

The Role Of Arbitration In Civil Aviation: An International Perspective*

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“Every nation is free to travel to every other nation and to trade with it”

- Grotius

ABSTRACT:

Trade and commerce in the international community have been increasing with the increasing sector. The most important sector here is civil aviation. Civil aviation possesses an international character and with this international character, it is possible that a dispute may arise. These disputes impact not only the domestic legal arena but also the international legal arena and stability. However, instead of going through a rigorous and time taking process of court one should approach Alternative Dispute Resolution and should prefer the dispute resolution process like Arbitration, negotiation, and other means. This article will look at the function of arbitration in civil aviation from an international standpoint and the current use of Arbitration in Civil Arbitration. the advantages and disadvantages of arbitration, the impact of the regulatory framework on the effectiveness of arbitration, the key factors that contribute to the success of arbitration in resolving civil aviation disputes, and the lessons that can be drawn from international experience with civil aviation arbitration.

OVERVIEW OF CIVIL AVIATION:

“According to Cambridge Dictionary, Flights, and aircraft are used for personal and business purposes, such as transporting goods or passengers, rather than for military purposes.”¹

Civil Aviation is very important for the global transportation system. And it connects many people from all over the world. It offers a high-speed transportation system in the worldwide transportation network, and it is very important for global business. It gives economic growth and also promotes trade and commerce across the world. Here civil aviation means all non-governmental aviation. Civil aviation is covered by the International Civil Aviation Organization (ICAO) also called the Chicago Convention which was first set up in 1944. It says that all signatories to this convention must follow rules given in this convention and should also create harmony in the Aviation world. As we all know that aviation sector is a very advanced sector, and it connects people from all over the world. Historically dominated by monopolistic (legacy airlines and publicly owned and controlled aerodromes), the liberalization and privatization move in this vital economic sector has been gradual. This publicist nature may well justify why the frequency of aviation disputes amongst sovereign States is relatively low when compared to disputes in the fields of international trade and investment.² The dispute in the aviation industry does not occur frequently like in any other sector if it arises also, it is to be settled with the help of diplomatic channel example, WTO, the international court of Justice, etc. there should be a need to establish a proper regulatory framework for solving the dispute

OVERVIEW OF ARBITRATION:

¹ Cambridge Dictionary, CIVIL AVIATION, <https://dictionary.cambridge.org/dictionary/english/civil-aviation>, (visited on April 20, 2023).

² Luping Zhang & Rita Sousa Uva, THE ROLE OF ARBITRATION IN INTERNATIONAL CIVIL AVIATION DISPUTES, delivery (ssrn.com), (visited on April 20, 2023).

Arbitration is primarily a conflict resolution technique in which the litigants to the dispute resolve their dispute through a third party known as the arbitrator rather than going through the regular court of law route. A clause requiring arbitration is present in nearly all commercial contracts. "One of the fundamental elements of our constitution is an impartial and effective judicial system. We have a fundamental duty to make sure that the backlog of cases is reduced and that more is done to speed up case disposition."³

Internationally Arbitration is Called "a Private Proceeding with Public Consequences"⁴ By using a private system of adjudication, arbitration enables opposing parties to resolve their disagreement outside of the national judicial system. In an effort to avoid a court trial, arbitration is a mini trial that may take place before a lawsuit is ready for trial. It is handled by a person or group of individuals who are not judges and are selected by the parties themselves. The arbitration may be agreed to by both parties as a means of resolving a dispute or in a contract, or it may be mandated by law. The parties frequently agree to have the matter decided by a panel, such as one, a retired judge, another reputable attorney, or some organization that offers these services, to avoid a court trial and calendars.

ARBITRATION IN CIVIL AVIATION:

Arbitration is becoming an increasingly popular method of dispute resolution in civil aviation. One reason for this is the complexity of aviation-related disputes, which often involve issues of international law, complex technical regulations, and high financial stakes. Arbitration offers a more specialized and tailored approach to dispute resolution than litigation in national courts, which may not have the expertise or resources to deal with these types of disputes.

Arbitration can be used to resolve a wide range of aviation-related disputes, including those arising from commercial transactions, airline operations, aircraft leasing and financing, and passenger claims. For example, airlines may use arbitration to resolve disputes with other airlines over landing rights or to settle disputes with airports over fees and charges. Passengers may also use arbitration to seek compensation for flight delays or cancellations.

INTERNATIONAL/CIVIL AVIATION ARBITRATION:

The term "international dispute" refers to a disagreement that is not subject to domestic law and to which domestic regulations do not apply. The conflict that falls under international law to settle the conflict between two parties. If both parties are from different countries or have their places of business in different locations, the parties are considered to be international.

The term Aviation means "Air law" it relies on the common maxim "*cujus est solum ejus est usque ad coelum*" which means that the owner of the soil owns the sky.⁵ A set of regulations governing the use of airspace and its advantages for aviation, the public, and the countries of the world is known as air law.

An aviation dispute is a legal dispute in which Air Law plays a critical role. Thus, party is bringing a dispute in which a dispute related to Air is involved.

Legal Dispute is mentioned in Article 36(3) of the UN charter:

*"In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court"*⁶

the convention of Civil Aviation arbitration was done on December 7, 1944⁷. It was an effort of 52 Nations to formulate this Convention. The convention talks about "every State has complete and exclusive sovereignty over the airspace above its territory"⁸ The Convention entered in 1947 also established an organization called the International Civil Aviation Organisation was a tool of the United Nations to see the Aviation sector not remain behind. ICAO is given the responsibility to encourage the growth of Arbitration in Civil Aviation.

³ *Brij Mohan Lal v Union of India & Others AIR 2002.*

⁴ Nigel Blackaby, et al., REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION, 6th ed. 2015, p. 126.

⁵ McCracken, William R. "Air Law.", AMERICAN LAW REVIEW, Vol. 57 No.1 1923, p.97.

⁶ Article 36 (3), UN Charter [Internet]. 26 June 1945. [Accessed 23 Nov. 2015]; Available from: <http://www.un.org/en/sections/un-charter/chapter-vi/index.html>.

⁷ CHICAGO CONVENTION, <https://www.icao.int/publications/pages/doc7300.aspx> (Visited on April 24, 2023).

⁸ Trevor C. Atherton and Trudie-Ann Atherton, 'The Resolution of International Civil Aviation Disputes', JOURNAL OF INTERNATIONAL ARBITRATION, Vol.9 No.2, p. 1.

FORUMS FOR SETTling DISPUTES RELATED TO AVIATION

However, by analyzing Civil Aviation we Particularly focus on Arbitration because as trade is increasing and due to the privatization of the aviation industry Arbitration is mostly chosen in Aviation Disputes.

This paper will cover the following Forums:

1. ICAO Council
2. AD HOC Arbitration

The International Civil Aviation Organisation (ICAO), a specialized organization of the United Nations founded “to administer the administration and governance of the Chicago Convention”, was one of its most notable accomplishments.⁹ It is a UN agency and does not have any legislative, administrative, or judicial branches. After the 1944 conclusion of the Chicago Convention, ICAO was established to implement international agreements on commercial air traffic rights and technical and navigational matters pertaining to international aviation. ICAO is the specialized United Nations agency established to administer and regulate the Chicago Convention. ICAO has 191 Member states in total.¹⁰

The Assembly is comprised of all Member States and convened by the Council at least once every three years.¹¹ The Assembly is comprised of all Member States and convened by the Council at least once every three years. The Council is a permanent body within ICAO that is accountable to the Assembly. It comprises 36 Member States elected for a three-year term by the Assembly. These diplomats do not necessarily possess adequate legal knowledge. Some members deferring decisions while waiting for instructions from their governments.” As observed in *India vs. Pakistan*, this structural defect manifested itself in a lengthy process due in part to certain members delaying decisions while awaiting instructions from their respective governments. The ICAO Council has been criticized for its lack of judicial character since it is comprised of political representatives from States rather than well-trained judges subject to the rule of law.¹² The ICAO Council has been criticized for its lack of judicial character due to it being composed of political representatives from States, not well-trained judges subject to the rule of law.¹³

Their approach is more political than judicial, so expecting them to act as justices is unrealistic. The ICAO Council has multiple functions, including submitting annual reports to the Assembly and managing the organization's finances. The ICAO Council functions as a “quasi-judicial body” for resolving disputes between member nations regarding international aviation. It acts as an arbitrator in aviation matters, investigates obstacles to air navigation development, and ensures the safety and regularity of international air travel. Thus, it entails three roles of ICAO:

1. Arbitrator
2. Investigator
3. Compliance manager.

PROCEDURE FOR THE SETTLEMENT OF DISPUTES:

Under Chapter XVIII, Articles 84-88 of the Convention, the Council is authorized to resolve disputes between member states.” Article 84 provides the framework for the resolution of disputes.”¹⁴ In short English, the ICAO Council's mandate under Article 84 of the Chicago Convention calls for more settlement than adjudication. The Chicago Convention's Article 84 lays out a three-step procedure for resolving disputes between nations. First, an attempt is made at negotiation between the nations. If this is unsuccessful, the ICAO Council may rule on the issue, and any party may then appeal that ruling to a designated tribunal or the International Court of Justice.

The Chicago Convention's Articles 85 and 86 describe the processes for resolving disputes and appeals between contracting states. In a disagreement where a Council decision is being appealed, the arbitration process is outlined in Article 85. Each state will appoint an arbitrator who will then select a neutral person if the states are unable to agree on an arbitral tribunal. The arbitral tribunal will be composed of arbitrators and an umpire, and it will make decisions by majority vote. The rulings of the arbitral tribunal and the Permanent Court of International Justice are conclusive and enforceable.

⁹ ICAO, UNITING AVIATION, <https://www.icao.int/about-icao/Pages/default.aspx>, (Visited on April 26, 2023)

¹⁰ Ibid.

¹¹ ICAO, ASSEMBLY, <<https://www.icao.int/about-icao/assembly/Pages/default.aspx>>.

¹² 'Memorial Submitted by the Government of India', Appeal Relating to the jurisdiction of the ICAO Council (*India v Pakistan*) [1971] ICJ Pleadings 24, 234-293

¹³ Zorica Jeremic, *Dispute Resolution in International Civil Aviation* (LLM Thesis, McGill University, 1996).

¹⁴ ARTICLE 84

Appeals are covered in Article 86. Unless reversed on appeal, the Council's decisions concerning international airline operations will stand. Decisions on additional issues may be put on hold while the appeal is being considered. Airlines and nations that violate the ICAO Council's rules may face sanctions that have an impact on their ability to operate and participate in voting, respectively. To maintain the safety and regularity of international air travel, these provisions highlight the significance of settling disagreements and appeals in the context of international air navigation.

CRITICISM:

First, the Council's political makeup results in a lack of judicial objectivity and legal knowledge.

Second, there can be conflicts of interest in a decision reached by 36 Member States. In addition, it takes a long time for a judgement to be made by 36 Member States, especially in light of the possibility of up to 15 dissenting opinions from each State.

Third, the scope of review for cases submitted to ICAO is unclear, as there is a potential conflict between articles 54¹⁵ and 84 of the Chicago Convention.

Fourth, unlike other domestic institutions, the Council does not actively exercise its judicial power.

The Council has already been preoccupied with other activities, which is the second justification. The composition of the Council is made up of representatives from States who hold prominent political or diplomatic positions.¹⁶ Moreover, the ICAO Council is not empowered with certain judicial powers such as the power to subpoena documents.¹⁷

INTERNATIONAL COURT OF JUSTICE:

The United Nations' charter founded the International Court of Justice in June 1945.¹⁸ There are two types of cases that ICJ may take: the legal dispute between states and the request for an opinion on any question which is legally referred by the UNITED NATION. There is general jurisdiction given to ICJ where parties can refer all the matters to the ICJ.¹⁹ Here the parties must see whether their case falls in the jurisdiction of the ICJ or not it's their discretion. Articles 84 to 86 of the Chicago Convention's dispute resolution provisions designate the ICJ as an institution of appeal for ICAO Council judgments. Thus, parties can appeal to the ICJ from the ICAO Council under the Chicago convention. This opens the way to solve aviation-related disputes for the ICJ. Another jurisdiction is general jurisdiction as mentioned above. In ICJ there are 15 judges elected to nine-year terms. ICJ is a general court without any specialization.

CRITICISM: ICJ always sees State to State dispute and not State to Airline, or vice versa thus decreasing the no. of a dispute before the ICJ. Many disputes were dismissed due to lack of jurisdiction. There are lot of disputes which was submitted to ICJ but due to lack of jurisdiction they are often dismissed. Because as we have discussed also ICJ provide general jurisdiction²⁰ in which party can either accept or reject the dispute. Hence states often hesitate to accept the jurisdiction of the ICJ compared to other forums. Hence cases related to civil aviation are very complex thus there should be ideal forum to resolve them.

First, it is limited by jurisdiction. Thus, the state can reject or accept the jurisdiction of the ICJ.

The second jurisdiction of ICJ is not economically oriented but it is more politically oriented as states are involved.

Third ICJ is a general court and has an international character thus does not have specialization.

There are a no. of cases related to Aviation dispute:

¹⁵ Article 54 of the Chicago Convention stipulates that: The Council shall: Submit annual reports to the Assembly; b) Carry out the directions of the Assembly and discharge the duties and obligations which are laid on it by this Convention; Determine its organization and rules of procedure; d) Appoint and define the duties of an Air Transport Committee, which shall be chosen from among the representatives of the members of the Council, and which shall be responsible to it;

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¹⁷ Article 36 (3), UN Charter [Internet]. 26 June 1945. [Accessed 23 Nov. 2015]; Available from: <http://www.un.org/en/sections/un-charter/chapter-vi/index.html>

¹⁸ United Nation, UNITED NATION CHARTER, CHAPTER XIV, INTERNATIONAL COURT OF JUSTICE, <https://www.un.org/en/about-us/un-charter/chapter-14> (visited on April 27, 2023).

¹⁹ International Court Of Justice, STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, <https://www.icj-cij.org/statute#:~:text=Article%2036,treaties%20and%20conventions%20in%20force> (visited on April 27, 2023)

²⁰ Article 36, ICJ Statute,

MH17 Ukraine v Russia Federation²¹ The International Court of Justice (ICJ) has not yet rendered a ruling on the MH17 case between Russia and Ukraine. The Joint Investigation Team, chaired by the Netherlands, is still looking into the situation. But in 2020, the Netherlands and Australia made a formal charge against Russia, holding it guilty under international law, for shooting down MH17.

The cases brought to the ICJ are mostly politically surrounded example, Ukraine and Russia²² mentioned above, India and Pakistan²³ cases also have political influence, and the US-USSR relationship during their tough times. All examples mentioned above involve state characteristics and political characteristics and it is often seen economic disputes are not brought to the ICJ, thus having a limited role.

ROLE OF ARBITRATION IN CIVIL AVIATION DISPUTE:

There are two types of Arbitration: Institutional and Ad hoc Arbitration.

Two specialized arbitration tribunals on aviation have been established.

One is the International Court for Aviation and Space Arbitration established in 1994 under the proposal of the Association Francaise de Droit Adrien et Spatial. It was headquartered in Paris to address 'the specificity and complexity (rather than the volume) of disputes arising from air and space activities.' The court is seated in Paris and French law applies. The court has no power to hear State-to-State disputes. The membership is 'open to any individual, company, or entity, whatever its nationality may be, such as corporations, societies, trade organizations, state and government authorities and public or private entities engaged in any activities whatsoever that is directly or indirectly related to the aviation and space sectors.'²⁴ countries joined the membership of the organization.²⁵ However, in practice, there is no public record that this court has heard any cases.

The International Aviation Court of Arbitration established in the Shanghai Free Trade Zone on 28 August 2014 is a significant development. A product of the collaboration between the China Air Transport Association, IATA and the Shanghai International Arbitration Centre, this Arbitration Court is affiliated with the Shanghai International Arbitration Centre. The Aviation Arbitration Court is empowered to deal with different disputes in the aviation industry, including disputes between airline companies and airports, or between handlers (for example, oil suppliers and catering companies). 'As it is a newly-established aviation arbitration court, it has been referred to for two types of cases so far: disputes regarding airline shares and aircraft leasing disputes. 72 The use of these two arbitration courts, especially the latter one, remains to be seen in the future. Overall, there is no arbitral institution for State-to-State aviation disputes. All the State-to-State cases referred to in the past have been brought to an ad hoc arbitration tribunal.

Compared to other means, ad hoc arbitration stands out in the following ways. First, it can provide specialized expertise as required by the aviation industry. Unlike the ICAO Council consisting of diplomats or the ICJ consisting of general international jurists, one or several arbitrators appointed to a panel in charge of resolving international aviation disputes can have the necessary expertise both in aviation and international arbitration.

The EUROCONTROL organization has created a special way of solving disputes called the "EUROCONTROL Draft Arbitration Policy"²⁶ which is specifically designed for aviation-related issues. If one party has a problem with how the rules of EUROCONTROL are being applied or followed, they can ask for an opinion from an expert (called the Commissioner) to help them understand what the rules mean and how they should be applied. While the opinion is not legally binding, both parties are expected to follow it. If the Commissioner disagrees with the decision made by the arbitral tribunal, they have the power to reject it The EUROCONTROL policy for resolving aviation disputes uses a panel of three highly qualified experts to make decisions. Parties can choose to have a quicker process if their case is not complex. The Director General of EUROCONTROL monitors the enforcement of the decisions made by the panel. The process is flexible and can be made confidential if necessary. However, there are concerns that the authority of the

²¹ International Court of Justice, APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM AND OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (UKRAINE V. RUSSIAN FEDERATION), <https://www.icj-cij.org/case/166> (visited on April 28, 2023).

²² Ibid

²³ Supra

²⁴ Andrew Rush, 'Arbitration in Spaaaaaaace!', IPINSPACE, 22 February 2012 .

²⁵ 'International Court of Aviation and Space', Aviation Week & Space Technology, 25 September 1995

²⁶ Margaret Moses, The Principles and Practice of International Commercial Arbitration (Cambridge University Press, 2012) 9.

panel may be questioned, and the decisions made don't create legal precedents like in a court of law. Despite these concerns, ad hoc arbitration is still a useful way to resolve aviation disputes and is likely to be used more in the future. Arbitration offers more flexibility in terms of procedures. States do not face any jurisdictional pressure when they choose to submit their dispute to an ad hoc arbitration tribunal. The procedure can be sped up depending on the complexity of the case and the party's willingness to do so.

Additionally, arbitration is well-known for providing confidentiality, which is important in international aviation where major security or economic interests may be involved and disputes need to be resolved in a confidential manner. These advantages make arbitration a useful method for resolving aviation disputes in a way that is efficient and protects the interests of all parties involved.

One concern with ad hoc arbitration is that its authority may be questioned, which could make enforcement of its decisions difficult in some countries. For example, in China, an ad hoc arbitration award may not be enforceable under Chinese law²⁷ unless an arbitration institution is specified in the agreement. Another issue is that ad hoc arbitration decision don't create legal precedents like court decisions, so they may not be helpful in similar cases. Despite these concerns, ad hoc arbitration still has unique advantages for resolving aviation disputes and is likely to become more important in this field.

DEVELOPMENT OF ARBITRATION:

If someone does not want to submit his/her dispute to ICAO Council under Article 84 of the Chicago convention they can refer to arbitration. But arbitration came into the picture after BERMUDA I. BERMUDA I is the air service agreement between the United Kingdom and the United States. After the arrival of this agreement, the role of ICAO was diminished. There are two models Bermuda II²⁸ and open skies agreement. And these agreements have expressly chosen arbitration as dispute resolution. This agreement was a bilateral air transport agreement between the United States and the United Kingdom that established a framework for commercial air travel between the two countries. Article 16 of the Bermuda II Agreement allows either of the countries involved to ask for discussions on how the agreement is being followed, changed or interpreted. These discussions must happen within 60 days of the request.

If the discussions don't solve a disagreement between the countries about the agreement, they can agree to take the disagreement to a person or group to decide. If they can't agree on who will decide, then either country can ask for an arbitration panel of three people to decide. If they can't agree on who the arbitrators will be, then they can ask the President of the ICJ to choose them.²⁹

Thus, we can see arbitration is a legal forum if above mentioned joint committee cannot do. It can then be referred to the joint committee.

CURRENT ARBITRATION TRENDS:

States do not want to give their dispute to ICAO so they choose Arbitration as a dispute mechanism. Here is what they do the most they opt for bilateral air service agreements in their agreement. Thus, finally contracting states identified the arbitration as the legal dispute resolution mechanism.

When Bermuda Agreement also come as we mentioned above people do not give their dispute to ICAO. In the Bermuda II agreement also Article 16 and Article 17 mentioned that for dispute resolution in civil aviation, there must be two tier mechanism first is consultation and another one is ad hoc arbitration.³⁰

In open skies agreement between US and EU Article 19 state:

"Article 19 Arbitration 1. Any dispute relating to the application or interpretation of this Agreement, other than issues arising under Article 20 or under Annex 2, that is not resolved by a meeting of the Joint Committee may be referred to a person or body for decision by agreement of the Parties. If the Parties do not so agree, the dispute shall, at the request of either Party, be submitted to arbitration"³¹

²⁷ Chinese Arbitration Law arts 16 and 18.

²⁸ Bermuda II Agreement, designates the bilateral air services agreement between the US and the UK, signed in 1976, entered into force 23 July 1977.

²⁹ Article 12

³⁰ Article 16 and 17 <https://2009-2017.state.gov/e/eb/rls/othr/ata/u/uk/176322.htm> visited on 4 april, 2023

³¹ Article 19 , https://www.icao.int/sustainability/Documents/Compendium_FairCompetition/Practices/EU-US_OSA_2007.pdf visited on 4 april, 2023

Thus, it indicates that party's government are more towards arbitration and that too bilateral agreement between state.

Characteristics making arbitration a primary choice in international civil aviation legal disputes:

- A detailed understanding of air law, as well as the scientific and technological facets of the aviation business, is required due to the specialized nature of aviation disputes. Other dispute resolutions lack this specialized expertise.
- Arbitration offers more freedom in deciding the panel's jurisdiction and makeup, which can be very helpful in settling issues involving international civil aviation.
- In some aviation conflicts, confidentiality is a crucial factor, especially when it comes to important security concerns. Due to the private nature of the procedures and the tight secrecy obligations placed on the arbitrators, arbitration is frequently seen as the best alternative for maintaining confidentiality.

POSITIVE OUTCOMES OF ARBITRATION IN RESOLVING INTERNATIONAL CIVIL AVIATION DISPUTES:

BELGIUM V IRELAND³²

Belgium and Ireland's disagreement over how to interpret the capacity clause in their bilateral air transport agreement was the subject of the most recent arbitrated international aviation conflict. The dispute was all about the interpretation of the capacity clause in the bilateral agreement between Belgian and Ireland. The Bermuda model left air capacity up to demand from traffic between nations rather than being predetermined by the concerned governments. Belgium and Ireland disagreed over how much capacity their airlines could have on flights between the two nations. The original agreement did not stipulate a specific quantity of capacity, but rather required airlines to provide sufficient capacity to meet demand. Belgium believed that the market's capacity was excessive and should be reduced. Ireland argued that the market was not overcapacity and that reducing capacity would be detrimental to Aer Lingus, their national airline. To settle the dispute, a sole arbitrator was appointed, who determined that there was indeed overcapacity and ordered a capacity reduction on the Brussels-Dublin route. Henrik Winberg, a former director of general civil aviation in Sweden, was the only arbitrator chosen to hear the dispute. Mr. Winberg came to the conclusion that there was overcapacity on the Brussels-Dublin route and thus ordered a capacity reduction. Give a brief explanation and record it for future research.³³

UNITED STATES V FRANCE 1978:

Among the arbitrations in which the United States has participated, perhaps the most intriguing involved a subsequent dispute between the United States and France.

In the 1963 United States v. France case, the dispute centered on the extension of fifth freedom rights beyond Paris. Fifth freedom rights refer to an airline's ability to transport passengers or cargo from one country to another and then to a third. The United States requested permission for its airlines to transport passengers and cargo beyond Paris, which would have violated the bilateral agreement between the United States and France.

This case is significant in the annals of aviation arbitration because both parties agreed to arbitrate their dispute. The arbitration panel comprised of three arbitrators, with one arbitrator appointed by each party and the third arbitrator selected by consensus.

The commission determined that the bilateral agreement between the United States and France did not prohibit explicitly the granting of fifth freedom rights outside of Paris. However, they also discovered that France had never granted such rights to any other country before, and that France did not wish to set a precedent by granting these rights to the United States.

In conclusion, the commission advised that the United States request the rights on a case-by-case basis, and that France would evaluate each request separately. This case was resolved through arbitration after the United States accepted this recommendation.

This case established a precedent for arbitrating aviation disputes and demonstrated the significance of bilateral agreements in regulating air travel.³⁴

³² Belgium v. Ireland, (1981) 11 ILM 1182 (PCA 1980)

³³ Paul Stephen Dempsey, The Role of the International Civil Aviation Organization on Deregulation, Discrimination, and Dispute Resolution, 52 J. AIR L. & COM. 529 (1987) <https://scholar.smu.edu/jalc/vol52/iss3/2>

³⁴ Andreas F. Lowenfeld, Aviation Law, Cases and Materials, 38 J. AIR L. & COM. 437 (1972) <https://scholar.smu.edu/jalc/vol38/iss3/10>

UNITED STATES V. ITALY CASE OF 1965:

1948, the two governments made a bilateral agreement.³⁵ The dispute concerned cargo-only services to Rome. The United States desired to continue its cargo-only service to Rome, but Italy expressed reluctance. The dispute was presented before an arbitration panel, which ruled in favour of the United States and allowed it to continue operating the cargo-only service.

Despite the tribunal's decision, the United States remained concerned about the bilateral relationship governed by the air services agreement. It was feared that Italy would resign from the US-Italy Bilateral ASA of 1948, causing additional complications.³⁶

After the US Civil Aeronautics Board authorized a third carrier to offer all-cargo services in 1966, Italy denounced the bilateral ASA. This necessitated the conclusion of a new bilateral ASA in 1970, thereby resolving the dispute.

This case demonstrates the potential impact of arbitration tribunal decisions on bilateral relationships between countries governed by aviation services agreements.

FUTURE OF ARBITRATION IN CIVIL AVIATION: AN INTERNATIONAL PERSPECTIVE:

In our view, the optimum venue for the resolution of legal disputes pertaining to international civil aviation should exhibit several particular characteristics. It is important for decisions and judgments to have the force of law, since this would make it much simpler to put the decision into action and would also help to foster the development of a case law system.

³⁵ The United States--Italy Air Transport Arbitration: Problems of Treaty Interpretation and Enforcement
Paul B. Larsen
The American Journal of International Law
Vol. 61, No. 2 (Apr. 1967), pp. 496-520, <https://www.jstor.org/stable/2197051>

³⁶ Ibid