

**DOCUMENTS SUBMITTED TO THE COURT
AFTER THE CLOSURE OF THE
WRITTEN PROCEEDINGS**

**DOCUMENTS FILED BY THE AGENT FOR THE GOVERNMENT
OF INDIA****Group A**

Relevant documents pertaining to a few examples out of the numerous cases where permission was sought from India between February 1966 and January 1971 for overflights of Pakistan aircraft across Indian territory on *scheduled services*.

(Vide paras. 18 and 25 (3) (c) of the Rejoinder.)

A. 1. Letter dated 2 February 1967 from Pakistan International Airlines Corporation (PIA) to the Director General of Civil Aviation (DGCA), India

(Atten. Shri L. K. Dey)

Sub.: Boeing/Trident/L-1049 Interwing Summer
Schedule Effective 1st April, 1967.

We are enclosing 30 copies of Boeing, Trident and L-1049 Interwing summer schedule effective 1st April, 1967.

It may be mentioned here that PK100/101 by L-1049 is complete cargo version.

Effective 1st April to 19th April, 1967, PK730/731 of Wednesdays is cancelled.

You are requested to please give us necessary permission.

(Signed) M. A. ROUF,
Central Control Manager.

A. 2. Letter dated 16 May 1967 from PIA to the DGCA, India

(Atten. Shri L. K. Dey)

Sub.: Interwing schedule during block overhaul of AP-AMJ
effective 11th July, till 31st August, 1967.

We are enclosing 30 copies of Interwing schedule during block overhaul of AP-AMJ effective 11th July, 67 till 31st August, 1967.

Effective 1st September, 67, we will resume our 1st April, 1967 schedule.

You are requested to please give us the necessary permission.

(Signed) M. A. ROUF,
Central Control Manager.

A. 3. Letter dated 10 August 1967 from PIA to the DGCA, India

(Atten. Mr. S. K. Godbole)

Sub.: PIA's Boeing Interwing Winter Schedule
Effective 1st November '67 till 31st Mar. '68.

We thank you for your letter No. 5/110/67-IR dated 1st June, 1967, giving us permission for our Interwing winter schedule forwarded vide our letter No. CCM/85/001/W/67/760 dated 3rd May, 1967. However we have made slight change in our schedule which is as follows:—

“PK722/723 will operate on Mondays/Tuesdays/Wednesdays/Fridays/Saturdays instead of Mondays/Tuesdays/Saturdays.

From 15th December, 67 till 15th January, 68 PK722/723 of Wednesdays/Fridays will operate by Trident instead of Boeing. Rest of the schedule remains unchanged.”

We are again enclosing 30 copies of the said schedule with amendments. This supersedes our schedule forwarded before vide our above referred letter.

Please give us your necessary permission.

(Signed) M. A. ROUF,
Central Control Manager.

A. 4. Letter dated 22 August 1968 from PIA to the DGCA, India

(Atten. Shri. L. K. Dey)

Sub.: PIA. Boeing Interwing Winter Schedule
effective 1st November, 1968.

We are enclosing 50 copies of Boeing Interwing winter schedule effective 1st November, 1968.

You are requested to please give us your necessary permission, as soon as possible.

(Signed) S. A. ABID,
Actg. Central Control Manager.

A. 5. Letter dated 27 September 1968 from PIA to the DGCA, India

(Atten. Shri. L. K. Dey)

Sub.: PIA Boeing Interwing Winter Schedule
effective 1st November, 1968.

Reference my letter No. CCM/85/001/W/68/1335 dated 22nd August, 1968 regarding the schedule noted above.

We have made the following minor amendments in the Boeing Interwing winter schedule effective 1st November, 1968:—

- (i) PK-735 Monday/Tuesday/Wednesday/Saturday Dep Dacca 2130 LT
Arr Karachi 0005 LT.

- (ii) Effective 1st January till 13th February, 69 PK-736/735 of Tuesdays/Wednesdays will not operate.

We are enclosing 50 copies of the above mentioned schedule with amendments for your ready reference.

You are requested to please give us the necessary permission, as soon as possible.

(Signed) M. A. ROUF,
Central Control Manager,

A. 6. Letter dated 28 September 1968 from PIA to the DGCA, India

(Atten. Shri. L. K. Dey)

Sub.: Trident Interwing Winter Schedule
effective 1st November, 1968.

Our Trident Interwing winter schedule effective 1st November, 1968, is as follows:—

PK-734 Daily Dep Lahore 1040 LT
Arr Dacca 1400 LT.
PK-733 Daily Dep Dacca 1450 LT
Arr Lahore 1640 LT.

You are requested to please give us the necessary permission, as soon as possible.

(Signed) M. A. ROUF,
Central Control Manager.

A. 7. Letter dated 17 October 1968 from PIA to the DGCA, India

(Atten. Shri L. K. Dey)

Sub.: PIA Boeing Interwing Winter Schedule
effective 1st November, 1968.

Reference your letter No. 5/110/68-IR dated 16th September, 1968, giving us permission regarding our above mentioned winter schedule.

We had made minor amendments in the Boeing Interwing winter schedule and 50 copies of the same were forwarded to you vide our letter No. CCM/85/001/W/68/1422 dated 27th September, 1968, for your necessary permission.

You are requested to please give us the necessary permission according to my letter referred to above.

(Signed) M. A. ROUF,
Central Control Manager.

A. 8. Letter dated 8 March 1969 from PIA to the DGCA, India

(Atten. Shri L. K. Dey)

Sub.: PIA Interwing Summer Schedule eff. 1-4-69
PIA Interwing Freighter Schedule eff. 17-4-69

We are enclosing 50 copies of our Interwing summer schedule effective 1st April, 1969 and Interwing freighter service effective 17th April, 1969.

You are requested to please give us the necessary permission as early as possible.

(Signed) M. A. ROUF,
Central Control Manager.

A. 9. Letter dated 6 June 1969 from PIA to the DGCA, India

Att.: Shri L. D. Dey

P.I.A. Interwing Summer Schedule effective
1st July, 1969

We are enclosing herewith 50 copies of our Interwing Summer Schedule effective 1st July, 1969.

You are therefore requested to please give us the necessary permission as early as possible.

(Signed) M. A. ROUF,
Central Control Manager.

Group B

Relevant documents pertaining to a few examples out of the numerous cases where permission was granted by Pakistan between February 1966 and January 1971 for overflights of Indian aircraft across Pakistan territory on *scheduled services*

(*Vide paras. 18 and 25 (3) (c) of the Rejoinder.*)

B. 1. Communication dated 24 October 1967 from the DGCA, Pakistan to DGCA, India

Attn. Mr. V. V. Joshi Planning Supdt. of Air India. Reference letters 19-8 A/9295 dated 11/9/67 and 19-8/A/10363 dated 9/10/67 received from Air India Bombay. Permission accorded to Air India to operate to their scheduled service overflying Pakistan territory on the prescribed ATS routings according to details mentioned in their letters referred to above with effect from 29th Oct. 1967. Any change in the schedule due to bad weather or technical reasons while overflying Pakistan territory may please be carried out with prior coordination with the FIC concerned.

B. 2. Communication dated 20 March 1968 from the DGCA, Pakistan to the DGCA, India

Ref. M/S Air India letter No. 19-8 A/2487 dated February 28th 1968. Permission accorded to Air India to operate their scheduled services overflying Pakistan territory on the prescribed routings according to detail mentioned in their letter referred to above with effect from 1st April 1968. Any change in the schedule due to bad weather or technical reasons while overflying Pakistan territory may please be carried out with prior coordination with FIC concerned.

B. 3. Communication dated 11 April 1968 from the DGCA, Pakistan to the DGCA, India

IAC permitted to operate their following scheduled passenger service overflying East Pakistan effective 15/4/68 to following revised details. IC-223/224 will be operating Viscount instead of F27 dep Calcutta 1405 arr Bagdogra 1535 dep 1605 arr Calcutta 1735. IC-249/250 dep Calcutta 0605 arr Gauhati 0735 dep 1205 arr Calcutta 1335. IC-225/226 dep Calcutta 1445 arr Agartala 1555 dep 0655 arr Gauhati 0840 dep Tezpur 1440 arr Calcutta 1640. IC-257/259 Mondays Wednesdays and Fridays dep Calcutta 0840 arr Agartala 1000 dep 1435 arr Calcutta 1605. VPDCZI inform all concerned.

B. 4. Communication dated 9 November 1968 from the DGCA, Pakistan to the DGCA, India

IAC permitted to operate their following scheduled passenger services overflying East Pakistan eff 11/11 to following revised details. Viscount services. IC203/204 Calcutta/Gauhati daily service dep Calcutta 1225 arr

Gauhati 1455 dep 1525 arr Calcutta 1655. IC205/206 twice weekly Mon and Thu dep Calcutta 1315 arr/dep Gauhati 1445/1515 arr Calcutta 1645. Same service all days of week except Mon and Thu dep Calcutta 0600 arr/dep Gauhati 0730/0800 arr Calcutta 0930. IC213/214 Calcutta/Gauhati/Mohanbari daily service dep Calcutta 0905 arr Gauhati 1035 return flight dep Gauhati 1445 arr Calcutta 1615. IC249/250 Calcutta/Gauhati/Tezpur/Jorhat daily service dep Calcutta 0610 arr Gauhati 0735 return flight dep Gauhati 1145 arr Calcutta 1315. F27 services. IC253/254 Calcutta/Agartala/Gauhati/Silchar on Tue Thur Sat and Sun dep Calcutta 0725 arr Agartala 0835 dep 0900 arr Gauhati 0950 dep 1015 arr Silchar 1110 return flight dep Silchar 1135 arr Gauhati 1230 dep 1255 arr Agartala 1345 dep 1410 arr Calcutta 1520. IC243/244 Calcutta/Agartala daily dep Calcutta 0615 arr Agartala 0725 dep 0750 arr Calcutta 0900. IC225/226 Calcutta/Agartala on Tue Fri and Sat dep Calcutta 1335 arr Agartala 1445 dep 1510 arr Calcutta 1620 on Thur and Sun dep Calcutta 1600 arr Agartala 1710 dep 1730 arr Calcutta 1840. IC259/260 Cal/Agartala/Silchar daily service dep Cal 1340 arr Agartala 1450 dep 1515 arr Silchar 1605 dep 1630 arr Agartala 1720 dep 1745 arr Calcutta 1855. IC211/212 Cal/Gauhati/Tezpur/Dimapur/Jorhat/Lillabari/Mohanbari on all days of week except Wed dep Cal 0730 arr Gauhati 0915 return flight dep Gauhati 1615 arr Calcutta on Wed dep Calcutta 0730 arr Gauhati 0915 return flight dep Gauhati 1550 arr Calcutta 1735. Dakota service. IC255/256 Cal/Agartala/Silchar/Imphal daily service dep Cal 0620 arr Agartala 0750 return flight dep Agartala 1450 arr Calcutta 1620 IC257/258 Cal/Agartala/Khowai/Kamalpur/Kailsharar daily service dep Cal 0830 arr Agartala 1000 return flight dep Agartala 1435 arr Calcutta 1605. IC277/278 Calcutta/Coochbehar/Hashimara on Wed Fri and Sun following the routing Cal/Ishurdi/Gauhati to cross Pakistan territory. IAC requested to intimate scheduled timings of this new service direct to FIC Dacca under intimation to us. All local timings. VPDCZI to inform all concerned.

B. 5. Communication dated 12 March 1969 from the DGCA, Pakistan to the DGCA, India

Permission accorded to AI to operate their sch overflying Pak territory on the prescribed ATS routings according to details mentioned in their sig referred to above with effect from 1/4/69. Any change in the schedule due to bad weather or technical reasons while overflying Pak territory may please be carried out with prior coordination with the FIC concerned.

B. 6. Communication dated 24 September 1969 from the DGCA, Pakistan to the DGCA, India

AirIndia permitted to operate their scheduled services overflying Pakistan territory on the prescribed ATS routings in accordance with the winter schedule effective 26/10/69 mentioned in their signal referred to above. All concerned informed. Any changes in the routings may be intimated direct to FIC at Karachi Lahore and Dacca.

B. 7. Communication dated 30 October 1969 from the DGCA, Pakistan to the DGCA, India

IAC permitted to operate their scheduled overflying services IC253/254 with F27 aircraft and IC267/268 with DC3 aircraft effective 1/11/69 to

following details IC253/254 Tuesdays/Thursdays/Saturdays/Sundays dep Vecc 0725 arr/dep Agartala 0835/0900 arr/dep Gauhati 0950/1050 arr/dep Silchar 1110/1135 arr/dep Gauhati 1230/1255 arr/dep Agartala 1345/1410 arr Vecc 1520. IC267/268 daily instead of Mondays/Wednesdays/Fridays on the same timings local.

B. 8. Communication dated 12 March 1970 from the DGCA, Pakistan to the DGCA, India

AirIndia permitted to operate their schedule services overflying West Pakistan territory on prescribed ATS routings in accordance with the details mentioned in VABBAIOO signal referred to above. VABBAIOO requested to please furnish their schedule overflying East Pakistan via PDR 8.

Group C

Relevant documents pertaining to a few examples of cases where Pakistan sought India's permission for making non-traffic landings in India in respect of its *non-scheduled* flights between February 1966 and January 1971
(*Vide* para. 18 of the Rejoinder.)

C. 1. Communication dated 30 June 1967 from the DGCA, Pakistan to the DGCA, India

Deptt of Locust Warning and Plant Quarantine Govt of Pakistan request permission to operate ferry flight of their Beaver trainer aircraft from Dacca to Lahore in the second week of July 1967 on following route. Dacca-Calcutta-Lucknow-Palam-Lahore. N/S Calcutta-Dehli. Refuelling Calcutta Lucknow Palam. Exact date of flight name of crew registration marks of aircraft will be intimated on receipt of your no objection.

C. 2. Communication dated 18 March 1968 from Pakistan International Airlines, Karachi, to the DGCA, India

PIA operating positioning flts from OPKC to VPDC and VPDC to OPKC on 27 and 28 March 68 respectively. Particulars of the flts are as follows. 27th March 68 OPKC to VPDC a/c F27 APATU Capt Raonaq plus 3 itinerary as follows positioning fit dep OPKC 270200Z arr VIPA 270500 dep 270545 arr VPDC 0930Z tech landing at VIPA. 28th Mar 68 VPDC to OPKC acft F27 APAUS Capt Raonaq plus 3 dep VPDC 280200-Z arr VECC 280300Z dep 0345 arr VIPA 280725 dep 0810Z arr OPKC 281115Z tech landings at VECC and VIPA. Req permission and no objection.

C. 3. Communication dated 27 April 1968 from Pakistan International Airlines, Karachi, to the DGCA, India.

PIA operating positioning fit from OPKC VPDC by F 27 aircraft on 03rd May 1968. Particulars of fit as follows aircraft F 27 AP-AUS Capt Roanaq plus 3 itinerary dep POKC 0200Z arr VIDD 0515Z dep VIDD 0600Z arr VPDC 0950Z request necessary permission.

C. 4. Communication dated 18 March 1969 from Pakistan International Airlines, Karachi, to the DGCA, India

PIAC operating positioning flights OPKC/VPDC and VPDC/OPKC on 21st and 22nd Mar 69 respectively according to following details positioning fit a/c F 27 APALW Capt Shahab plus three dep OPKC 210200 over VIDP 0500 dep VIDP 0545 arr VPDC 0930Z positioning fit a/c F-27 APAAO Capt Shahab plus three dep VPDC 220400 arr VECC 0500 dep VECC 0545 arr VIDP 0925Z dep VIDP 1010 arr OPKC 1315 Z. Request no objection and necessary permission.

C. 5. Communication dated 17 April 1969 from Pakistan International Airlines, Karachi, to the DGCA, India

PIAC operating a positioning on 19/4/69 flight from OPLA to VPDC. Particulars of flight as follows aircraft F-27 APAUV Capt N Chughtai plus three itinerary 19/4/69 dep OPLA 0200 arr VIDP 0320 dep 0400 arr VPDC 0750. On 20/4/69 PIAC optng positioning flight fm VPDC to OPLA. Aircraft APALW Capt N Chughtai rpt Capt N Chughtai plus three. Itinerary positioning flight 20/4/69 dep VPDC 0200 arr VECC 0255 dep 0340 ar VIDP 0715 dep 0800 arr OPLA 0925. Request no objection and necessary permission to operate the flights.

C. 6. Communication dated 3 November 1969 from the DGCA, Pakistan to the DGCA, India

Govt of Pakistan Department of Plant Protection Beaver aircraft AP. AVH Capt S M Shahjehan Talukdar and Flt Engnr S A Shaikh undertaking ferry flight from Lahore to Dacca departing Lahore 6/7 Nov early morning and to land at Delhi (Palam) for refuelling. A/c to fly straight from Delhi to Dacca followings Delhi Dacca pdr. SM Shahjehan Talukdar passport Number AC 006184 S A Sheikh NPPN AC460386. Request confirm no objection urgently. Short notice regretted.

Group D

Relevant document pertaining to an example where permission was granted by Pakistan to an Indian aircraft for making non-traffic landings in Pakistan territory on *non-scheduled service*
(*Vide para. 18 of the Rejoinder.*)

D. 1. Communication dated 28 October 1968 from the DGCA, Pakistan, to the DGCA, India, permitting Indian Airlines Corporation to operate a flight from Delhi to Kabul with a landing at Lahore for non-traffic purposes in both directions

Permission granted to IAC to operate fit VIPA-OPLA-OAKB on 28/10 and return via same route on 29/10 as per following details. Aircraft Visc VTDOD Capt Singh ETD VIPA 0630Z eta/etd OPLA 0800/0830Z eta OAKB 1100Z carrying engineers spares. Landing Lahore 'technical' bothways routing in Pakistan will be Lahore Rahimyarkhan Fort Endaman and vice versa. IAC to intimate return flight details in advance to OPLAZI. OPLAZI to inform all concerned.

Group E

AIPs need not incorporate prohibitions of flights applicable to aircraft registered in particular countries—extracts from relevant documents
(*Vide* para. 13 (iv) of the Rejoinder.)

E. 1. Extract from Jeppesen Airway Manual, Entry Requirements Section, pp. ME-11-12 (Special Notices issued by Pakistan)

1. **PASSPORT:**

Required.

2. **VISA:**

Required, except U.N. Passport holders and citizens of the following countries: Norway, Netherlands, Denmark, Greece, Turkey, Tunisia, Sweden, Austria, Federal Republic of Germany, Belgium, Japan and the Commonwealth Countries.

3. **HEALTH:**

Certificates of vaccination against smallpox and cholera are required. Certificate of vaccination against yellow fever is required for persons arriving from infected areas in Africa and America.

The pilot-in-command of an aircraft shall submit a health report to the aerodrome authorities 2 hours before landing. All aircraft infected or suspected to be infected with yellow fever should land at Karachi only.

4. **RATE OF EXCHANGE:**

\$ 1.00 (U.S.) equals approximately 4.76 Rupee.

5. **AIRCRAFT ENTRY REQUIREMENTS:**

a) **Scheduled Air Services**

Scheduled operations are governed by interstate air agreements or special authorizations.

b) **Non-Scheduled Air Services**

All non-scheduled flights wishing to enter Pakistan territory shall obtain clearance from OPKCYAAT at least 96 hours before intended flight.

The notification shall include the following information:

- name of operator;
- type of aircraft, registration marks and callsign;
- purpose of flight, name of charterer, if any;
- number of passengers and their nationality, description and amount of cargo with names of consignor and consignee;
- details of route of flight/itinerary with ETA/ETD.

Prior permission required for flights with traffic stops. Applications shall be submitted 72 hours in advance to the Director General of Civil Aviation, 19 Napier Barracks, Karachi. Telegraphic address: CIVILAIR KARACHI. AFTN: OPKCYO.

Applications will be considered only if the following conditions have been observed: The remuneration, hire or reward for the carriage of charter traffic originating in or destined for Pakistan shall be not less than the rates, remuneration, or hire ordinarily charged by an airline performing regular air services on the route concerned. If there is no such regular air service, it should not be less than the rates ordinarily charged by an airline performing regular services for or over a com-

parable route or distance. Furthermore, charter flights by foreign operators and originating in Pakistan will be permitted, provided the applicant produces satisfactory evidence in the form of a "No Objection Certificate" from the national operator to the effect that the national operator is not in a position to provide the service rendered by the charterer. No freight or passengers shall be taken on in Pakistan unless the charter or hire of the whole or part of the space on such aircraft is considered to have been arranged through the agency of the national operator. No advertisement in respect of such flights soliciting booking or trafficking or purporting to notify availability of space in an aircraft shall be made in any manner whatsoever, either by the person or airline owning or operating the aircraft, or by any other person.

The applications or notification shall include the following information:

- name of owner or company;
- type of aircraft;
- registration marks;
- callsign of aircraft;
- origin, destination and route of flight;
- details of passengers or freight, if carried;
- estimated time of arrival in and departure from Pakistan;
- radio equipment carried;
- name of charterer and consignee of freight, if applicable.

c) State Aircraft Flights

Application for permission to operate military and diplomatic aircraft shall be submitted to the Ministry of External Affairs. Telegraphic address: FOREIGN KARACHI.

6. AIRPORTS OF ENTRY:

No aircraft other than aircraft engaged in a scheduled air transport service, shall make flights into or transit across the territory of Pakistan except in accordance with the following conditions:

Every such aircraft shall immediately upon entry into Pakistan be flown and landed

- if the entry is from the West, at Karachi airport;
- if the entry is from the East, at Chittagong airport;
- if the aircraft is flying from India to West Pakistan, at Lahore airport or Karachi airport;
- if the aircraft is flying from India to Afghanistan and vice versa, at Karachi airport or Lahore airport;
- if the entry is from Ceylon into West Pakistan, at Karachi airport.

In the case of short-range aircraft coming from the West, a landing at Jiwani for purposes of refuelling is permitted, provided that the aircraft will not proceed thence to a point outside Pakistan territory, without clearing customs and other formalities at Karachi airport.

7. SPECIAL NOTICES:

- a) All aircraft entering Karachi and Lahore FIR shall contact the appropriate FIC at least 15 minutes prior to entry.
- b) No Rhodesian or Israel registered aircraft is permitted to fly into or over Pakistan. No flight of international airlines operating to or from Rhodesia or Israel is permitted within Pakistan airspace.
- c) Aircraft operating from Indian territory are not permitted to overfly West Pakistan unless a landing is made at a Pakistan airport.

*E. 2. Extract from Jeppesen Airway Manual, Entry Requirements Section,
p. ME-9 (Special Notices issued by Iraq)*

1. **PASSPORT:**
Required.
2. **VISA:**
Required. No national of Israel will be allowed to enter Iraq and passengers holding passports containing an endorsement for Israel, either valid or expired will not be permitted to enter Iraq.
3. **HEALTH:**
Vaccination certificates are not required except for persons coming from an area infected by plague, cholera, yellow fever, smallpox, typhus, or relapsing fever.
4. **RATE OF EXCHANGE:**
\$ 1.00 (U.S.) equals approximately 0.36 Dinar.
5. **AIRCRAFT ENTRY REQUIREMENTS:**
 - a) **Scheduled Air Services**
Scheduled air services are governed by interstate air agreements or special authorization from the Directorate General of Civil Aviation, Baghdad-West Airport. Telegraphic address: CIVILAIR BAGHDAD. AFTN: ORBWYA.
 - b) **Non-Scheduled Air Services**
Non-Scheduled and private flights over or into Iraqi territory are subject to prior permission. Applications shall be submitted 72 hours in advance to the Directorate General of Civil Aviation, or through diplomatic channels. Application for military flights shall be submitted 7 days in advance through diplomatic channels. The following information shall be given with each application:
 - name of operator;
 - type of aircraft and registration marks;
 - date and time of arrival at, and departure from Iraq;
 - place or places of embarkation or disembarkation, as the case may be of passengers and/or freight;
 - purpose of flight and number of passengers and/or nature and amount of freight;
 - name, address and business of charterer, if any.
6. **AIRPORTS OF ENTRY:**
Aircraft shall first land at and finally depart from an international airport.
7. **SPECIAL NOTICE:**
 - a) Aircraft registered in USA are not permitted to overfly or land in Iraqi territory.
 - b) All non-scheduled aircraft flying over Iraqi territory shall land at an Iraqi airport.
 - c) Use of all Iraqi airports except Baghdad Int'l and Basrah (Ma'aquil) is prohibited to all foreign aircraft.

E. 3. Extract from Jeppesen Airway Manual, Entry Requirements Section, pp. MID-3-4 (Special Notices issued by Egypt Arab Republic)

1. PASSPORT:

Required.

2. VISA:

Required, except for passengers in direct transit.

3. HEALTH:

Certificates of vaccination against smallpox, cholera and yellow fever are required for persons arriving from respective epidemic areas.

4. RATE OF EXCHANGE:

\$ 1.00 (U.S.) equals approximately Egypt £ 0.35.

5. AIRCRAFT ENTRY REQUIREMENTS:

a) Scheduled Air Services

Scheduled operations are governed by interstate air agreements or special authorizations.

b) Non-Scheduled Air Services

Prior permission, 5 days in advance, is required for overflights and technical landings. The application shall be submitted to the Director General of Civil Aviation.

Landings for traffic purposes require prior permission, and an application shall be submitted to the aeronautical authority within the following time limits:

At least 5 days in advance for the following categories of flights:

Flights for the purpose of meeting humanitarian or emergency needs;
Taxi-class passenger flights of occasional character on request, provided that the aircraft does not have a seating capacity for more than six passengers and provided that the destination is chosen by the hirers and no part of the capacity of the aircraft is resold to the public;

Flights on which the entire space is hired by a single person (individual, firm, corporation) for the carriage of his staff or merchandise, provided that no part of such space is resold to the public.

At least 30 days in advance for the following categories of flights:

Flights on which the entire space is hired on behalf of members of affinity groups provided that:

- every passenger to be carried shall be a member of a single organized group which pursues a principal objective other than travel, and shall have been a member of that group for the period of six months preceding the flight, or shall be spouse or dependent child of a person so qualified or a parent of such person living in the same household with that person;

- the group shall have a permanent character,

- the membership of the group shall not exceed twenty thousand persons, and

- advertisements and communications, whether oral or written, for the purposes of inviting or inducing persons to engage in the journey shall be communicated only to members of the group, and only by members or officials of the group.

Flights for the transportation of students, provided that:

- such flights are sponsored by recognized institutions or students associations;
- such flights shall be reserved for students matriculated at a recognized university or other equivalent establishment of higher education, only registered full-time students who have not yet graduated shall be eligible. Students taking evening courses or courses lasting a few months shall not be eligible;
- Members of teaching staff shall be authorized to participate in such flights when they are leading students groups on such flights and are enrolled in the same establishment, provided that the number of such leaders is not larger than is necessary for each group;

The spouse or dependent child of a person so qualified or a parent of such person living in the same household with that person are also permitted to participate in such flights:

Flights for the sole transportation of merchandise.

Applications for permission or notification should be submitted by operators or their agents by letter or reply-paid telegram for at least 20 words to the Director General of Civil Aviation, Cairo, Telegraphic address: TAY ARAN CAIRO and shall include the following information:

- name and address of operator;
- type of aircraft and registration marks;
- date and estimated time of arrival at, and departure from Egypt A.R. territory;
- place of embarkation or disembarkation abroad of passengers and/or freight;
- purpose of flight indicating name, address and business of charterer, the number of passengers, and/or nature and amount of freight.

In order to perform non-scheduled commercial flights to Egypt A.R. territory, the aircraft operator or the travel agent shall have been previously inscribed and accredited before by the Civil Aviation Department. Furthermore, the point of origin or the destination of the traffic must lie within the territory of the country in which the aircraft is registered. Nevertheless, consideration will be given to requests for flights not fulfilling this condition in cases where the national air carriers are unable to provide the service required.

Application for inclusive tour charter services shall be submitted by the operators or their agents to the aeronautical authorities by the following dates:

- 1st September for flights between 1st November and 31st March;
- 15th January for flights between 1st April and 31st October.

The application for inclusive tour air services shall include the following information:

- name and address of the operator;
- name and address of the charterer or travel agent by whom the tour is organized;
- route, including all places to be served and ultimate destination of tour;
- frequency of flights and period over which they are to take place;
- type and capacity of aircraft;
- provisional timetable;
- number of passengers;

- minimum inclusive price each passenger is charged for.
Consideration will only be given to application submitted from the country of origin or destination of the inclusive tour traffic.
Charges must conform to the appropriate IATA resolution. The criteria followed by the aeronautical authority in considering the application is that the inclusive tour price charged to each passenger should not be less than the lowest applicable fare for the type or service provided, available to the public on the same route.
6. **AIRPORTS OF ENTRY:**
Aircraft shall first land at and finally depart from a customs airport.
7. **SPECIAL NOTICES:**
- a) Aircraft destined for or departing from Israel are not allowed to fly over or into Egypt A.R. airspace.
 - b) Aircraft registered in South Africa or Portugal are prohibited to fly over or into Egypt A.R. airspace.
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E. 4. Title Page of Aeronautical Information Publication, India

AERONAUTICAL INFORMATION PUBLICATION INDIA

SECOND EDITION
(1965)



सत्यमेव जयते

CONSULT NOTAMS AND AERONAUTICAL
INFORMATION CIRCULARS FOR LATEST INFORMATION

AERONAUTICAL INFORMATION SERVICE
DEPARTMENT OF CIVIL AVIATION
INDIA

E. 5. Page GEN 1-2 of Aeronautical Information Publication, India

Published Aeronautical Information

1. *AIP India*.—The AIP, issued in one volume, is the basic aeronautical information document published for international usage. It contains information of a lasting character essential to air navigation over the territory of India, that is, the FIRs of Bombay, Calcutta, Delhi and Madras. It is available in English only and is maintained up-to-date by an amendment service consisting of reprinted pages and, in case of minor amendments, manuscript corrections. Amendments, together with checklists, are normally issued dated first of January/April/July/October.

Aeradio.—The Aeradio, India, is published in one volume. It is the basic aeronautical communication information document for domestic usage. It contains information essential to air navigation over the territory of India. It may thus also include the aeronautical communication information already published in AIP, India.

Notams Class II (Called Notices to Airmen upto 14-7-1962).—The notams are published as and when necessary to disseminate information of direct operational significance.

From 15-7-1962 each NOTAM has been assigned a serial number, pertaining to the calendar year. A check list of NOTAMS currently in force is normally issued every 6 months.

Aeronautical Information Circulars

These circulars contain information of general technical interest and information relating to administrative matters which is inappropriate to AIP or NOTAM. They also contain information about aerodromes not available for international usage but the information about which never-the-less, is primarily important for domestic aircraft operation. Notams and Aeronautical Information Circulars are furnished free of charge to all users.

Distribution of Notams by Telecommunications

NOTAMS given class I distribution (by telecommunication service) are originated by international NOTAM offices, Bombay, Calcutta, Delhi & Madras, and are distributed in two series *i.e.* VVO series and International Class I Notam series. VVO Notams are for domestic distribution covering all the four FIRs. Separate serial numbers are maintained for International Class I distribution of NOTAMS at the respective NOTAM offices starting with No. 1 at 0000 GMT on 1 January every year. A check list of NOTAMS currently in force is issued every month to all NOTAM offices as agreed to from time to time.

2. Summary of National Regulations

The legislation and rules governing Civil Aviation in India have been

compiled in the Indian Aircraft Manual which is revised from time to time. The national regulations in force are:—

- (i) The Aircraft Act, 1934 (XXII of 1934)
- (ii) The Indian Aircraft Rules, 1937
- (iii) The Indian Aircraft Rules, 1920 (Part IX)
- (iv) The Indian Aircraft (Public Health) Rules, 1954
- (v) The Indian Carriage by Air Act, 1934 (XX of 1934)
- (vi) Important statutory notifications affecting Aviation in India.

NOTE: All the above are available in one volume entitled the Indian Aircraft Manual priced at Rs. 4.55 (inland) and 10s. 8d. or \$ 1.64 (foreign).

International Standards and recommended practices, evolved by International Civil Aviation Organisation pursuant to article 37 of the Convention on International Civil Aviation (Chicago 1944) and adopted for world wide application and recommended for inclusion in the National regulations of the countries, are brought into force from time to time by issuing special directions not inconsistent with the Aircraft Act, 1934, or the Indian Aircraft Rules, 1937. These special directions relate to the operation, use, possession, maintenance and navigation of Aircraft flying in or over India or of aircraft registered in India. These special directions are promulgated through Notams Class II (Notices to Airmen) and/or Aeronautical Information Publication, Aeronautical Information Circulars & Notices to Aircraft Owners & Maintenance Engineers.

Group F

International Civil Aviation Organisation, Working Paper on "Voting in the Council on disagreements and complaints brought under the Rules of Settlement of Differences"

(Vide para. 78 of the Rejoinder.)

F. 1. International Civil Aviation Organisation, Council—Seventy-fourth Session, document C-WP 5465 dated 21/10/71

*Subject No. 27: Convention on International Civil Aviation
(Chicago Convention)*

*Voting in the Council on Disagreements and Complaints
Brought under the Rules for the Settlement of Differences
(Presented by the Secretary-General)*

- References:* 1. S. G. Memorandum SG 609/71, 10 August 1971
2. Chicago Convention, Doc. 7300/4
3. International Air Services Transit Agreement
4. Draft C-Min. LXXII/20 (Closed) Part II

Introduction

1. Following the issue of the Secretary General's Memorandum of the above-mentioned subject to Council Representatives, No. SG 609/71 dated 10 August 1971, a Council Representative requested the President of the Council that the subject of that Memorandum be included in the Work Programme of the Council. The present paper provides an analysis of the question of the majority required under the Chicago Convention for a decision of the Council in cases of disagreements and complaints brought under the Rules for the Settlement of Differences. The opinion of the Legal bureau in the matter is stated in paragraph 5, while paragraph 6 recalls the ruling given by the President in two cases recently.

Majority required for decisions of the Council

2. (a) The Council is a body of which the number of members is fixed: Article 50 of the Chicago Convention states: "It shall be composed of twenty-seven Contracting States elected by the Assembly".
- (b) Article 52 provides that: "Decisions by the Council shall require approval by a majority of its members".
- (c) Consequently, at present the requisite number of members is fourteen.
- (d) It is to be specifically noted that the requirement of Article 52 is that a decision of the Council as a body is dependent on the number of its members, and not, for example, as in the case of the Assembly, on the number of "the votes cast" (Article 48, paragraph (c), of the Chicago Convention).

Cases where some members do not vote

3. The number of votes cast on a given occasion would be less than the number of members of the Council (namely, 27) in the following cases:

- A.—Where the Convention states that a member shall not vote:
- (i) Under Article 53 which provides: “No member of the Council shall vote in the consideration by the Council of a dispute to which it is a party”.
 - Note:* Article 84 of the Convention contains an identical provision.
 - (ii) Under Article 66 (b): “Members of the . . . Council who have not accepted the International Air Services Transit Agreement . . . or the International Air Transport Agreement . . . shall not have the right to vote on any questions referred to the . . . Council under the provisions of the relevant Agreement”.
 - (iii) Under Article 62 of the Convention: “The Assembly may suspend the voting power . . . in the Council of any Contracting State that fails to discharge within a reasonable period its financial obligations to the Organization”.
- B.—Where it is impracticable for a member to vote because its Representative is not present, or unable to be present, for any reason, at the time of the voting in the Council.
- C.—Where a member voluntarily decides not to vote: for example, a Representative may declare that his State is not participating in the vote; or he, without any such declaration, simply abstains in the voting.

Effect of not voting

4. The provisions of Articles 53, 84, 66 and 62 mentioned above contain no reference, expressly or by implication, to Article 52. Consequently, they do not produce any effect on the requirement specified in Article 52 that: “Decisions by the Council shall require approval by a majority of its members”. Therefore that Article is not subordinated to, and operates independently of, the other four Articles mentioned.

Conclusion

5. In the opinion of the Legal Bureau—
- A.—Nothing in Articles 53, 84, 66 or 62 of the Convention amends the figure of twenty-seven which is the membership of the Council specified in Article 50 (a). In other words, a member of the Council does not cease to be a member of that body solely because its voting power is taken away for some particular occasion by a provision of the Convention. (A State which is not entitled to vote at a particular session of the Assembly by reason of the application of Article 62 or Article 88 does not cease to be a Contracting State.)
- B.—Nothing in the four Articles mentioned affects the majority required by Article 52, such majority being related to the number of members of the Council and not to the members voting.
- C.—The foregoing conclusions would only be fortified by the following provision of Article II, Section 2, of the International Air Services Transit Agreement¹ which depends on the Chicago Convention:

¹ Doc. 7500.

“Section 2

If any disagreement between two or more contracting States relating to the interpretation or application of this Agreement cannot be settled by negotiation, the provisions of Chapter XVIII of the above-mentioned Convention shall be applicable *in the same manner as provided therein with reference to any disagreement* relating to the interpretation or application *of the above-mentioned Convention.*”¹

Ruling of the President

6. The only precedent relating to voting in the Council on (1) disagreements and (2) complaints, brought under the Rules for the Settlement of Differences, is that the President of the Council, in the meeting of the Council held on 7 April 1971, gave the ruling that in the two cases before the Council, Case No. 1 and Case No. 2, Pakistan versus India, “the statutory majority requirement in Article 52 for any decision taken” would be necessary. Replying to two questions he confirmed that the statutory majority would be required in Case No. 2 also (besides Case No. 1), and explained that the Rules could not be amended to permit decisions to be taken on Case No. 2 by a majority of the Member parties to the Transit Agreement because “the majority was governed by the Chicago Convention, not by the Rules for the Settlement of Differences”: *see* Draft C-Min. LXXII/20 (Closed), Part II—*Discussion*, paragraphs 6, 7, 8 and 9. There were no further questions raised relating to procedure.

Action

7. This paper is presented for information.

¹ Italics supplied for this paper.

Group G

Air defence clearance regulations of India

(*Vide* para. 18 and Annexure 1 of the Rejoinder.)

G. 1. NOTAM No. 22/1968 of 26 November 1968 issued by the Government of India, Aeronautical Information Service

(10-4-66-ARI)

ESTABLISHMENT OF AIR DEFENCE IDENTIFICATION ZONES AND PROCEDURES FOR AIR DEFENCE CLEARANCE

Air Defence Identification Zones (ADIZs) as indicated hereunder and shown in the attached map have been established.

(a) A.D.I.Z. Bombay

A circular airspace of 150 NM with Bombay as centre excluding airspace of A.D.I.Z. West protruding into this area.

(b) A.D.I.Z. West

The entire airspace over the area bounded by coordinates 2940 N 7318E, 2930N 7538E, 2520N 7400E, Ahmedabad, Surat (2110N 7250E), 2057N 6947E, 2115N 6807E and 2336N 6807E and thence along the international border with West Pakistan up to 2940N 7318E.

(c) A.D.I.Z. North

The entire Indian airspace north of line formed by joining the coordinates 2940N 7318E, 2930N 7538E, 2930N 8000E and 2930N 8020E.

(d) A.D.I.Z. Delhi

The entire Indian airspace bounded by joining the coordinates 2930N 7538E, 2930N 8000E, 2614N 8000E, Gwalior, 2520N 7400E, and 2930N 7538E.

(e) A.D.I.Z. Central India

The entire airspace over the area bounded by joining the coordinates 2930N 8000E, 2930N 8020E then along the Indo-Nepal boundary on the north upto 2639N 8600E, 2315N 8600E, Allahabad, 2614N 8000E and 2930N 8000E.

(f) A.D.I.Z. Calcutta

The entire airspace over the area bounded by coordinates 2639N 8600E along the Indo-Nepal border upto a point 2623N 8735E joined by the shortest line through Kishanganj (2605N 8755E) to a point 2555N 8806E and then along the International boundary with East Pakistan upto a point 2040N 8915E, 2040N 8600E, 2315N 8600E, and up to 2639N 8600E.

(g) A.D.I.Z. East

The entire Indian airspace northeast of the shortest line through Kishanganj (2605N 8755E) joining the borders of Nepal at 2623N 8735E and East

Pakistan at 2555N 8806E including Sikkim, Bhutan, Assam, NEFA, Nagaland, Manipur and Tripura.

2. Requirement for Air Defence Clearance

No flight of aircraft, civil/military, Indian or foreign originating within the ADIZs defined under para. 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 Notam No. 6 of 1966.

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. The Flying Club aircraft proceeding on cross country flights may obtain Air Defence Clearance for the return flight also if so desired provided that a fresh ADC will have to be obtained in the event of delay of more than thirty minutes in excess of the estimated departure time filed for the return flight.

G. C. ARYA,
Director General of Civil Aviation.

**DOCUMENTS FILED BY THE AGENT
FOR THE GOVERNMENT OF PAKISTAN**

1. Letter dated 17 September 1965 from the Secretary General, ICAO, to the DGCA, Pakistan

No. E 1/8-65/192

I have the honour to inform you that a letter dated 9 September 1965, of which a copy is attached, was received from the Government of India. The cable referred to in the first paragraph was notified to you in my communication E 1/8-62/232 of 20 December 1962. The statements made in the letter with reference to the Convention on International Civil Aviation presumably relate to the provisions of Article 89 thereof; as regards the International Air Services Transit Agreement, there is no provision corresponding to Article 89 of the Chicago Convention.

The President of the Council, acting under the delegation of authority conferred on him when the Council is not in session, decided to transmit copy of the letter from India to all Contracting States. The Government of India has been requested that, upon termination of the Emergency, notice of that fact be sent to the Council.

(Signed) B. T. TWIGT.

Attachment

Copy of a letter, dated 9 September 1965, received from the Government of India

To: The President of the Council of ICAO

I have the honour to refer to Government of India's cable of November 28, 1962, and the letter No. 21-A/7-62 dated November 29, 1962, whereby intimation was given that the President of the Republic of India has declared by proclamation under the Indian Constitution that a grave emergency exists whereby the security of India is threatened and that, under these circumstances, the Government of India may not find it possible to comply with any or all provisions of the Conventions on International Civil Aviation and the International Air Services Transit Agreement.

2. Despite this notification, as you are aware, the Government of India have consistently adhered to their obligation under the Convention on International Civil Aviation and the International Air Services Transit Agreement.

3. However, the recent aggression on India by the Armed Forces of Pakistan places on the Government of India, heavy burdens with regard to their own security and the safety of aircraft flying through the country's air space. Therefore, the present danger, coupled with the continued threat of external aggression on Indian territory by the People's Republic of China, again entails the possibility that the Government of India may not be able to comply with any or all provisions of the Convention on International Civil Aviation and the International Air Services Transit Agreement.

4. It will be the continued endeavour of the Government of India to adhere, as far as possible, to the provisions of the Convention on International Civil

Aviation and the International Air Services Transit Agreement but to the extent they are unable to do so, it will be directly as a result of the emergency referred to above created by the continued threat of aggression by the People's Republic of China and now extended and heightened by the Pakistani aggression.

(Signed) V. SHANKAR,
Secretary to the Government of India.

2. Letter dated 9 December 1971 from the Secretary General, ICAO, to the DGCA, Pakistan

E 1/8-71/243

Subject: Article 89 of the Chicago Convention

I have the honour to send herewith copies of two cables from Pakistan dated 3 and 6 December 1971 and a cable dated 4 December 1971 from India. These cables were placed before the Council with the comment by the Secretary General that the references to the Convention related, presumably, to Article 89 of the Convention on International Civil Aviation, and that there was no corresponding provision in the International Air Services Transit Agreement.

The Council decided to transmit copies of the said cables to contracting States. The Government of Pakistan and India have been requested that, upon termination of the emergency, notice of that fact be sent to the Council.

(Signed) Assad KOTAITE.

Attachment

Copy of Cable dated 3 December 1971 received from Pakistan

In view of the existing emergency and aggression by India on Pakistan unable to comply with the provisions of the Convention.

CIVILAIR

Copy of Cable dated 4 December 1971 received from India

From N. Sahgal, Secretary, Government of India, Ministry of Tourism and Civil Aviation, New Delhi. Pakistan having launched a full scale war against India on third December 1971 the President of the Republic of India has declared by proclamation under Clause (1) of Article 352 of the Constitution of India that a grave emergency exists whereby the security of India is threatened by external aggression. Under these circumstances Government of India may not find it possible to comply with any or all provisions of the Convention on International Civil Aviation and International Air Service Transit Agreement.

AVMIN

Copy of cable dated 6 December 1971 received from Pakistan

As a result of aggression into Pakistan territory by India the President has declared by proclamation that a grave emergency exists whereby the security of Pakistan is threatened. Pakistan airports are already under attack by Indian aircraft. Under these circumstances the Government of Pakistan may not find it possible to comply with any or all provisions of the Convention on International Civil Aviation and International Air Services Transit Agreement.

MINDEF Aviation Division Rawalpindi.

3 (a). Letter dated 12 September 1964 from the Manager, Air India International, to the DGCA, Pakistan

Air-India Winter Timetable 1964

The Winter Timetable of Air-India Flights AL. 801 and 802 with Comet equipment will be as under:

Flight AI. 801—
(1st Flt. 26.10.1964)

Bombay	dep.	1730	Mon.	LT
Karachi	arr.	1845	"	
	dep.	1930	"	
Bahrain	arr.	2135	"	
	dep.	2220	"	
Kuwait	arr.	2220	"	

Flight AI. 802—
(1st Flt. 26.10.1964)

Kuwait	dep.	0645	Mon.	LT
Bahrain	arr.	0840	"	
	dep.	0925	"	
Karachi	arr.	1245	"	
	dep.	1330	"	
Bombay	arr.	1535	"	

We shall be grateful if you will kindly acknowledge receipt of this letter.

(Signed) R. D. KHORY.

3 (b). Letter dated 27 April 1965 from the Manager, Air-India International, to the DGCA, Pakistan

Air-India Summer Schedule

Kindly refer to your letter No. 2-7/64/AT.1 dated April 26, 1965.

We regret to inform you that we have discontinued our operations through Karachi, effective 1st April 1965, until further notice.

We have, however, submitted notification of Air-India services overflying Pakistan territory and have received acknowledgement of the same vide your letter No. 7-2/65/AT.1 dated 15th March, 1965.

(Signed) R. D. KHORY.

3 (c). Letter dated 4 September 1965 from the Manager, Air-India International, to the DGCA, Pakistan

Flight AI. 512 of 12.9.1962 and
Flight AI. 505 of 5.10.1965

We have your standing permission for our Flights AI. 512 and AI. 505, amongst others, to overfly Pakistan territory.

We would like to inform you, however, of a slight change in schedule of the above flights. The revised schedule will be as under:

Flight AI. 512 of 12th September 1965

dep.	Moscow	2120	GMT	12.9.65
arr.	New Delhi	0330		13.9.65

Flight AI. 505 of 5th October 1965

dep.	New Delhi	2225	GMT	4.10.65
arr.	Moscow	0500		5.10.65

(Signed) R. D. KHORY.

3 (d). Indian Airlines Corporation Schedule of Passenger Services to and Overflying Pakistan Effective 1 April 1965

Viscount Schedules

	<i>IC-131</i>				<i>IC-132</i>	
	2.4.5.				2.4.5.	
	0740	D	Bombay	A	1320	
	0935	A	Karachi	D	1025	
<i>IC-203</i>	<i>IC-201</i>				<i>IC-202</i>	<i>IC-204</i>
Daily	Daily				Daily	Daily
1210	0600	D	Calcutta	A	0930	1540
1335	0725	A	Gauhati	D	0805	1415
	<i>IC-213</i>				<i>IC-214</i>	
	Daily				Daily	
	1120	D	Calcutta	A	1830	
	1245	A	Gauhati	D	1705	
	1320	D	Gauhati	A	1630	
	1435	A	Ghabua	D	1515	
	<i>IC-221</i>				<i>IC-222</i>	
	Daily				Daily	
	0730	D	Calcutta	A	1035	
	0845	A	Bagdogra	D	0925	
	<i>IC-441</i>				<i>IC-442</i>	
	3.7.				3.7.	
	1430	D	Delhi (Palam)	A	2050	
	1650	A	Karachi	D	1730	
	<i>IC-451</i>				<i>IC-452</i>	
	6				6	
	0945	D	Delhi (Palam)	A	1725	
	1210	A	Kabul	D	1300	

Friendship Schedules

<i>IC-249</i>				<i>IC-250</i>	
Daily				Daily	
0610	D	Calcutta	A	1230	
0805	A	Tezpur	D	1035	
0830	D	Tezpur	A	1010	
0905	A	Jorhat	D	0935	
<i>IC-259</i>				<i>IC-260</i>	
Daily				Daily	
1310	D	Calcutta	A	1825	
1420	A	Agartala	D	1715	
1445	D	Agartala	A	1650	
1535	A	Silchar	D	1600	
<i>IC-271</i>				<i>IC-272</i>	
Daily				Daily	
1530	D	Calcutta	A	1750	
1650	A	Dacca	D	1730	
<i>IC-431</i>				<i>IC-432</i>	
2.4.6.				2.4.6.	
1240	D	Delhi (Palam)	A	1600	
1335	A	Lahore	D	1405	

Dakota Schedules

<i>IC-211</i>				<i>IC-212</i>	
Daily				Daily	
0650	D	Calcutta	A	1845	
0855	A	Gauhati	D	1640	
0920	D	Gauhati	A	1615	
1005	A	Tezpur	D	1530	
1020	D	Tezpur	A	1515	
1105	A	Jorhat	D	1430	
1120	D	Jorhat	A	1415	
1145	A	Lilabari	D	1350	
1200	D	Lilabari	A	1335	
1235	A	Ghabua	D	1300	
<i>IC-241</i>				<i>IC-242</i>	
2.4.6.				2.4.6.	
1150	D	Calcutta	A	1815	
1320	A	Agartala	D	1645	
1350	D	Agartala	A	1625	
1455	A	Gauhati	D	1520	
<i>IC-243</i>	<i>IC-255</i>			<i>IC-256</i>	<i>IC-244</i>
Daily	Daily			Daily	Daily
0630	0720	D	Calcutta	A	1525
0800	0850	A	Agartala	D	1355
	0910	D	Agartala	A	1325
	1010	A	Silchar	D	1225
	1030	D	Silchar	A	1205
	1105	A	Imphal	D	1130
					0950
					0820

<i>IC-257</i>			<i>IC-258</i>		
1.3.					1.3.
0620	D	Calcutta	A		1335
0750	A	Agartala	D		1205
0810	D	Agartala	A		1145
0830	A	Khowai	D		1125
0845	D	Khowai	A		1110
0910	A	Kamalpur	D		1045
0925	D	Kamalpur	A		1030
0945	A	Kailashahar	D		1010

(All timings are in Local Time)

(Signed) O. P. LUMBA,
Asstt. Traffic Manager (Sales),
for Chief Traffic Manager.

3 (e). Letter dated 29 January 1965 from the DGCA, India, to the DGCA, Pakistan

No. 5/10/65-IR

Subject: Pakistan International Airlines—
Operation of air services to India.

I have the honour to refer to your W/T Signal No. 3/6/65-AT I TOO 200853Z and to state that there is no objection to the introduction of PIA Schedules effective 1st April, 1965 as proposed. Authorities concerned are being advised.

(Signed) P. S. WARRIER,
Deputy Director, Regulations and Information,
for Director General of Civil Aviation.

4. Arbitration Award of 18 December 1967 between Dalmia Cement, Ltd., New Delhi (India) and The National Bank of Pakistan, Karachi (Pakistan)

International Chamber of Commerce, Paris

Case No. 1-12

AWARD

Made on December 18, 1967 in the
arbitration
between

Dalmia Cement Limited, New Delhi (India)

and

The National Bank of Pakistan, Karachi (Pakistan)

by

Professor Pierre A. Lalive, Professor of Law in Geneva University and in the Graduate Institute of International Studies, Dean of the Law School, Member of the Geneva Bar, Associate of the Institute of International Law,

Arbitrator

Whereas the parties have signed on September 30, 1964, a "bank guarantee" containing a clause IX stating that

"All disputes arising in connection with this guarantee shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by a sole arbitrator appointed in accordance with the Rules",

Whereas by letter dated July 4, 1966, Dalmia Cement Limited, the Claimant, applied to the Court of Arbitration of the International Chamber of Commerce (hereinafter called ICC) and requested that an arbitrator be appointed,

Whereas the National Bank of Pakistan, the Defendant, declined the jurisdiction of the Court of Arbitration of the ICC,

Whereas the Court of Arbitration of the ICC, pursuant to the provisions of Article 13 of its Rules, appointed the undersigned as sole arbitrator, on March 14, 1967, to decide on his own jurisdiction and, if need be, on the merits of the dispute,

Whereas both parties, on September 25, 1967, met in Geneva with the Arbitrator and signed the Terms of Reference drafted by him and approved by the Court of Arbitration of the ICC,

Whereas the National Bank of Pakistan, in signing the Terms of Reference and throughout the proceedings, has maintained its position that the arbitration clause automatically came to an end the moment a state of war came into existence between Pakistan and India,

Whereas Dalmia Cement Limited has rejected this contention and denied that a state of war came into existence or continues up to date between the two countries,

Whereas, under the Terms of Reference signed by both parties on September 25, 1967, the "issues to be decided" is described as follows:

"The Arbitrator appointed is required to hear and determine the above dispute in accordance with the Rules of Conciliation and Arbitration of the ICC and to make an award covering in the first place the following issue: to decide whether the arbitration proceedings instituted by the Claimant come within the competence of the Arbitration Court of the ICC and whether or not the Arbitrator has jurisdiction to adjudicate upon the dispute, in conformity with Art. 13(3) of the Rules of Conciliation and Arbitration of the ICC."

The undersigned Arbitrator now renders the following Award:

1. The National Bank of Pakistan, the Defendant, has raised as a preliminary objection the plea of lack of jurisdiction of the Arbitrator and has disputed the competence of the arbitration proceedings; it assumes therefore the position of a claimant in these proceedings, while Dalmia, the Claimant on the merits, assumes that of a defendant on the question of jurisdiction. This was agreed upon by both parties at the preliminary meeting held, on September 25, 1967, at Geneva (Minutes, p. 2, No. 3: Position of Parties).

2. It appears convenient, therefore, to discuss the arguments of the National Bank of Pakistan, the Defendant, first, as a general rule, following roughly the order in which they were presented in their preliminary written statements or in the oral argument and summed up in the written memorandum submitted afterwards, this discussion being made in the light of the

answers and points made by the Claimant and in the light of relevant legal principles.

3. On the last day of the Geneva hearings, i.e., on September 30, 1967, it was decided by the Arbitrator, and agreed upon by both parties, that each party could, if it so desired, send to the Registrar within 10 days from September 30th, a memorandum summing up their oral argument and containing the references to the authorities cited by them. The parties availed themselves of this opportunity. The following analysis takes these memoranda into consideration, to the extent that they remain within the agreed limits and do not make new points which the other party had no opportunity to discuss, and to the extent also that they do not deal with the merits of the dispute.

4. It should be stressed, lastly, that nothing in the following discussion purports to express, or can be considered as expressing, any opinion whatsoever on the merits of the case.

The present Award is limited to one issue only, as stated in the Terms of Reference attached to it (Annex I), that of *jurisdiction*. The reasons why the undersigned Arbitrator has both the right and the duty to adjudicate on the issues of his own jurisdiction, under Article 13 of the Rules of Conciliation and Arbitration of the International Chamber of Commerce, have been stated in detail in the Arbitrator's "Order" of September 28, 1967 (attached herewith as Annex II) and need not be repeated.

*Did a State of War Come into Existence on September 6, 1965,
between India and Pakistan?*

5. It is strongly maintained by the Defendant that the "hostile acts" and "armed attack" of the Indian forces, on September 6, 1965, without any declaration of war, undoubtedly created a "state of war" in all meanings of the term. This is denied by the Claimant.

In its "written arguments", (pp. 3 ff.) the Defendant mentions several arguments in support of its conclusion, among which: (A) "*The hostile acts of India in the form of an invasion*".

6. The events which took place during 17 days in September 1965 in the border region between West Pakistan and India are too well known to warrant a recital. For present purposes, there is also a sufficient measure of agreement between the parties as to what actually took place although conflicting views and interpretations are held, as is the rule with regard to military operations anywhere.

7. Whether a "State of War" resulted from these events and from the armed conflict which took place cannot be decided at this stage, before a *global* evaluation of the other arguments invoked, since it is not disputed that not all armed conflicts constitute "war", and that hostile acts against another country do not necessarily amount to "war" in the legal sense. This is made abundantly clear by the authorities relied upon by the Defendant, notably by the writings of McNair (*The Legal Effects of War*, by McNair and Watts, 4th ed., 1966, Chapter I and *passim*): "*Forces may be used by one State against another without any state of war arising*" (McNair, p. 3). This is shown also by events like the Suez "incident" of 1956, when France, Britain and Israel were engaged in hostilities against Egypt.

8. The Defendant relies next upon (p. 3) (B) "*Declaration of War by the President of Pakistan on the 6th September 1965*", on the Pakistan Radio—an official copy of the broadcast is attached to these arguments—marked "A".

Much reliance was indeed placed in the Defendant's oral argument on the broadcast delivered by President Ayub Khan on the 6th September 1965. In the official copy of this broadcast (issued by the Press Information Department, Government of Pakistan) are to be found, *inter alia*,—with a criticism of Indian "aggression" and attack, which was made "without a formal declaration of war"—the words "*We are at war*" and a statement to the effect that Pakistan is invoking its right of self-defence under the UN Charter.

9. Whether or not the facts or claims referred to in the broadcast are sufficient evidence that a "state of war" came into existence, a distinct question remains: can the President's statement be considered as a "*declaration of war*", as contended by the Defendant in its written argument and, although somewhat less clearly, during the oral argument?

The answer, in my opinion, must be in the negative. In the words of a leading authority much relied upon by both parties (Oppenheim-Lauterpacht, *International Law*, Vol. II, 7th ed., § 94, p. 293), a declaration of war is:

"a communication by one State to another that the condition of peace between them has come to an end and a condition of war has taken place".

It is obvious that the President's speech of September 6, 1965, addressed to his "dear countrymen" in no way was, or purported to be, a "communication" to India. The official text produced by the President, moreover, contains, neither in its title nor elsewhere, the terms "declaration of war".

10. In September 1965, therefore, there was no "declaration of war" either on the part of Pakistan or on the part of India. No conclusion, however, can be derived from this fact, since it is commonly recognised in International Law, as rightly pointed out by the Defendant (written argument, p. 1), that a declaration is *not* necessary for a state of war to exist (McNair, p. 7: Oppenheim-Lauterpacht, p. 290 ff.).

11. The Defendant also relies (cf. points C to E) on various texts and measures in Pakistan, the Proclamation of Emergency on September 6, 1965, the Defence of Pakistan Ordinance and the Defence of Pakistan Rules, of the same date and other "*Emergency Laws*" (cf. the volume of 229 pages produced by the Defendant as Annex I), M. Law 168/1,000, (as modified up to the 9th December 1965), and on "three notifications by the Government of Pakistan as to contraband of war" of September 9th and 11th, and November 15th, 1965 (written arguments, pp. 3-4).

12. Subject to the comments to be made later on the significance of the terms used by the President Ayub Khan in the Proclamation of Emergency, which is a matter of dispute between the parties, it needs only be observed here that these texts cannot, taken in themselves, prove the existence of a state of war, although they may possibly serve to corroborate other evidence of "war". The existence of a state of emergency does not establish the existence of a state of war, as is evident from the text of Article 30 of the Constitution of Pakistan (1962) which enumerates the various causes of an emergency and the conditions in which the President may issue a Proclamation of Emergency.

13. With regard to "contraband of war", the Defendant relies upon three proclamations (which have been submitted as Annexes J, K, L, to the written arguments), issued by the Ministry of Commerce and signed, respectively, by a Deputy Secretary and a Joint Secretary to the Ministry. Each proclamation begins as follows: "Whereas a state of war exists between Pakistan, on the one hand, and India on the other".

On the other side, it was argued by the learned Counsel for the Claimant that such administrative regulations originating from a ministry could hardly carry the same weight as a Proclamation by the Head of the State. It might be added that the words just cited are contained in a mere recital and not in the operative part of the proclamations, and do not thus purport to have any particular legal force. The fact remains, however, that these words have been used and they may be considered at least as evidence of the opinion held at the time by the officials involved in the Ministry of Commerce, and, perhaps, when put together with other evidence, as a relevant factor in the solution of the present problem.

14. Analogous observations may be made in respect of other facts mentioned by the National Bank of Pakistan, like the contraband lists issued by India, the seizure of ships and the appointment, by both sides, of Custodians of enemy property. Such facts, at least taken independently, cannot be considered as sufficient and conclusive evidence of a state of war, but they should be kept in mind for consideration in the future stage of "global evaluation" of the situation prevailing in September 1965.

15. Turning now to the points made by the Claimant, Dalmia Cement Limited, in order to substantiate its contention that no state of war came into existence, I must consider again the wording used by the President of Pakistan in the Proclamation of Emergency No. 119/1/65-Min., dated the 6th September, 1965.

Under Article 30 (1) (a) of the Constitution of Pakistan on the legislative powers of the President in an emergency, the President has the choice, in order to explain or justify the issuance of a proclamation of emergency, to say that he is satisfied that a grave emergency exists—

"(a) in which Pakistan, or any part of Pakistan, is (or is in imminent danger of being) threatened by war or external aggression; . . ."

On September 6, 1965, therefore, the President could state that Pakistan was "*threatened by war*"—which, in any case, is not the same as stating that Pakistan was "*at war*". Instead, President Ayub Khan chose the second, and more cautious, formula and stated that Pakistan was "*in imminent danger of being threatened by war*".

This choice cannot have been made inadvertently on such a serious occasion, so the Claimant's argument runs, and it is highly significant.

16. Invited by the Arbitrator to comment on this argument, the learned Counsel for the National Bank of Pakistan, while stating that he did not know for what reason the President elected to use one rather than the other formula, expressed the opinion that such choice of language was unintentional and devoid of any particular meaning. In the written text submitted after the hearing, however, the Defendant attempted to give an explanation as follows:

"The emergency was proclaimed the moment the President received information that Pakistan was going to be attacked, that the Indian forces were marching towards it. The proclamation came when the attack was already on. The proclamation said 'A state of emergency has been declared' which shows that already before the proclamation of war (sic) there was a state of emergency" (p. 3).

17. As previously pointed out (*supra*, No. 3), it would not be proper to take into account new points or arguments which the other party has no opportunity to discuss. Moreover, the explanation just quoted is hardly clear

or convincing, repeating as it does a confusion between the President's broadcast and a "proclamation of war" (cf., *supra*, No. 9). However that may be, no evidence whatever has been produced or offered to show that the "proclamation of emergency" was in fact issued before the Indian attack.

18. While, on the one hand, the wording used by the President of Pakistan in the Proclamation of Emergency tends clearly to indicate that there was, in the opinion of the Government, no state of war, the language used in the President's broadcast and in the regulations about contraband obviously gives indications to the contrary, as well as the booklet produced by the Department of films and Publications (*The Indo-Pakistan War, a Flash-back*).

19. It has been contended that a Government's statements are "conclusive" with regard to the problem whether a state of war exists or not. They may well be conclusive in English municipal Law for the English Courts, as authorities quoted by McNair and by the Defendant seem to indicate, but this does not mean that they should, or can, be taken as conclusive by an Arbitrator in an international arbitration under the ICC Rules. Indeed they cannot be so considered, but they are facts which should not be neglected, of course, while assessing the situation as a whole between the parties.

20. The position is aptly described by McNair (*op. cit.*, p. 8).

"So serious a matter as the existence of a state of war is not lightly to be implied. Furthermore, where leading political figures of a country engaged in hostilities refer to their country being 'at war' caution must be exercised before concluding therefrom that a state of war exists in any legal sense, since such reference may prove to be more of emotional and political significance than legal."

Even greater caution must, *a fortiori*, be exercised with regard to facts or statements reported, accurately or not, in newspapers, such as the statements reported in the many press extracts reproduced from the Pakistani press in the files submitted by the Defendant after the hearing.

21. Another argument put forward by the Defendant during the oral proceedings was that the *cease-fire* did not end the state of war but was the best proof that such state existed. On a question by the Arbitrator, the learned Counsel for the National Bank of Pakistan replied that they could not quote authorities to support that contention but they did rely on this "logical argument".

No long refutation is needed to demonstrate that a *cease-fire* may be regarded as a proof that there previously was "fire", i.e., fighting between the parties, but certainly not as a proof that such fighting was "war".

22. The armed conflict which took place during 17 days of September 1965 should *not* be considered *in isolation*, but seen in the general context of India-Pakistan relations, which had been strained ever since the Kashmir dispute. In the year 1965, at the beginning of August, a revolt took place in the part of Kashmir occupied by India, the origin of which was ascribed by the Indians to Pakistani "guerillas", whereas, according to a Pakistan version, the revolt was initiated by "freedom fighters" among the local population. Eventually both Indian and Pakistani troops seem to have crossed the *cease-fire* line.

Then the conflict, until then confined to Kashmir, spread to new areas when Indian troops attacked and crossed the border in the Lahore region, on September 6, 1965.

23. The facts need not be recalled in detail, and it is enough to state that, while the first Resolutions of the UN Security Council were not heeded, by the parties and the efforts of the UN Secretary-General U Thant to stop the

conflict proved unsuccessful, a third Resolution of the Security Council, ordering a cease-fire as of September 22, at 7 a.m. was finally respected. Meanwhile the Soviet Union had offered its good offices which, accepted on September 21 by Pakistan and on September 22 by India, led eventually to the Tashkent meeting on January 4, 1966.

24. In his report of September 17 to the Security Council UN Secretary-General U Thant described the military situation; he stated that the cease-fire line in Kashmir had been violated by both parties and that the fighting had spread to the border region between India and West Pakistan, a situation which, in his opinion, was equivalent to a state of war.

This statement too is capable of different interpretations: it may appear to strengthen the Defendant's case on the one hand while, on the other, it may be thought that, had there been a state of war *stricto sensu*, the UN Secretary-General would have said so. Again, caution must be exercised when assessing the legal significance of statements made by leading political figures (cf. McNair, p. 8).

25. This leads me to the question whether the fact that both parties are members of the UNO has any relevance. In reply to this question put to the parties by the Arbitrator in the course of the oral proceedings, a negative reply was given by the Defendant whereas the Claimant gave an affirmative answer.

It has been contended by some authors that, in view of the provisions of the UN Charter (e.g., Arts. 2 (3), 2 (4), 28, 33), a state of war *cannot* exist between members of the United Nations. But this view is not generally held and it must be admitted, with McNair (p. 17) that

“these obligations are not so tightly drawn that States may never resort to armed force otherwise than in violation of their obligations under these articles”.

26. However this does not, and cannot mean that the UN membership of both India and Pakistan is irrelevant and devoid of significance—a conclusion which is hardly to be reconciled moreover, with the fact that both Parties did obey the cease-fire order of the Security Council, on September 22, 1965, and with the fact that the President of Pakistan, in his broadcast of September 6, expressly invoked Pakistan's rights under the Charter.

27. The *obligations* of both India and Pakistan under the Charter—a text which purports to prohibit or at least regulate the use of force—are bound to have *some* effect and *some* relevance upon the question whether a “state of war” came into existence on September 6, 1965. This minimum effect may be described as follows: *in case of doubt* as to the answer to be given to that question, the answer should be negative rather than affirmative, for the existence of a state of war can certainly *not be presumed* between members of the UNO. On the contrary, it must be presumed, *in dubio*, that each Member State, if and when it is using force, intends to use it in a manner consistent with its obligations under the Charter (especially under article 2(4)).

It should be noted that the undertaking to “*refrain from the threat or use of force*”, as generally interpreted, “covers a considerably wider range of actions than the phrase *resort to war* as used in the Covenant and interpreted in the practice of the League” (Goodrich-Hambro, *The Charter of the U.N.*, 2nd ed., 1949, p. 104). Since the authors of the Charter clearly intended to go further than merely prohibit a “*resort to war*” and prohibited the use (or mere threat) of (armed) force, it follows that, if the Members of the Organisation must be presumed not to intend to use *force* (except within the narrow

limits allowed by the Charter), they must *a fortiori* be presumed not to intend to resort to war.

28. To the extent at least that the intentions of the parties may be relevant, in the present case, in order to answer the question whether a state of war came into existence in September 1965, to that extent, then, it cannot be disputed that their position as members of the UN is a factor to be taken into consideration by the Arbitrator.

I shall now proceed to consider further what are the governing legal principles as to the existence of a "state of war", first under International Law, then under a relevant municipal system of Law.

29. *What is "war" in international Law?*

There is of course no unanimity among legal writers as to the definition of war and it has even been contended by some that "each separate use of that term requires its own definition in the light of its particular purpose" (cf., the authors quoted by McNair, p. 6). The matter is of some difficulty; it must be admitted that the concept of war may well bear a different meaning (e.g., "a technical" meaning and a commonsense one) for different purposes (e.g., in International Law and Municipal Law), and that the term may have to be interpreted in various ways in different legal documents, according to the context (cf. McNair, pp. 10, 44-45 and *passim*).

Not surprisingly therefore, "it may well happen that the question whether certain acts create or not a state of war cannot be answered with absolute certainty" (Guggenheim, *Traité de Droit international public*, II, p. 350).

30. There is enough general agreement, however, on the constituent elements of "war" to justify certain conclusions in the present case, as will presently be seen. According to one leading authority much relied upon by the Defendant, Oppenheim-Lauterpacht (Vol. 2, 7th ed., p. 202).

"War is a contention between two or more States through their armed forces, for the purpose of overpowering each other and imposing such conditions of peace as the victor pleases".

Elaborating this definition, the learned author points out (p. 208) that "The last, and not the least important, characteristic of war is its *purpose*. It is a contention between States, for the purpose of overpowering the other". (Cf. also Westlake, *International Law*, II, 1913, p. 1.) And he stresses the necessity to distinguish from the "objects" or "ends" of war, which may be different in each case, the "*purpose*" which is always the same—"namely, *the overpowering and utter defeat of the opponent*" (p. 225).

31. Whether or not a *subjective* element, the *animus belligerendi*, is a constituent element of the concept need not be decided here. In the words of Sir Wilfrind Greene, M.R., in the famous *Kwasaki Kisen* case (*Kawasaki Kisen Kabushiki of Kobe v. Bantham S.S. Co. Ltd.* (1939) 2 K.B. 544, 557 (C.A.)). "What *animus belligerendi* meant was again a matter of obscurity and to define war by relation to it came near to define war by itself."

The fact is that, to quote Schwarzenberger (*The Frontiers of International Law*, 1962, p. 249):

"States may contend through their armed forces but, as in the case of the extensive battles in 1938 and 1939 between Russian and Japanese troops on the frontier between the Soviet Union and Manchukuo, may be unwilling to consider such acts as a state of war."

32. The undeniable and undenied fact is that not all armed conflicts between States constitute wars. After 1945 as well as before "States are likely

to continue to resort to armed force *and to do so in circumstances which do not result in a state of war*" (whether by taking advantage of those provisions of the Charter which in certain situations permit, or may be argued to permit, the use of armed force, or by committing a breach of their obligations under the Kellogg-Briand Pact or the Charter"—McNair, p. 19).

33. There is a need, therefore, for distinguishing "wars" from "*conflicts not amounting to wars*". One possible criterion is a subjective one, the *animus belligerendi*, i.e., the intention (of at least one of the parties—provided, it would seem, that this will to be at war is "*unmistakably*" and "*unequivocally*" expressed; cf. Schwarzenberger, p. 250, who stresses the connection between this notion and the question whether there is a "*status mixtus*", distinct from both war and peace. It may be noted in passing that the Defendant strongly contended that there was no intermediate state between war and peace, whereas the Claimant took the opposite view. Schwarzenberger effectively criticises the "doctrine of an alternative character of peace and war" and shows how far the reality of State practice has gone from the old theory; *op. cit.*, pp. 242-248).

Another more objective criterion is suggested by McNair (p. 19): "The most noticeable distinction between a conflict not amounting to war and war itself is that the *former is essentially limited*, while the latter is not".

34. The two approaches may perhaps be brought somewhat nearer to each other through the use of definition quoted above and the idea of "purpose" of war. Whatever the *ends* of war may be, and whatever the *aims* of land or sea warfare, the "purpose" of war remains "the overpowering and utter defeat of the opponent" (Oppenheim-Lauterpacht, p. 225). In other words, war always implies, from this point of view, hostilities of a "*general*" character in contradistinction to armed conflicts short of war.

35. Considered in the light of those principles, how are the events of September 1965 to be characterised?

With regard to the "general" or "limited" character of the conflict, it is clear that the fighting involved a substantial number of troops on both sides (more than 21 Indian divisions and 7 Pakistani divisions, according to the Pakistani booklet, submitted by the Defendant, entitled *Indo-Pakistan War*). It involved "extensive action by land and air forces and minor naval action" (McNair Appendix: "Note on Indo-Pakistan Hostilities", p. 457) which took place mainly in the Sialkot and Kasur region, near the border between India and West Pakistan, 14 miles from Lahore. In the circumstances, it is not surprising that the term "war" should have been used on a number of occasions in the press and in some political statements—a fact which, for reasons already mentioned, cannot be considered as legally decisive.

36. On the other hand, it is interesting to note that the fighting was geographically limited to a comparatively small portion of the frontiers between the two countries. Moreover, although tanks and planes took part in the fighting and the number of casualties was not negligible, the hostilities did *not* assume an extreme or extraordinary character. According to foreign observers, both countries seemed to hesitate quite understandably, before embarking on full-scale hostilities (for instance a correspondent of the Swiss leading newspaper *Neue Zürcher Zeitung*, reported on September 16, 1965, that a certain caution seemed to be used in the fighting and that tank squadrons were opposed in the Sialkot region, without engaging in decisive action. Independent observers had the impression that the commanding officers on both sides maintained a somewhat cautious attitude (which can easily be justified, among other factors, by the uncertain political situation, the absence

of declarations of war, diplomatic interventions by the UNO and by friendly foreign powers).

37. From the *objective* standpoint, the extension of the hostilities does not appear to be out of proportion with what took place in other instances, such as the case of the British and French intervention at Suez in 1956—an armed conflict upon the outbreak of which, let it be mentioned in passing, Egypt sequestered all British property in Egypt while Britain blocked Egypt's sterling balances, etc. (cf. McNair, pp. 19 and 23), not to mention again the fighting between Russian and Japanese troops in 1938-1939 on the Manchukuo frontier.

It is to be noted that, in the last edition of his work on the *Legal Effects of War*, McNair mentions the Indo-Pakistan conflict of September 1965 as "*displaying special features which allow room for argument as to the existence of a state of war*". Not insignificant is also the fact that the learned author entitles his "Appendix" on this subject "Note on Indo-Pakistan *Hostilities* 1965" and carefully refrains from expressing any opinion as to the existence or not of a "state of war" (pp. 457-458).

38. From the *subjective* standpoint, it is difficult to say positively that there was an intention, on either side, to use force for the purpose of "*overpowering the other country*": no declaration of war was made, as shown above. It was repeatedly stated, on the Indian side (for instance by an Indian official spokesman on September 6) that India was *not* at war with either the State or the people of Pakistan. It must therefore be concluded from these official pronouncements, in the absence of evidence to the contrary (which could not be lightly inferred), that there was no *animus belligerendi* on the part of India. It is perhaps not entirely superfluous to point out that this absence of *animus belligerendi* does *not* exclude the coming into existence of a state of war, provided this factor or intention is present in the other party.

39. On the part of Pakistan, it has been shown (*supra*, Nos. 8-10) that no "declaration of war" was made, and that the statement made by the President, in his broadcast of September 6 to his countrymen, is not legally decisive: all the less so since unavoidable uncertainty was reigning at the time in each camp as to the intentions, or even as to the real state of affairs. The reference to "war" in that broadcast, may well prove—to quote again McNair's words (p. 8)—"to be more of emotional and political significance than legal".

40. The intention of the Government of Pakistan (still assuming, with some writers on International Law, that such "intention" is relevant in Law) was certainly to resist and to repel forces by force. Does this raise "a presumption that the attacked State elects to regard war as having broken out", as McNair seems to claim (p. 8)? This point need not be argued here, although there seems to be no reason why a *limited* use of force in defence against a *limited* attack (in a "conflict not amounting to war") should create even a "presumption".

41. In order to establish the intention of the Government of Pakistan, it is probably safer to rely, not on such a "presumption", but on the legal argument used by President Ayub Khan, before concluding his broadcast on September 6: "*We are invoking the United Nations Charter to exercise our inherent rights of individual and collective self-defence recognised in Chapter VII of the Charter*".

It is clear that this right of self-defence can be exercised not only when an armed attack initiates a "war" but also in cases of armed conflicts *short of war*. The fact that Pakistan referred to Article 51 of the UN Charter and, eventually, on September 21, 1965, complied with the Security Council

Resolution on a cease-fire indicates that it did intend to fulfil its obligations and exercise its right of Member of the UNO. One is therefore tempted to draw the conclusion that, if any "presumption" may be based on the use of force by the attacked State, it is a presumption rather against than in favour of the will to wage "war", a presumption that self-defence will be limited and the use of force kept within the general limits of the Charter, pending action by the Security Council (cf. also McNair, p. 16).

42. It must be admitted, however, that the situation is ambiguous with regard to the "intention" or *animus belligerendi* of Pakistan. Now, is this ambiguity as to the "subjective element" put together with the denial of India that a state of war exists sufficient (quite apart from any consideration of "objective elements" such as the limited character of the conflict) to warrant a conclusion in the negative (in the sense of McNair's argument, pp. 9-10).

Before coming to any conclusion, it is necessary to take into account other elements, if any, and to look more closely into the *conduct* of the parties and into the *effects* of the outbreak of the hostilities. Whether or not these factors are regarded as "objective" or as reflecting the intentions of the parties, they certainly are to be given much weight in any attempt at characterizing the conflict of September 1965.

43. The first factor of importance is that of *diplomatic relations*.

"The outbreak of war at once causes the rupture of diplomatic intercourse between the belligerents, if this has not already taken place"

writes Oppenheim-Lauterpacht (§ 98, p. 301; cf. also Guggenheim, II, p. 356). Consular activities, likewise, come to an end. This well-known fact is confirmed by the Defendant (written arguments, p. 1) quoting MacGardie J. in the case *Naylor Benzon & Co. v. Krainische Industrie Gesellschaft* (1918) 1 K.B. 331, 336:

"War effects a supreme intervention. It precludes all intercourse between the parties. It results in extreme consequences".

44. On the other hand, in an "armed conflict not amounting to war", the totality of the relations between the parties "is not necessarily disrupted" and diplomatic relations between them "may, or may not, be broken off" (McNair, p. 19). Diplomatic relations were broken off, for instance, at the time of the Suez conflict, in 1956, between Egypt on the one hand and France and the United Kingdom on the other, a conflict which does not seem to have been considered as "war". They were maintained between China and India during the fighting between them in 1962 (cf. 67 *Revue générale de droit international public* 1963, pp. 136, 143).

45. During the conflict of September 1965, the diplomatic relations between India and Pakistan were never formally broken off—and the Defendant never contended that they were, contenting itself (on p. 4 of its written arguments) with quoting one author, Webber, in flat contradiction to most authorities and to its own quotation (p. 1) of the *Naylor, Benzon* case, to the effect that severance of diplomatic relations is "not essential". Although the activities of both diplomatic missions were restricted and the personnel reduced, no rupture of diplomatic relations occurred—a significant fact, taken in itself as well as seen in relation to the other "special features" of the conflict, e.g., its *limited* character.

46. It should be noted, lastly, that, in Section V of the Tashkent Declaration of January 10, 1966, the Prime Minister of India and the President of

Pakistan agreed that the High Commissioners of both countries "will return to their posts and that *the normal functioning of diplomatic missions of both countries will be restored*". Such language clearly refers to a lifting of the restrictions imposed, on both sides, on the activity of diplomatic missions and confirms, *a contrario*, if need be, that diplomatic relations had never been broken off.

47. Little need be said on postal communications between the two countries, a subject which was discussed by the parties in their written statements and in their oral addresses. Although there was no agreement as to the extent to which postal relations had continued after September 6, it was not alleged by the Defendant (e.g., in its written statement of 27 September, 1967, p. 4) that postal communications were totally interrupted or suppressed. This fact alone may be held as significant in the light of the authority quoted by the Defendant itself (on p. 1 of its written arguments) that war "precludes *all* intercourse between the parties".

48. The second factor which remains to be examined is the continued existence of *treaties* between the two countries.

While the question of the effect of war on treaties "remains as yet unsettled", according to Oppenheim-Lauterpacht (II, § 99, p. 303), it is generally agreed that at least certain categories of bilateral treaties previously concluded by the belligerents are *ipso facto* annulled through war, some writers maintaining the traditional doctrine that the outbreak of war cancels *all* treaties previously concluded between the parties.

49. It is therefore interesting to note that not one of the treaties concluded by India and Pakistan before September 1965 seems to have been considered, on either side, as cancelled; at least no contention and no evidence to that effect has been forthcoming from the Defendant. On the contrary, evidence may be found to show that both countries have viewed their treaties as still in force. On the Claimant's side, reference was made to the fact that India continued to effect payments to Pakistan under the Indus River Treaty. It is common knowledge also that the Treaty concluded on June 30, 1965, in order to arbitrate the question of the Rann of Kutch was finally implemented by both parties (if not actually during the hostilities, of course, but shortly after the Tashkent Declaration of January 10, 1966, i.e., on February 15, 1966). McNair writes on this point (p. 458): "Both States apparently regarded the existing Kutch Arbitration Agreement between them as continuing in force, taking action under it in connection with the appointment of arbitrators".

Moreover, this view finds confirmation in Article VI of the Tashkent Declaration, whereby the Prime Minister of India and the President of Pakistan agreed "to take measures to *implement the existing agreements* between India and Pakistan"—and not, for instance, to "revive" former agreements cancelled by a "war".

50. While it is generally recognised that war entails, and must be analysed as, a *complete rupture* of international relations—of which treaties are the most perfect legal expression—, the continued existence of treaties as well as of diplomatic relations between the parties cannot be reconciled with a "state of war". It proves or confirms, by the conduct of both parties, that the hostilities of September 1965 were a "conflict not amounting to war".

51. This conclusion is not only in keeping with authority, and with the obligations of the parties to the conflict under the UN Charter, it is also in the obvious interest of both countries. It is appropriate here to quote McNair again (pp. 15-16):

“States have not always wanted to embark upon a full-scale state of war, the circumstances and consequences of which would perhaps be out of all proportion to the particular end to be achieved, but have instead frequently had recourse to a limited degree of force. This has become accepted in international law as not necessarily giving rise to a state of war and as compatible with the continuation of a state of peace”.

And the learned author, after stating that “the existence of a state of war depends upon the determination of the parties to the conflict and can arise where only one of the parties to the conflict asserts the existence of a state of war”, writes elsewhere, in the same line of thought (p. 8):

“Such a view has not proved without advantages. It has enabled conflicts, even if militarily extensive as between the parties, *to stay essentially limited rather than to entail the overall dislocation*, both international and municipal, both military and civil which would accompany the escalation of those conflicts into a state of War”.

52. In the face of overwhelming and decisive evidence to support this conclusion, there is no need to discuss at length other elements, relied upon by the Defendant in favour of its contention, and already referred to above, at least in part, such as seizure of enemy property, proclamation of state of emergency, rules as to “contraband of war”, etc. Some of these measures at least, like the proclamation of emergency are quite compatible with a state of hostilities not amounting to war. Others may have been loosely termed, or may reflect the uncertainty which existed at the time in the minds of the drafters, or may even be of doubtful legal value. However that may be, none of these elements is of such nature or importance as to countervail the conclusions already arrived at.

53. For the reasons previously mentioned, I therefore find that the Indo-Pakistan hostilities of September 1965, although admittedly somewhat of a borderline case presenting “special features”, did not constitute or create a state of war in the sense of International Law.

54. It remains to be seen whether the same or a different conclusion is justified in the field of municipal Law. This is particularly necessary in as much as, as already said above, the term “war” may well bear different meanings for various purposes and in different contexts.

By “municipal law” is meant in the present case the Common Law of England, which, as stated by both parties in the course of the oral proceedings, is basically the law of both Pakistan and India, under their respective Constitutions, until and unless otherwise provided by Statute Law and special enactment. Both parties have, consequently relied upon the Common Law and cited English authorities in support of their contentions.

55. The Defendant, in particular, summed up the legal position as seen by it in its written arguments submitted after the hearing (p. 1). It stresses the fact that no declaration of war is necessary; this cannot be disputed and is established by clear authority (e.g., per Lord Stowell in the *Eliza Ann*, 1813/Dods. 244, 246).

The Defendant further stated:

“A study of the authorities leaves no doubt that, the *moment there is a hostile act by the authority of the State, there comes into existence a state of war*, the reason being that such act is an implied declaration of war and is inconsistent with a state of peace”.

56. This statement cannot be accepted, however, as an accurate summary of the Law and is in obvious contradiction to the observations made above on the use of force by a State short of war and to the statement made, and the authorities cited, by McNair under the heading "Armed conflicts not amounting to war" (pp. 45 ff.).

To say that, for "war" to come into existence, there should be hostilities under the authority of the State, does not entail that there is "war" every time there are hostilities under the authority of the State. A "*necessary condition*" should not be confused with a "*sufficient condition*".

57. This evidence confusion appears to be related, in the Defendant's argument, to the English judicial theory (on which more will presently be said) of the alternative character of peace and war. But the fact that, according to a body of judicial decisions, no intermediate state between peace and war is recognised, does *not* mean that any hostile act, any armed conflict excludes a state of peace: the point is clearly seen in the following quotation of McNair (p. 45):

"... English Courts do not recognise any intermediate state between peace and war. Therefore, *in the event of there being an armed conflict which does not give rise to a state of war*, a state of peace would still be considered to subsist".

58. Although the Defendant concedes (p. 1) that "there may be fighting which is not war", it repeatedly seems to argue that a hostile act of the State is enough to create war. Referring to McNair and Halsbury, it writes for instance (p. 2, written arguments):

"... There is an extract from an article by McNair, reproduced in Oppenheim's *International Law*, 1953, 7th edition, p. 299, footnote, which says *war comes into existence by the hostile act of a State*".

In fact, in the full text of the footnote referred to (p. 299, note 3), an essential element is to be found, which should not be overlooked, that of *animus belligerendi*, it has already been discussed at some length (*supra*, No. 31) so that further comment is unnecessary. Suffice it to say that it is misleading to submit, without qualifications, that "a hostile act, because it has the same force as declaration has the same effect on peace. It puts both parties in a state of war".

59. The Defendant has underlined the fact that, in English Law,

"... It always belongs to the Government of the country to determine in what relation any other country stands towards it; that is a point upon which courts of justice cannot decide (per Sir William Grant, in the *Pelican*, 1809, McNair, p. 37)".

This doctrine of the conclusiveness of statements by the Executive in relation to such matters as war and peace is of undisputed importance for the English judge and also, it would seem, for the Indian or the Pakistani judges. But it is not clear what relevance it may have for an arbitrator in an international arbitration such as the present one, even if it should be governed, in part or in toto, by India or by Pakistani Law.

60. These points need not be discussed here, however, since I find that, for the reasons outlined above, the Government of Pakistan did not choose to regard the Indo-Pakistan hostilities of September 1965 as "war" with the "overall dislocation" and total disruption which such a state of affairs implies. This conclusion, first reached on the basis of International Law, is

equally justified for analogous reasons, on the basis of English Law—which, while apparently acknowledging, like International Law, “that war has a technical meaning”, “knows no technical definition of a state of war” (McNair, pp. 34 and 36).

To quote again a leading case relied upon by the Defendant (p. 1: *Naylor, Benzon & Co. v. Krainische Industrie Gesellschaft* [1918] 1 K.B. 331, 336, per MacCardie J.): “war effects a supreme intervention. It precludes all intercourse between the parties. It results in extreme consequences”. This being the case, I have no alternative but to find that all intercourse never was precluded either between the countries concerned or between their citizens so that there could not have been any “war” in the technical meaning of the term. This is confirmed by the various facts and reasons referred to above.

Arriving at this conclusion upon the basis of municipal law and with reliance upon the authorities quoted by the Defendant, I find it unnecessary to examine whether the matter should be considered specifically with respect to *Indian Law*, claimed by Dalmia to be the proper Law of the contract and of the arbitration clause, or with respect to the Law of *Pakistan*, or with respect to the Law of England, being the Common Law applicable in both the countries of the parties.

61. The Defendant has also stressed, both in its written statements and in the oral argument, that English Law “recognises a state of peace and a state of war, but . . . it knows nothing of an intermediate state which is neither the one thing or the other—neither peace nor war” (*Janson v. Driefontein Consolidated Mines Ltd.* [1902] A.C. 484, at p. 497, per Lord Macnaghten). The Claimant has contended, on the other hand, that there was a “third category”, a “grey zone” of “armed conflict not amounting to war”. Owing to the importance seemingly attached by the parties to this controversy, it would have been appropriate to say a few words upon the subject, but for the fact that no decision on it is necessary at all.

Since there is no “state of war”, it is superfluous to enquire here, in a discussion limited to the subject of the Arbitrator’s jurisdiction, into the consequences if any, of a state of armed conflict not amounting to war. It is unnecessary to point out the relative confusion, prevailing in English decisions, as to the line between peace and war (cf. McNair, pp. 34 ff.), or to explain the practice of the English Courts, with Schwarzenberger (*op. cit.*, pp. 243-244) by their idea of the desirable division of functions between the judiciary and the executive and by a legitimate concern for the certainty of their municipal law. The whole controversy turns in fact on a question of definitions and, provided it is remembered that, as said above, “war” may have various meanings for different purposes, there seems to be no serious disadvantage in accepting with the Defendant, the traditional view of the English Courts that everything which is not “war” is “peace”.

62. It follows that in the absence of a state of war, as far as the issue under consideration is concerned, the arbitration clause, contained in the “Bank Guarantee” is still binding on the parties and that the undersigned Arbitrator has jurisdiction in the present case.

This conclusion, and the reasoning which underlies it are without prejudice to any conclusion which might be reached, in an examination of the merits, on the claims or arguments put forward by the parties, for instance on the legal state of affairs prevailing both in Pakistan and in India, on the consequences of emergency legislation, on impossibility of performance, on consequences of “enemy status” and prohibition of intercourse with the enemy, etc. Although such questions were discussed at some length by both parties

in the present proceedings, they were not, and could not be, examined by the Arbitrator. Nothing in the present Award as to the inexistence of a "state of war", therefore, can be considered as in any way binding on the Arbitrator with regard to such questions.

63. Assuming even—*ex abundante cautela*—that I should have found that a state of war *had* come into existence on September 6, 1965, it is most likely that I would have reached the conclusion that the Tashkent Declaration of January 10, 1966, terminated the "war".

While no declaration is necessary to create a state of "war", no declaration is necessary either to create a state of peace; it is well known that, "in a number of cases wars have come to an end by the belligerents *drifting into a state of peace* after cessation of the hostilities" (McNair, p. 41; in the same sense Oppenheim-Lauterpacht, § 261, p. 598). Armistice agreements, as a general rule, do not mean the end of the state of war, although recent practice, here too, seems to be changing the traditional rules. However, that may be, it is clear that "an armistice agreement may be capable of interpretation as showing that both parties intended not only a cessation of hostilities but also the termination of the state of war between them" (McNair, p. 15).

64. If a war may be terminated by the fact that belligerents abstain from further acts of war and "glide into peaceful relations", *a fortiori* it must be considered as ended when the parties, by a formal treaty (registered, as the Tashkent Declaration, with the Secretary-General of the United Nations) expressed "*their firm resolve to restore normal and peaceful relations between their countries*". Even assuming that there had previously been a "war" (a solution which the language of the Tashkent Declaration cannot be interpreted as favouring), the Declaration, which purports to effect, *inter alia*, the "normalisation" of diplomatic relations (Article V) must be seen as restoring "peace", at least in the sense (accepted by the English judicial practice relied upon by the Defendant) of the "*absence of the state of war*". Although of a political, rather than legal, character, the statement made by Premier Kosygin, of the Soviet Union, shortly after the end of the Tashkent Conference (a statement which did not provoke any denial or protest from the parties), may be recalled, where he said "The Tashkent Declaration restores the peace, normalises diplomatic relations between Pakistan and India . . ."

65. Assuming, then, that a "state of war" came into existence on September 6, 1965, between India and Pakistan, which was terminated on January 10, 1966, by the Tashkent Declaration a further question would have to be settled; i.e., whether the Claimant was entitled, on July 4, 1966, to file with the ICC a request for arbitration, that is to say to rely on the arbitration clause.

In the oral argument, the National Bank of Pakistan contended, in respect of the merits of the dispute, that, when the hostilities broke out on September 6, 1965, there was as yet no "right", no "mature claim" which Dalmia could invoke against the Bank, such an "alleged right" having come into existence at the earliest on December 19, 1965 (reference being made here to the relations between Mr. Maneckgi and/or the Company Pakistan Progressive Cement Industries Ltd., Dalmia Cement Ltd., and the National Bank of Pakistan, and to the text of the Bank Guarantee; see pp. 94-95 of the volume submitted by the Claimant, Annexure No. 12).

Whether this argument is well founded or not (a point which could only be decided after full consideration of the merits), it may perhaps be used as an analogy here, with regard to the right to go to arbitration under the arbitration clause.

66. When, on September 6, 1965, the alleged "war" broke out there was in existence a valid arbitration clause between the parties, accepting the ICC Rules of Conciliation and Arbitration and the jurisdiction of the Court of Arbitration of the ICC. This fact cannot and indeed has not been disputed.

On the relevant date, therefore, each party had the right as against the other party, unilaterally, to submit a case to an arbitration under the ICC Rules, should a dispute arise. Such a right was as "complete" or "mature" as it could conceivably be—no other act or fact being necessary to make it effective, nor even the advent of a real "dispute" (since it is obviously enough, under the arbitration agreement, and the ICC Rules, that *one* party claims or believes that there is a dispute, to enable such party to set the arbitration procedure in motion).

67. Still *assuming* that war did break out on September 6, 1965, it would seem to follow according to the Defendant's own line of reasoning—that each party had then a "mature claim" to go to arbitration, and that such an "accrued right" was *not* destroyed or cancelled by war, but at the most *suspended* until "revived" by the termination of the state of war.

Accepting here, for the sake of argument, the English distinction between several kinds of contracts (such as "executed" and "executory" contracts—English "term of art" which have no "Continental" synonyms, cf. McNair, pp. 118 ff. and Drost, *Contracts and Peace Treaties*, The Hague 1948, pp. 8 ff.), I cannot see a valid reason (nor has any such reason been put forward by the Defendant) why the arbitration contract or clause ought to be considered as belonging to the class of contracts which are automatically dissolved, rather than merely suspended at the outbreak of war; and it is superfluous to stress the independent character of the arbitration clause, and the fact that the nature of the undertaking to arbitrate does not change because it happens to be included in a contract having a different object, such a contract of sale or guarantee, rather than in a separate arbitration agreement.

68. To conclude, there is no doubt in my mind that, when the Claimant filed with the Court of Arbitration of the ICC a request for arbitration, there was in existence between the parties a valid and binding agreement to arbitrate under the ICC Rules, even assuming that there had been a state of war between India and Pakistan. It is unnecessary to examine, then, whether submitting to arbitration does involve "intercourse" with an "enemy" and whether the authorities quoted to support this contention are relevant only to "English" or local arbitrations but also to international arbitrations under the ICC Rules. It would be equally superfluous to discuss the question whether the parties did, or could contemplate, when accepting the arbitration clause, the possibility that a "state of war" or of an armed conflict short of war could or would arise between Pakistan and India.

FOR THESE REASONS,

The undersigned Arbitrator

Finds that the arbitration proceedings instituted by the Claimant come within the competence of the Arbitration Court of the International Chamber of Commerce and that the Arbitrator has jurisdiction to adjudicate upon the dispute in conformity with Article 13 (3) of the Rules of Conciliation and Arbitration of the ICC,

Reserves the rest of the procedure for further decision, pending the drafting

of further terms of reference according to the ICC Rules and to the terms of reference of September 25, 1967.

Done at Geneva this 18th December, 1967.

Professor Pierre A. LALIVE,
Arbitrator.
