US v. France (1963)

US-France Air Transport Services Agreement of 1946:

Route One granted US-flag carriers the opportunity to operate between the US to Paris, and thence to Switzerland, Italy, Greece, Egypt, "the Near East", India, Burma, Thailand, Hanoi to China and beyond.

Route Two allowed US-flag service from the US via Spain to Marseille, then via Milan and Budapest to Turkey and beyond.

TWA was immediately certified to serve Route One; service by Pan Am between the United States to Paris, thence to Rome and Beirut, began in 1950. France argued that Beirut was not included in the term "Near East," but allowed service to begin.

In 1955, Pan Am announced its intention to fly beyond Beirut to Tehran. France objected on the same grounds, but acquiesced in the new service. However, the French government refused to allow "fifth-freedom" movements by Pan Am between Paris and Istanbul.
US v. France (1963)

Issues: (1) may a US carrier may provide Fifth Freedom service between the US and Turkey via Paris; (2) may a US carrier may provide Fifth Freedom service between the US and Iran via Paris?

Held: neither Turkey nor Iran was included in Route One of the 1946 bilateral, because a route to India via Turkey was specified in Route Two. Nevertheless, a US carrier could continue to serve Turkey via Paris as a result of French consent beginning with the inauguration of service in 1955, and confirmed by the 1960 exchange of notes. However, neither the 1946 agreement nor subsequent practice gave Pan Am the authority to provide "fifth-freedom" service in the corridor.

As to Iran, a US carrier had the right to serve it, not by virtue of the bilateral, but as a result of informal French consent to the Paris-Rome-Tehran US service inaugurated in 1955. The US carriers also had the right to continue "fifth-freedom" service in this market, again by virtue of French consent.
TWA began passenger service to Italy in 1946; the following year it added all-cargo flights to the market. Pan Am entered the market in 1950.

TWA's all-cargo service to Italy was interrupted in 1950 by the war in Korea and did not resume until 1958; once-a-week service was increased to four weekly TWA all-cargo flights the following year.

Pan Am initiated all-cargo service to Italy in 1960, increasing to two flights per week in 1963.

Alitalia began all-cargo service in the market in 1961, increasing to three flights a week in 1963.

In 1963, both Pan Am's proposal to expand its all-cargo service to four weekly flights, and TWA's proposal to expand to six weekly flights were rejected by the Italian government. In December, TWA announced its intention to substitute jet aircraft in the market, which would thereby more than double its capacity.

Italy insisted that all-cargo service was not authorized by the 1948 bilateral, which explicitly authorized carriers of the two States to transport "passengers, cargo and mail. Italy read this phrase in the conjunctive, as a requirement for combined passenger and cargo service.

By a vote of two-to-one, the Arbitrators upheld the US position, resting its decision on the interpretation of identical language of Bermuda 1 and the practice of the airlines of both States to provide all-cargo service in the market without objection until 1963.
In 1978, Pan Am proposed service between San Francisco and Paris via London, flying a B-747 from San Francisco to London, and offloading the remaining passengers onto a smaller B-727 aircraft for the duration of the London-Paris journey. The French objected, arguing that "change of gauge" operations were not permitted under the US-France bilateral.

Pan Am commenced the "change of gauge" operations on May 1, 1978. After twice issuing warnings to the carrier, on May 3, the French gendarmes seized the B-727 at Paris Orly Airport, refused to allow the passengers to disembark, and ordered it returned to London.

In turn, the US suspended Air France's service to Los Angeles via Montreal, effective July 12.

Held: France had wrongfully denied Pan Am's "change of gauge" operations which were implicitly authorized by the bilateral, and the CAB's sanctions were lawful.
Belgium v. Ireland (1981)

The original Bermuda I model capacity clause had precluded any explicit predetermination of capacity, and instead provided: "air services are to provide capacity adequate to the traffic demands between the country of which such airline is a national and the country of ultimate destination of traffic."

"The transport capacity provided by the contracting parties' airlines on the agreed services shall be adapted to traffic needs."

"On joint routes, the airlines designated by the contracting parties shall take into account their mutual interests so that their respective air services shall not be unduly affected."

Average load factors ranged between 36%-43%. Belgium maintained:

a) that excess capacity had been created;

b) that there was an imbalance in traffic carried;

c) that these two problems, contrary to the agreement, created a third problem, for they unduly affected the services of the carrier designated by Belgium;

d) that these discrepancies should be corrected by reducing the total number of services to 8, to be shared equally by the two designated airlines: 4 for Sabena and 4 for Aer Lingus:

e) that such an equal distribution was stipulated by the agreement, and that equality was also set as an objective by the designated airlines.

The arbitrator concluded: "overcapacity has existed on the Brussels-Dublin route for two years, that future growth is not likely to remedy this situation and that a reduction of capacity is needed as early as possible." Aer Lingus 6›4 Sabena 4›3
United States v. United Kingdom (1992)

Article 15 of the Chicago Convention requires nondiscriminatory treatment in the use of their airports and air navigation facilities, and to assess airport and user fees at a level no higher than those charged local aircraft in the performance of like or similar services.

The UK imposed a distance-based formula whereby landing fees increased with the distance flown, thereby falling most heavily upon transatlantic carriers. This was revoked in 1975.

In 1977, the BAA imposed a steep increase in peak-period charges with a weight element. These weight-based runway charges allegedly discriminated against the wide-bodied aircraft used by transatlantic carriers:

For example, the British Airways Trident requires more runway strength than the B-747, and the British Airways Concorde greater runway length than the B-747, but each Trident landing costs only about one-ninth that of a B-747, and each Concorde landing costs a fraction of the B-747 cost. Parking charges, also weight-based, are disproportionately high for B-747 aircraft relative to spatial requirements.

Held: the UK had failed to use its best efforts to ensure that landing fees charged at London's Heathrow Airport between 1983 and 1989 were fair and reasonable.

On March 11, 1994, the US and UK exchanged diplomatic notes settling the Heathrow arbitration. The UK government paid the US government $29.5 million in settlement of the dispute.
**Australia v. US (1993)**

US-Australia bilateral: the United States may designate a carrier to serve the North Pacific route between the US to any two points in Australia via Canada, Japan, Southeast Asia and the Philippines.

On Oct. 27, 1991, Northwest Airlines began providing service between New York-Tokyo-Sydney. Soon, between 80-85% of Northwest's traffic were local Japanese-Australian passengers, with no link to the US, and therefore arguably violative of the "primary objective" provision of the capacity clause in Annex B, Section IV of the bilateral. The "primary objective" clause requires that the traffic on the fifth freedom route in question should be primarily based on traffic going to or coming from an airline's country of registry.

On December 1, 1992, Australia notified Northwest Airlines that two of its three weekly Osaka-Sydney flights would be limited to no more than 50% fifth freedom traffic, and the third would have none.

On April 29, 1993, Australia notified the US that because Northwest had failed to comply with restrictions imposed upon Fifth Freedom operations, that Northwest's rights to serve Osaka-Sydney would be revoked on May 30th, and that upon reapplication only two of the three weekly flights would be reauthorized, and that Fifth Freedom traffic would be capped at 50%.

The US retaliated: effective upon the date of the Australian government's restriction of Northwest's Osaka-Sydney service (June 30th), Qantas would lose three of its ten weekly frequencies in the Los Angeles-Sydney market.

Negotiations allowed NW to substitute Detroit for New York on the route, and provided that local traffic between Osaka and Sydney would not exceed 50% of the total passengers on Northwest's flights.
India v. Pakistan (1952)

India alleged breach of the Chicago Convention and the Transit Agreement by Pakistan's refusal to permit Indian aircraft to fly over its territory to and from Afghanistan.

By June of 1953, the parties had reached an amicable resolution of the controversy and so informed the Council.
UK v. Spain (1969)

Chicago Convention violations by Spain's establishment of a prohibited zone near Gibraltar. In November of 1969, the Council President reported that the parties had informed him that they wished the complaint deferred *sine die*. 
Pakistan filed a complaint against India in February of 1971, triggered by India's suspension of Pakistani flights over its territory five days after two Indian nationals hijacked an Indian aircraft, flew it to Pakistan, and blew it up, allegedly with the complicity of the Pakistani government.

India claimed that both the Chicago Convention and the Transit Agreement were suspended in 1965 between the two States; air traffic between them was instead governed by the special agreement under the Tashkent Declaration.

On July 29, 1971, the ICAO Council affirmed its jurisdiction over the Pakistani complaint. India appealed that decision to the ICJ pursuant to Article 84 of the Chicago Convention.

On appeal, the ICJ voted 14-2 to uphold the jurisdiction of the ICAO Council to hear the case.
Cuba v. United States (1998)

In 1988, the no fly prohibition was amended to allow Air Cubana to fly over New York state, and to enter US airspace during inclement weather.

In 1995, Cuba filed a formal complaint with the ICAO Council, objecting to the "no fly" policy against Cuban commercial aircraft as violative of the Chicago Convention and Transit Agreement.

Aviation relations soured in February 1996, when the Cuban Air Force shot down two civilian aircraft flown by a Cuban refugee group Hermanos al Rescate (Brothers to the Rescue) in international airspace, killing the four Cuban Americans aboard.

ICAO condemned the military action as a violation of international law.

The airspace restrictions forced Cabana to take more than a 200 nautical mile detour over the Atlantic Ocean to serve Canada.

When it became clear that if forced to render a formal decision, the ICAO Council would rule against it, in June 1998, the US capitulated. Under the ICAO-brokered agreement, Cubana would be allowed to use two designated routes over the US to access Canada, and the US would provide normal FAA air traffic control services at cost.
EU Regulation 925/1999 established significantly more stringent standards for noise emissions than the ICAO standards, promulgated under Annex 16 to the Chicago Convention, demand, and prohibited “hush kitting” of engines to reduce noise.

The ICAO Council:

• found that the exhibits submitted by the parties established that the negotiations between them fulfilled the requirements for bringing a dispute before it;

• the US was not required to exhaust local remedies, since it sought "to protect not only its nationals, but also its own legal position under the Convention"; and

• agreed with the US that the EU's objection that ICAO was "seeking to create new obligations under the Convention going beyond what has been agreed between the parties and to impose on the Respondent obligations that have not been contracted" was not preliminary in nature and could be resolved with the merits of the case.
The International Court of Justice
Members of the Court

- 15 Judges
- Judges serve 9 year terms
- Elected by the United Nations General Assembly and Security Council
- President and Vice-President are elected via secret ballot and serve 3 year terms in those positions
- The Court has always included members of the Security Council
- The Court as a whole must represent the main forms of civilization with only one judge allowed per state
- Judges are not allowed to be employed in any other capacity during their term.
The Cold War Cases

The first commercial aircraft attacked by military aircraft occurred on April 29, 1952, when an Air France aircraft was attacked by Soviet fighters on a flight from Frankfurt to Berlin.

In the 1950s, the United States filed six cases with the ICJ against the Soviet Union, and her allies (Czechoslovakia and Hungary), for armed attacks by Warsaw Pact military aircraft against US military aircraft. For example, in 1954, the US filed a complaint against the USSR for the destruction of a US Air Force B-29 in Japanese air space. The Soviet Union responded that:

"the violation of the Soviet State border by the American plane which was the first to fire the Soviet fighter-planes is an indisputable fact and that the responsibility for the incident is completely on the American side. . . . The Soviet Government draws your attention to the fact that they repeatedly protested against violations by American planes of the USSR state borders situated many thousand kilometers away from the American territory and warned that all responsibility for such violations and their consequences would be completely on the American side."

Because none of the respondents had submitted to the jurisdiction of the ICJ, all of these complaints were dismissed.
The Cold War Cases

On July 27, 1955, an El Al civilian aircraft en route from Vienna to Tel Aviv departed from its flight path and entered Bulgarian air space where it was shot down by Bulgarian military aircraft, killing all 58 persons on board. Declaring the attack "a grave violation of accepted principles of international law" the US, UK and Israel brought complaints before the ICJ. The Court dismissed the claims for want of jurisdiction.
April 5, 1986, three people were killed and 230 injured when La Belle discothèque was bombed in West Berlin. Two of the dead and 79 of the injured were American servicemen.

March 23, 1986, US aircraft and naval vessels fired upon. US retaliation resulted in:
- 1 corvette sunk
- 1 patrol boat sunk
- 1 corvette damaged
- 1 patrol boat damaged
- SAM sites damaged or destroyed
- 35 killed
Libya v. US (1992)
Libya v. US (1992)

15 April 1986 – US bombs Tripoli
Tracking the 'unaccompanied bag from Malta'

Item 8849 presumably loaded onto PA103A. PanAm files for loading are missing records.

Unloading 1248-1300 56 bags to 55 claimed records.

Wagon to station 206 - arrives 1301 paperwork verified number of items unknown records.

Coding station 206

Store HS33

Gate 44

Normal records Item 8849 coded 1307 at station 206 routed to store HS33, held till 1517 arrived at gate 44, 1523. Normal records lost, verified only by Erac printout.
5 December 1988, the FAA issued a security bulletin saying that a man with an Arabic accent had telephoned the U.S. Embassy in Helsinki, Finland, and told them that a Pan Am flight from Frankfurt to the United States would be blown up within the next two weeks by someone associated with the Abu Nidal Organization.

The FAA sent the warning to all U.S. carriers, including Pan Am, which had charged each of the passengers a $5 security surcharge, promising a "program that will screen passengers, employees, airport facilities, baggage and aircraft with unrelenting thoroughness"; the security team in Frankfurt found the warning under a pile of papers on a desk the day after the bombing.

21 December 1988, Pan Am 103 destroyed, killing all 243 passengers and 16 crew on board.
The Libyan leader Col. Muammar al-Gaddafi handed the accused over to Scottish authorities in 1999.

31 January 2001 - Abdelbaset al-Megrahi was convicted of murder on, and sentenced to life imprisonment in Scotland.

20 August 2009 – al-Megrahi was released from prison because he allegedly had terminal prostate cancer, and only had months to live.
29 May 2002 - Libya offered up to US$2.7 billion to settle claims by the families of the 270 killed in the Lockerbie bombing, representing US$10 million per family. The Libyan offer was that:

- 40% of the money would be released when United Nations sanctions, suspended in 1999, were cancelled;
- another 40% when US trade sanctions were lifted; and
- the final 20% when the US State Department removed Libya from its list of states sponsoring terrorism.
17 May 1987 - an Iraqi jet aircraft fired missiles at the American frigate USS Stark. 37 US Navy personnel were killed and 21 were wounded.

3 Jan. 1988 - USS Vincennes shoots down Iran Air 655, killing 290, including 66 children and 16 crew
Iran Air Flight 655, also known as IR655, was a civilian airliner shot down by the United States Navy on Sunday 3 July 1988, over the Strait of Hormuz.
Korean Airlines Flight 007
versus
Iran Air Flight 655

Korean Air Lines 007
269 Passengers and Crew
Shot down, Sep. 1, 1983

Iran Air Flight 655
290 Passengers and Crew
Shot down, July 3, 1988
Lt. Colonel Gerasimenko, Acting Commander, 41st Fighter Regiment.

"Gerasimenko: (to Kornukov) Task received. Destroy target 60–65 with missile fire. Accept control of fighter from Smirnikh."

General Anatoly Kornukov, Commander of Sokol Air Base – Sakhalin.

"Kornukov: (to Gerasimenko) I repeat the task, Fire the missiles, Fire on target 60–65. Destroy target 60–65... Take control of the MiG 23 from Smirnikh, call sign 163, call sign 163 He is behind the target at the moment. Destroy the target!... Carry out the task, Destroy it!"

General Valery Kamensky, Commander of Far East Military District Air Defense Forces.

"Kornukov: (To Kamensky) ...simply destroy [it] even if it is over neutral waters? Are the orders to destroy it over neutral waters? Oh, well."

Anatoly Kornukov receiving an award from Vladimir Putin in the Grand Kremlin Palace, Moscow (2000).
U.S. says missile was launched near Snizhne
Two days of Russian aircraft intercepts

In the past two days, NATO detected at least 19 Russian aircraft in international airspace. NATO has conducted over 100 intercepts of Russian aircraft in 2014 to date, about three times as many as were conducted in 2013.

**Wednesday**
- Eight Russian aircraft are intercepted over the North Sea. Six return to Russia while two bombers continue to the Portuguese coast.
- Tu-95 strategic bombers
- Il-78 tanker aircraft

**Tuesday**
- Seven Russian aircraft are intercepted over the Baltic Sea.
- Fighter, fighter bomber and attack aircraft

**Wednesday**
- At least seven Russian aircraft are intercepted over the Baltic Sea.
- Fighter, fighter bomber and attack aircraft

**Wednesday**
- Four Russian aircraft are intercepted over the Black Sea.
- Tu-95 strategic bombers
- Su-27 fighters

Fighters from Denmark, Finland and Sweden, as well as Portuguese and German fighters from the NATO Baltic Air Policing Mission, intercepted the Russian flights in the Baltic Sea.

F-16s from Portugal intercept two of the Tu-95 bombers before they apparently return to Russia.

Note: Russian aircraft routes and interception points are approximate.