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Analysis of the International Court of Justice's Jurisdiction in the Airspace Violation Cases

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Abstract

This writing examines the International Court of Justice's authority over cases of airspace breaches. Airspace is the space above the land area and waters of a country. Air space is one of the most critical parts of a region in realizing the welfare of a country. ICJ, as the Supreme Court of the United Nations, is capable of resolving conflicts between countries and disputes involving United Nations member states. As a result, this writing aims to analyze further the authority of the International Court of Justice regarding airspace violations. The research was normative and qualitative. The result showed that, in theory, ICJ had clear jurisdiction in resolving violation of airspace cases, but in practice, only a few cases had been resolved by ICJ. However, most of those cases submitted to ICJ produce no judgment from ICJ since the Court found that it lacks jurisdiction.

1. Introduction

Land, people, and a sovereign government are the foundations upon which a country is founded. A sovereign is free from the control of other countries both inside and outside its borders.[1] A country's territory is a critical component that must be owned in order to carry out its territorial sovereignty. The territory of a country is typically divided into three dimensions, land, water, and airspace. However, not every country has a fully three-dimensional territory. Regardless of geographical form, all countries have land and airspace as part of their territory.

The space above a country's land and waters is referred to as its airspace. Airspace is one of the most important parts of a country's territory for achieving its welfare. A state may conduct a variety of activities in its airspace in order to maximize the prosperity of its people. National airspace extends not only horizontally between each country's international landmasses or maritime borders but also vertically from ground level to the atmospheric boundary.[2] When countries develop aircraft technology, airspace gains economic and strategic importance. From a defense standpoint, airspace may be a possible place for foreign threats to national security to occur. Thus, in maintaining the sovereignty of the country in its airspace, each country must be very strict. Countries began to consider legal instruments to protect their interests, and numerous international agreements in the field of air law were developed. Foreign aircraft can now enter or pass-through national airspace only with a country's prior permission, either through bilateral or multilateral agreements.[3]

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[1] Baiq Setiani, "Konsep Kedaulatan Negara di Ruang Udara dan Upaya Penegakan Pelanggaran Kedaulatan oleh Pesawat Udara Asing," *Jurnal Konstitusi* 14, no. 3 (January 9, 2018): 489–510, https://doi.org/10.31078/jk1432.

[2] Alison J Williams, "A Crisis in Aerial Sovereignty? Considering the Implications of Recent Military Violations of National Airspace," *Area* 42, no. 1 (2010): 51–59, https://doi.org/10.1111/j.1475-4762.2009.00896.x.

[3] Dita Anggraini Wibowo, "Pelanggaran Kedaulatan Di Wilayah Udara Negara Indonesia Oleh Pesawat

Numerous international conventions govern air sovereignty, like the Havana Convention of 1928, the Geneva Convention of 1958, the Vienna Convention of 1961, and the 1982 United Nations Convention on the Law of the Sea (UNCLOS).[4] Moreover, both the 1919 Paris Convention and the 1944 Chicago legitimize state control of airspace. However, despite the international community's regulations and requirements to avoid airspace violations, it can be seen that foreign aircraft are still passing through the territories of other countries without permission, or that a neighboring State has attacked an aircraft belonging to another State, or because actions taken in the air are harmful to another country's airspace. If such violations of the airspace domain have arisen, they are among the kinds of lawsuits that have been brought to the International Court of Justice. As a result, the authors conducted this research to further examine the International Court of Justice's (ICJ) authority over airspace violations.

2. Problem Statement

Based on this context, the issue was regarding the jurisdiction of the International Court of Justice (ICJ) on resolving violations of airspace cases.

3. Methods

The research employed normative legal research, as well as a comprehensive analysis based on a case study approach. The case approach was to describe the International Court of Justice's authority over cases of past airspace breaches. Furthermore, the data were obtained through the analysis of study objects such as books, journals, and cases.

4. Discussion

4.1. Airspace Sovereignty Security for States

The space above a country's land and waters is known as airspace. Airspace is commonly used for aviation and is under the control of the government. After the invention of aviation technology at the turn of the twentieth century, the principle of

Sipil Asing" (Brawijaya University, 2017).

[4] Yan Jefry Barus, Arif Arif, and Sutiarnoto Sutiarnoto, "Yurisdiksi Wilayah Udara Suatu Negara Dalam Perspektif Hukum Internasional," *Sumatra Journal of International Law* 2, no. 1 (2014): 164433.

airspace sovereignty over territorial areas became an internationally accepted legal principle. Hence, to protect the airspace, there is a regulation called an air law. Air law can be defined as a set of national and international rules governing aircraft, air navigation, commercial air transport, and all other legal relationships arising from domestic and international air navigation, whether public or private.[5] Apart from the term "air law," the term "aeronautical law" is also used, particularly in the Roman language,[6] even though the concept did not originate in Rome.[7] The development of the law of the air can be divided into two stages, namely before 1910 and after 1910.

After several German hot air balloons crossed France's airspace, which France considered a threat to their security, the first International Air Law Conference was held in 1910, and the development of air law began.[8] Moreover, at the 1919 Paris Convention, many countries met with two conflicting ideas. On one side, some countries believed that the wartime experience demonstrated that the concept of state airspace sovereignty needed to be reaffirmed in light of national air defense considerations.[9] Several countries, on the other hand, aware of international transportation modes that use air as the medium. The principle of *caelum liberam*, or freedom of the skies, was then recognized in the 1919 Paris Convention for the Regulation of Aerial Navigation.[10] It was the first legal instrument enacted in the field

[5] Saharuddin Daming, "Telaah Perwujudan Kedaulatan Negara Atas Wilayah Udara Dalam Perspektif Hukum," *YUSTISI* 1, no. 2 (September 1, 2014): 23–41, https://doi.org/10.32832/yustisi.v1i2.1091.
[6] Pablo Mendes de Leon, *Introduction to Air Law* (Kluwer Law International B.V., 2022). p. 1
[7] Matthew T. King, "Sovereignty's Gray Area: The Delimitation of Air and Space in the Context of Aerospace Vehicles and the Use of Force'(2016) 81," *Journal of Air Law and Commerce* 377 (n.d.).
[8] Michael Milde, *International Air Law and ICAO* (Eleven International Publishing, 2008). p. 8
[9] Daming, "Telaah Perwujudan Kedaulatan Negara Atas Wilayah Udara Dalam Perspektif Hukum.", *Op.Cit.*
[10] Peter A. Dutton, "Caelum Liberum: Air Defense Identification Zones Outside Sovereign Airspace,"

of air law. Its main goal is to uphold the state's sovereignty over the airspace above its borders and to establish rules for airspace users.

Then, in 1944, the international community recognized the importance of achieving international aviation safety through legal uniformity.[11] In Chicago, representatives from 54 countries gathered from November 1 to December 7 to establish the International Civil Aviation Convention, which also addressed the issue of aerial sovereignty.[12] This convention has integrally adopted the Paris Convention's general theory of air rule, which specifies that "States parties recognize that each country has full and exclusive sovereignty over the airspace over its territory."[13] Article 1 of the Convention states that each sovereign state has full jurisdiction over the airspace over its territories.[14] In other words, the Article expresses the belief that each country has complete sovereignty over its airspace territory and that each country has the right to manage and control its national airspace fully and completely. Furthermore, Article 6 specifies that no scheduled international air service can be run over or through a contracting State's territory unless the contracting State has granted permission or other authorization.[15]

American Journal of International Law 103, no. 4 (October 2009): 691–709, https://doi.org/10.1017/S0002930000159834.

[11] Paul Stephen Dempsey, "Compliance & (and) Enforcement in International Law: Achieving Global Uniformity in Aviation Safety," *North Carolina Journal of International Law and Commercial Regulation* 30 (2005 2004): 1.

[12] Q. I. N. Huaping, "Reparation for Victims of the International Civil Aviation Arising from Armed Conflict Zones," *The Korean Journal of Air & Space Law and Policy* 30, no. 1 (2015): 245–71.

[13] Adi Kusumaningrum and Wisnu Virgiaswara Putra, *Hukum Udara: Kepentingan Indonesia di Ruang Udara Nasional* (Universitas Brawijaya Press, 2019). p. 135

[14] Article 1 of 1944 Chicago Convention on International Civil Aviation.

[15] Article 6 of 1944 Chicago Convention on International Civil Aviation.

As a result of the Convention, the national airspace of a country is entirely restricted to international aircraft, both civilian and military, and entry is allowed only with prior approval from the subjacent State *(negara kolong)* via bilateral or multilateral agreements. A subjacent state is a country whose sovereign territory is under certain airspace, which has sovereignty to an unlimited height and is only limited by the obligation to allow other countries' aircraft the right of safe passage.[16] Because military attacks using aircraft have many advantages and conveniences for the attacking country, in terms of protection and stability, airspace as a mode of travel is extremely sensitive for the subjacent state. It would not be considered justification for entering foreign airspace, and therefore such overflow is illegal under international law.[17] Thus, the closed nature of air space is understandable.

Two theories explain how a country's airspace approaches. According to the first theory, airspace is free by definition and is known as the air freedom theory. Meanwhile, the second theory holds that a government has sovereignty over the airspace above its borders. This is also known as the air supremacy principle. Article 1 of the Chicago Convention refers more to this second theory. However, recent developments show that state sovereignty over its airspace is no longer strictly absolute and closed.

Furthermore, one of the terms used to describe airspace violations is "aerial intrusion," which refers to a situation in which an airplane from one country enters the airspace of another without the prior permission of the subjacent state.[18] Another scenario that could result in an airspace violation is the intentional or unintentional entry of a foreign

[16] Dewa Gede Sudika Mangku and I. Ketut Radiasta, "Tanggung Jawab Negara Terhadap Penembakan Pesawat MH17 Berdasarkan Hukum Internasional," *Pandecta Research Law Journal* 14, no. 1 (August 12, 2019): 25–33, https://doi.org/10.15294/pandecta.v14i1.18987.
[17] Mateusz Osiecki, "Shooting Down Civil Aircraft in the Light of Sovereignty in the Airspace," *Sociology Study* 6, no. 6 (June 28, 2016), https://doi.org/10.17265/2159-5526/2016.06.005.
[18] Wibowo, "Pelanggaran Kedaulatan Di Wilayah Udara Negara Indonesia Oleh Pesawat Sipil Asing.", *Op.Cit.*

aircraft into the national airspace. As a result, some other unintended situations include becoming disoriented (aircraft in distress), which is also a type of violation of aerial sovereignty.

4.2. Good Governance Practices in Health Services

Disputes between countries may be resolved peacefully or by an international court. As a whole, the international court is divided into three, namely, the International Criminal Court (ICC), the International Court of Justice (ICJ), and the International Criminal Tribunals and Special Courts. The International Court of Justice is a United Nations judicial body headquartered in The Hague, Netherlands. It is a judicial institution that replaces the Permanent Court of International Justice (PCIJ).

The PCIJ is the pioneer of ICJ established in 1922 under the Covenant of the League of Nations, Article 14. As an international judicial institution, previously, PCIJ has several vital roles. Despite that PCIJ runs many essential parts, the outbreak of World War II had severe consequences for the PCIJ as the war continued and dissolved the PCIJ. On February 10, 1944, the League of Nations Commission, led by Sir William Malkin, successfully published its report, which included three recommendations to reactivate and rebuild international tribunals. The recommendations include establishing a modern International Court of Justice based on the PCIJ Statute, as well as the new court must have jurisdiction to provide advisory opinions, and the new courts should not have compulsory jurisdiction.[19] Following several meetings on the formation of a new tribunal, in 1945 at a conference namely the San Francisco Conference, an agreement was eventually made to create a new institution known as the International Court of Justice, which would become the United Nations' main body (UN).

Thus, ICJ was created in 1945 based on the UN Charter and formally convened in 1946. The legal basis for the ICJ is the UN Charter of 1945, the 1945 International Court of Justice Statute, Rules of the Court of 1970 as amended on December 5, 2000, Practice Directions I – IX, and Resolution Regarding the Internal Judicial Practice of the Court

[19] Indien Winarwati, "Eksistensi Mahkamah Internasional Sebagai Lembaga Kehakiman Perserikatan Bangsa-bangsa (PBB)," *Rechtidee* 9, no. 1 (June 1, 2014): 56–71, https://doi.org/10.21107/ri.v9i1.415.

adopted on April 12, 1976, from Article 19 of the Rules of the Court.[20] This institution was formed under Chapter IV Article 92 until Article 96 of the UN Charter. It is an institution that aims to maintain world peace. Currently, this court has 15 who are nominated by the General Assembly and the Security Council. According to Sri in Winarwati's paper, the ICJ has three main tasks, namely to decide cases between States (both UN member states and non-UN member states), to provide guidelines, and to support the work of other major UN organs and for special bodies through their legal opinion, and involved in extra-judicial activities.[21]

The Court's dispute-resolution powers are defined in its Statute and are referred to as its contentious jurisdiction.[22] The term "jurisdiction" is derived from the Latin word *ius dicere,* which refers to the authority to pronounce on rights and obligations, or in a broad sense, to cover the total activity of the ICJ.[23] The ICJ's jurisdiction includes the following:[24]

1) Deciding Dispute Cases

   According to Article 36 (1) of the ICJ Constitution, the ICJ has authority over all lawsuits filed by the parties. The exercise of judicial jurisdiction in cases of litigation recommends that the parties to the conflict agree to the court's jurisdiction. Usually, the submission is made by notifying a bilateral agreement known as compromise. If the other party agrees to such submission or later

[20] Nur Asyraf Munif Junaidy Nasser, "Peran Mahkamah Internasional Dalam Penyelesaian Sengketa Lingkungan Hidup Internasional," *JURNAL ILMIAH HUKUM DIRGANTARA* 9, no. 1 (September 8, 2018), https://doi.org/10.35968/jh.v9i1.302.
[21] Winarwati, "Eksistensi Mahkamah Internasional Sebagai Lembaga Kehakiman Perserikatan Bangsa-bangsa (PBB).", *Op.Cit*.
[22] John Merrills and Eric De Brabandere, *Merrills' International Dispute Settlement* (Cambridge University Press, 2022). p. 127
[23] Chittharanjan F. Amerasinghe, *Jurisdiction of International Tribunals* (BRILL, 2002).
[24] Winarwati, "Eksistensi Mahkamah Internasional Sebagai Lembaga Kehakiman Perserikatan Bangsa-bangsa (PBB).", *Op.Cit.*

agrees, a unilateral submission of a dispute to the ICJ by one of the parties is deemed sufficient.

2) Provide Opinions

   The ICJ can provide opinions to requesting States, as well as opinions requested by the General Assembly, the UN Security Council, and other UN bodies, as long as the General Assembly permits. The procedure for requesting an opinion from the ICJ must be done in writing, and it must include a statement on the issues for which an opinion is sought, as well as supporting documents.

3) Examine UN member-to-member disputes

   According to L. Oppenheim, the ICJ's jurisdiction in Article 36 of the Statute can be divided into voluntary and obligatory categories. Because of this voluntary authority, the ICJ's authority is contingent on the approval of the disputing countries. The mandatory authority, on the other hand, holds that the parties are bound by the option clause, as defined in Article 36 (2), which describes a state's acceptance of a particular judicial settlement, and that if both parties have made a declaration on their dispute, it denotes the ICJ's jurisdiction. Also, the ICJ has the power to exercise incidental jurisdiction.

Further, the ICJ can gain jurisdiction in three ways. In some cases, however, jurisdiction is based on more than one source. The three options are as follows:[25]

1) By special agreement

   When conflicting countries agree to refer their disputes to the ICJ, special consent jurisdiction may arise. In special treaty cases, the ICJ acts as a complex arbitration tool.

2) By international agreement

   It refers to a jurisdictional clause, such as one found in a treaty.[26] Many treaties state that if a dispute arises under the agreement, the ICJ will have jurisdiction.

[25] Eric A. Posner, "The Decline of the International Court of Justice," *International Conflict Resolution* 23 (2006): 111.
[26] Kimberly R. Gosling and Jacob A. Ayres, "Surface to Air: Malaysia Airlines Flight MH17 and Loss Recovery by States for Civilian Aircraft Shootdowns," *Journal of Air Law and Commerce* 80 (2015): 497.

3) By unilateral declaration under optional clauses

   Many countries have submitted mandatory jurisdiction declarations, granting the ICJ jurisdiction over disputes. This obligation is reciprocal; a country can only be summoned to the ICJ by another country that has made the declaration. Furthermore, many states agree to compulsory jurisdiction only in a limited number of cases.

Furthermore, the ICJ has two types of jurisdictions, namely contentious cases, and noncontentious (advisory) cases. A contentious case is the authority to adjudicate a dispute between two or more countries. The Court's authority can be implemented in the following ways:[27]

1) Based on the Statute's Article 36, Paragraph 1

   The court's authority, according to this provision, covers all disputes raised by the parties as well as all matters stipulated in the UN Charter as outlined in the treaties.

2) *Forum Prorogatum* Doctrine

   This type of jurisdiction (Propagated Jurisdiction), according to this doctrine, arises when only one country expressly states its support in order to establish the Court's jurisdiction. The agreements of other parties may be given tacitly, not explicitly, or implicitly.

3) The Optional Provision of the Statute's Article 36, Paragraph

   It refers to the choice clause. It is stated that States that have ratified the legislation may announce mandatory recognition of the Court's *ipso facto* jurisdiction at any time and until a special provision is made against States which accept similar obligations for any legal conflicts regarding the interpretation of an agreement, any issues of international law, the presence of a reality that, if present, would constitute a violation of international commitments, as well as the extent and duration of damages imposed for a breach of an international obligation.

[27] Nin Yasmine Lisasih, "Mahkamah Internasional," *Nin Yasmine Lisasih S.H., M.H.* (blog), June 21, 2011, https://ninyasminelisasih.com/2011/06/21/mahkamah-internasional/.

Noncontentious (Advisory) cases are the second jurisdiction. It refers to a jurisdiction with authority to provide legal advice or considerations to the main organs or other UN organs. The legal advice provided is limited in scope, only relating to the scope of activities or activities of the five central agencies or organs and the sixteen UN specialized agencies. Moreover, in order for a case to be accepted or admissible in the ICJ, the State as the proceeding party must accept the ICJ's jurisdiction. Acceptance of jurisdiction within this framework can take the form of a Special Agreement, Subject to International Treaties, Declaration of Submission for States Members of the ICJ Statute, ICJ Decisions on ICJ Jurisdiction, Interpretation of the Judgment, and Revised Decision.[28]

4.3. Analysis of the ICJ Jurisdiction on Violation of Airspace Cases

There have been numerous cases brought before the International Court of Justice concerning violations of airspace up to this point. The type of violation of airspace cases varies depending on the type of aerial intrusion and aerial incident. It should be noted that several incidents involving the destruction of foreign airspace intruders have occurred since the 1950s.[29] Many aerial incidents occurred between 1950 and 1960, in which military aircraft were targeted, forced to land, or shot down, and the crew was exiled.[30] The most recent violation of airspace occurred on January 8, 2020, when a Ukraine International Airlines flight flying from Tehran to Ukraine was hit by a missile shortly after takeoff, killing all on board. According to a statement issued by the General Staff of the Islamic Republic of Iran's Armed Forces, the shooting at the aircraft was caused by human error and an error made by the Iranian Air Defense in determining the nature of the aircraft.[31]

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[28] *Ibid*.
[29] Cindy Nur Fitri, "Unauthorized Airspace Infringements and Use of Weapons Against Civilian Aircraft From an International Law Perspective," *Juris Gentium Law Review* 1, no. 2 (April 1, 2013): 46–53.
[30] Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (Routledge, 2002).
[31] Azam Amini and Vahid Bazzar, "Legal Aspects of Aerial Incident of the 3 January 2020 Concerning Ukraine International Airlines Flight 752 and International Responsibility Arising from It," *Journal of*

Furthermore, some of the cases of airspace violations are as follows:

1) Aerial Incident on July 27, 1955

   Several countries are involved in this case, including Bulgaria, the United States of America, and the United Kingdom. On the 27th of July, 1955, while operating from London to Tel Aviv on a scheduled passenger route, a Constellation aircraft owned and operated by El Al Israel Airlines Ltd. strayed away slightly from its original route between Belgrade and Salonica due to poor weather and accidentally crossed the Bulgarian border. Then it was attacked by Bulgarian fighter planes and caught fire several miles inside Bulgarian territory. At the time of the crash, there were 51 passengers and seven crew members on board, and they were all killed. The pilot and the three passengers on board were all British citizens. As a result, parts of the goods carried on board that was destroyed belonged to a British citizen. Further, despite the lengthy procedure, it was decided that the Court of the judgment of the United Kingdom's Government launched to put an end to the investigations that have been started, and thus, with no opposition from other parties, the ICJ ordered the matter to be excluded from the Court's registry.[32]

2) Aerial Incident on July 3, 1988

   This dispute arose as a result of the loss of an Aircraft of Iran and the deaths of its 290 crew and passengers while flying over its national territorial waters inside its national airspace by two surface-to-air missiles launched from the USS Vincennes by a US warship that had taken up role in Iranian territorial waters. The court removes the case from the list in its Order after the two sides separately told the Court that their governments had decided to drop the lawsuit after they had signed a settlement deal.[33]

3) The case of Aerial Herbicide Spraying between Ecuador and Colombia

Legal Studies 12, no. 2 (2020): 35–58.

[32] Aerial Incident Of 27 July 1955 (Israel v. Bulgaria; United States of America v. Bulgaria; United Kingdom v. Bulgaria).

[33] Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America).

Colombia has used airplanes and helicopters to spray broad-spectrum and potent herbicides over large swaths of territory on the two countries' border every year since at least 2000. The alleged spraying targets were illegal coca and opium plantations near the border. However, at the time, spraying from the air near, on, and across the boundary with Ecuador at the time caused significant damage to humans, trees, wildlife, and the natural environment on the Ecuadorian side of the border. The court excluded the case from the list in its last order because both countries agreed to establish an exclusion zone within which Colombia would not perform aerial spraying activities and will exchange information and establish a dispute resolution mechanism.[34]

4) Aerial Incident on March 10, 1953

In this case, the Czechoslovakian government ordered military aircraft of the MIG type to cross the Czechoslovakia-Germany border on March 10, 1953. It attacked a US Air Force F-84 fighter jet that was conducting routine patrols in the airspace of Germany's US zone. It then destroyed one of the F-84 aircraft, injuring the pilot, an American citizen, and causing other damage. The Court ruled in its Order that the Government of the Czechoslovak Republic had previously refused to recognize the Court's authority to resolve the conflict that was the focus of the Application presented to it by the US Government. As a result, no further action could be taken on this Application.[35]

5) Aerial Incident on September 4, 1954

On September 4, 1954, over the Sea of Japan, in international airspace, Soviet Government military aircraft carried out several deliberate actions against US Navy Neptune-type aircraft and their crew. Following all proceedings, the Court ruled that the Union of Soviet Socialist Republics' Government had previously refused to recognize the Court's authority to comply with the conflicts that were the focus of the Application presented to it by the US Government, and thus could not take any further action on this Application.[36]

[34] Aerial Herbicide Spraying (Ecuador v. Colombia).
[35] Aerial Incident of 10 March 1953 (United States of America v. Czechoslovakia).
[36] Aerial Incident of 4 September 1954 (United States of America v. Union of Soviet Socialist Republics).

6) Aerial Incident on November 7, 1954

On November 7, 1954, a Union of Soviet Socialist Republics aircraft struck and crashed a US Air Force 13-29 airplane engaged in legal and friendly flight over the Japanese island of Hokkaido, killing one crew member of the 13-29 aircraft, an American national, and injuring the other members of the B-29 aircraft, all of whom were American nationals. The Court ruled that the Union of Soviet Socialist Republics' Government had initially refused to acknowledge the Court's authority to contend with the problems that were the focus of the Application brought to it by the US Government of America, and it could not proceed with this Application.[37]

7) Treatment in Hungary of Aircraft and Crew of United States of America

An American plane, No. 6026, returned to Erding, Germany, from Belgrade, Yugoslavia. However, none of the passengers or crew members knew that the plane had passed through or was about to pass through Hungary or Romania. The Judges decided in its order that the Government of the Hungarian People's Republic had not previously accepted the Court's power to proceed with the conflicts that are the topic of the Application presented to it by the US Government, and thus it cannot take any further steps.[38]

8) Aerial Incident on July 27, 1955

On July 27, 1955, an Israeli civil aircraft constellation belonging to El Al Israel Airlines Ltd. crashed on Bulgarian territory. It happened in the Petrich area when an expected flight from Vienna to Lydda was downed fired by a unit of the Bulgarian Security Forces, killing all of its inhabitants, including 51 passengers from various countries and seven crew members. The case dragged on for a long time, and in the end, the court determined that it lacked jurisdiction to hear

[37] Aerial Incident of 7 November 1954 (United States of America v. Union of Soviet Socialist Republics).
[38] Treatment in Hungary of Aircraft of United States of America (United States of America v. Hungarian People's Republic; United States of America v. Union of Soviet Socialist Republics).

disputes brought before it on October 16, 1957, by the Application of the Government of Israel.[39]

9) Aerial Incident on August 10, 1999

On August 10, 1999, an unmanned Pakistan Navy Atlantique aircraft was targeted by an Indian air force plane while flying over Pakistani airspace on a scheduled training flight. As a result, sixteen people were killed. The Court stated in its decision, by a gape of fourteen votes to two, that it lacked jurisdiction to hear disputes brought by Pakistan against India.[40]

Hence, among the cases provided above, it is clear from the preceding cases that the majority of the cases (from number 4 to number 9) referred to the International Court of Justice lacked authority to resolve the conflict. Those cases are the Aerial Incident Case on 10th of March, 1953, between the USA and Czechoslovakia, the Aerial Incident Case on September 4, 1954, between the USA and the Union of Soviet Socialist Republics, the case of Aerial Incident on November 7, 1954, between USA and Union of Soviet Socialist Republics, the Aerial Incident Case on July 27, 1955, between Israel and Bulgaria, and the Aerial Incident Case on August 10, 1999, between India and Pakistan.

The Applicant State cited the declarations under which the two Parties recognized the Compulsory jurisdiction of the Court and Article 36 clause 1 of the ICJ Statute as a ground of jurisdiction in all of those cases. According to this provision, the Court's authority covers all matters expressly provided for in the United Nations Charter or treaties and conventions in place. As a result, they are treaty-based jurisdiction cases, and the ICJ has jurisdiction to decide them. The respondent State, on the other hand, posed the same concerns, arguing that the applicant's State application made no reference to any treaty or convention in place between the applicant and the respondent State that confers jurisdiction on the Court under paragraph 1 of Article 36.

As a matter of fact, the most apparent justification for the Court to deny the case is that the respondent State in none of those cases states that the State in which the

[39] Aerial Incident of 27 July 1955 (Israel v. Bulgaria).
[40] Aerial Incident of 10 August 1999 (Pakistan v. India).

Application is filed has granted some consent to jurisdiction. The Applicant State depends solely on Article 36 clause 1 of the Court's Statutes, which states that the Court's authority extends to all cases to which the party relates. Furthermore, the Court concluded in its opinion that neither the Charter nor the reciprocal treaties cited by the applicant State include any particular clause conferring compulsory jurisdiction on the Court.

Nonetheless, even though the judges voting decided that ICJ had no authority over such cases, some points must be made. Judge Koroma noted in the case of the 1999 Aerial Incident that, while he entirely agreed with the Court's decisions and reasoning for them, he thought the judgment should have discussed the questions of justifiability and authority posed during the trial proceedings more deeply, considering the seriousness of the case.[41] Also, the majority of judges in such cases above agree that the United Nations Charter does not provide for a robust scheme of jurisdiction.

As can be seen, no lawsuits alleging breaches of airspace have been settled by the Court. In previous years, the court has decided on its loss of discretion and dismissed cases on the basis that it lacked authority to hear those requests. Furthermore, notwithstanding the Court's lack of authority to hear such cases, the Court reaffirmed its stance that judicial settlement of international disputes is only a substitute for direct and peaceful settlement of certain conflicts between states, which the Court will encourage.[42] Despite its denial of jurisdiction, the Court reminded all sides of their ongoing commitments to pursue a negotiated settlement of their differences in good conscience, and reiterated the points made in the judgment to that effect.[43]

5. Conclusion

According to the study's conclusions, airspace breaches can occur during an

[41] *Ibid.*
[42] Peter HF Bekker, "Aerial Incident of 10 August 1999 (Pakistan v. India), Judgment (Jurisdiction)," *American Journal of International Law* 94, no. 4 (2000): 707–13.
[43] J. G. Merrills and Malcolm D. Evans, "The Aerial Incident of 10 August 1999 (Pakistan v. India), Judgment on Jurisdiction," *The International and Comparative Law Quarterly* 50, no. 3 (2001): 657–62.

international conflict. As a result, it can be resolved by the International Court of Justice. However, it can be seen that only a few cases were settled without the involvement of the ICJ when the parties concerned sought to make arrangements between countries to resolve those cases, while the remainder were the bulk of cases of which the Court claimed in its Order that it lacked authority to settle the conflict. As a result, it remains that the International Court of Justice (ICJ) has failed to determine and extend its authority to remedy airspace breaches. In previous years, the court has ruled early on that it lacks discretion and has excluded appeals from the registry that it lacks jurisdiction to hear those applications.

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