EXAMINING THE INTERNATIONAL DISPUTES AND SETTLEMENT THEREOF: A DETAILED ANALYSIS

Insha Afreen, Aligarh Muslim University

1. MEANING OF INTERNATIONAL SETTLEMENT OF DISPUTES

The expression 'dispute' is not precisely defined. In a wider sense one can say that it is "a disagreement on a point of law or a fact, a conflict of legal views or of interest between two persons." It has always been the objective International law to develop that methods which can solve the dispute through peaceful means and on the basis of Justice. To establish a dispute whether it exists or not there should be opposition from both the parties. This disagreement or dispute is a matter of objective determination.

A dispute can arise between the parties maybe on a legal or on a political grounds. Despite that all other differences maybe termed as political disputes or as a conflict of interests.

The expression 'International disputes', covers not only "disputes between states as such, but also other cases that have come within the ambit of International regulation, being certain categories of disputes between two states on the one hand, and individuals, bodies corporate, and non-state entities on the other."[1]

2. LEGAL POLITICAL DISPUTES

Whether a dispute is legal or political, it depends upon the attitude of the states. The distinction made between the legal or political disputes is purely subjective.[2] If a State desires that its dispute is to be settled only on the basis of law, then it is regarded as legal dispute. If they fear that the decision might go against them, then the dispute is considered as political. It is therefore difficult to difference between the dispute as they are legal or political.

But this distinction is important because in International law, the resolving of disputes has been

[1] I A Shearer, Starke's International law 441(Oxford University Press, New Delhi,11th edn., 1994)
[2] Dr. H.O. Agarwal, International law and human rights 528(Central Law Publications, Allahabad,8th edn.,2002)

laid down only for legal purpose.

In a case named, Nicaragua v. Honduras[3], the case concerning the matter of Border and Transborder Armed Action, the court said that the court is only concerned with the matter of legal dispute, meaning thereby that the matter could only be resolved through the application of rules of International law. Para 2 of Article 36 of the statute of International Court of Justice uses the term 'legal disputes' in connection with the compulsory jurisdiction of the court. This is so, because, 'the judicial procedure presumed by the court may not be suitable for the political disputes.' If there is presence of any kind of political aspects the court as a judicial organ 'cannot concern itself with the political motivation'. Thus, the International law is not concerned with all the disputes in relation to the states and therefore the term 'dispute' should be taken in a restricted sense.[4]

However, whenever there is a dispute arising between two states on the question as to whether the particular dispute is legal or political, is determined by the decision of the court in accordance with the Article 36, para 6 of the statute which says "that in event of a dispute as to whether the court has jurisdiction, the matter shall be settled by the decision of the Court." It was laid down in international law "that the procedure for the settlement of those disputes which arises when a party presents to another a specific claim based on the alleged breach of law, and the latter rejects it."

3. ROLE OF UNITED NATIONS AND SECURITY COUNCIL

As provided under Article 2, Para 3 of the Charter, 'the United Nations settled the disputes as one of its important principles by peaceful means.' The two organs of the United Nations _ General Assembly and the security Council, have been empowered to discharge some important functions regarding it.

Although, there is no such specific means for the purpose of settlement of disputes in General Assembly but it is mentioned under Article 11 para 2, "that it may discuss a dispute" and "that it may make recommendations to the disputant parties" under Article 14 of the Charter for the measures of peaceful settlement of any situation. Recommendations can only be made by the assembly after the discussion which may take place when the matter is brought before it by any

[3] Nicaragua v. Honduras,(ICJ reports 1988 p. 69 at p. 91.)
[4] Supra note 2 at 529.

member of United Nations, or by the Security Council, or by a non-member of the United Nations. Thus the Assembly has a 'general' power for the peaceful settlement of disputes.

Several ways by which General Assembly worked for the peaceful settlement of disputes such as:

- Calling upon of Member States on December 14, 1974 to make full use and implementation for the means as provided under the Charter of the United Nations and for the exclusive peaceful settlement of any conflict.

- Also established an Ad hoc Committee in 1974 to review the UN Charter and to make organisation more effective.

- In 1982, the Committee drafted Manila Declaration as to solve the International Disputes in a spirit of cooperation and equitable settlement by any of the following means: Negotiation, Inquiry, Mediation, Conciliation, Arbitration, Judicial settlement or other peaceful means of their choice.[5]

- In 1988, the special Committee drafted the Declaration on the Prevention and removal of disputes and situations which may threaten the International peace and Security and the role of the UN in this Field.[6]

Chapter VI of the charter provides for the various modes for the security council to deal with the issues of International disputes. The security Council can only act, "If a matter has been referred to it by a state under Article 35 of the UN Charter or by the Secretary General under the Article 99."[7] By the Article 24 of the Charter, the members of the UN consulted to the Council to make "prompt and effective action" on their behalf. The following duties is to be performed by the council:

- "To call upon the parties to a dispute to settle it by peaceful means[Article 33(2)];

[5] Id. at 536.
[6] Ibid.
[7] Louis B. Sohn, "The Security Council's Role in the Settlement of International Disputes." The American Journal of International Law, vol. 78, no. 2, 1984, pp. 402–04. JSTOR, https://doi.org/10.2307/2202283. Accessed 9 Mar. 2024.

- To investigate any dangerous dispute or situation(Article 34);
- To recommend appropriate procedures or methods of adjustment [Article 36(1)]
- Or such terms of settlement as it may consider appropriate[Article37(2)];
- And, if it determines that there is a threat to the peace, breach of the peace, or the act of the aggression, to make recommendations or binding decisions on measures to be taken to maintain or restore International peace and security."

The procedure laid above would allow "the security council to deal with the issues of International peace and security as procedure matters, without any difficulty and interference."

4. WAYS OF SOLVING INTERNATIONAL DISPUTES

International law has been regarded by the international community as a means to ensure no threat and preservation of world peace and security. It was the main objective behind the formation of the league of Nation in 1919 and United Nations in 1945. Since, "a direct cause of war and violence is always a dispute between the states, it is therefore in the interest of peace and security that disputes should be settled."

Broadly categorised, there are mainly two methods of International disputes settlement:

1. Pacific or peaceful methods of settlement, i.e., where the parties are willing to find an friendly solution.
2. Coercive or forceful methods of settlement, i.e., where a solution is begin and implied by way of compulsion.

Each class will be discussed in turn.[8]

5. PACIFIC MEANS OF SOLVING THE DISPUTES

Para 3 of the Article 2 lays down the principles of peaceful settlement of disputes that "all members shall settle their disputes by peaceful means……". The Charter of the United Nations

[8] Supra note 1 at 442.

under Article 33, para 1 enumerated number of peaceful methods to seek solution by Negotiation, Enquiry, Mediation, Conciliation, Arbitration, Judicial settlement, or other peaceful means of their own choice. It is to be noted that it is the duty of the state to peacefully resolve the disputes. As the draft Declaration of rights and duties of states under Article 8 clearly provided that every state has the duty to settle it's disputes with other states by peaceful means that International peace and security, and justice should not be endangered. There are two main means of peaceful resolving- Extra Judicial peaceful means and Judicial peaceful means. Extra Judicial peaceful means are diplomatic procedures whereas Judicial means of settlement is a legal process according to International law by an impartial third party.[9]

5.1. Negotiation

Negotiation is the simplest form of resolving the disputes. When the dispute Settlement between two states done either thorough discussion by themselves or by settling their differences, it is negotiation. Negotiation maybe initiated either by the heads of the state or by any appointed representative or diplomatic agents. It helps the disputant states to make change through the mutual comment. There are many Notable and important states disputes settled by way of negotiation such as,

- India and Pakistan in 1976 settle their outstanding differences in Simla Conference through negotiation.
- India and Sri Lanka in 1974 settled their border disputes by way of negotiation.
- In1977, India and Bangladesh settled their issue of Farraka Barrage through this method.
- In 1996, Iran and U.S.A in the case of Aerial incident entered into negotiation that lead to final settlement of the case.

But if negotiation failed to resolve the disputes then the other methods, such as, good Offices, Mediation, etc., maybe used along with the negotiation.[10]

[9] Supra note 2 at 530.
[10] Dr. S.K. Kapoor, International law and human rights 719(Central Law agency, prayagraj,22nd edn.,2021)

5.2. Mediation

In this method, the third state or individual is appointed not only offers its services(good offices) but also participates in the talks and matters to resolve the dispute. The mediator so appointed is made to be neutral and impartial. He has to personally present with the disputant parties and enter into discussions.

For example, In 1966, mediation done by Soviet Premier Kosygin in between the dispute of India and Pakistan which result into the making of Tashkant Agreement is an example of Mediation. The Arab-Israel conflict was settled by America in the year 2020. Also Algiers mediated the border disputes between Iran and Iraq in the year 1975.

5.3. Enquiry

When the commission is appointed, included of unbiased investigators, for ascertaining the facts of the conflict, this method is called enquiry. It is also a method resorted to, for the settlement of disputes. Enquiry is often used along with other methods. The main purpose of the enquiry is to make investigation regarding the apposite matters to establish facts which help in the solution to the problems of the states. This procedure was mainly evolved at the Hague Conference 1899 for the peaceful settlement of disputes between the states so that states who were not inclined towards diplomacy may use the method of enquiry.

Examples of enquiry made in following number of cases such as:

- The procedure for enquiry was first invoked in the dogger bank incident.
- The other incidents by which the disputes are settled through enquiry are those of Tavignano in 1912 and Tubantia in 1916.[11]

The trend of the states changed after the First World War. Now the state preferred to invoke Conciliation rather than enquiry for the settlement of disputes.

5.4. Good Offices

This type of dispute Settlement takes place when the disputant states are not able to resolve

[11] Supra note 2 at 534.

their disputes then a third state offers its offices(services) for the settlement. These services can also be offered by any international organisation or some individuals. The third party has to create such an environment as it will be conducive to both the states for the settlement of disputes. The third party play no active role in this process of negotiation but can merely give some general suggestions. Example of good Offices are as follows:

- The prime minister of UK, Wilson, lent his good Offices to India and Pakistan to settle the disputes of kutch issue.
- The security council offered his good offices in dispute related to Netherlands government and Republic of Indonesia in the year 1947. [12]
- The recent example is that France offered to America and North Vietnam to settle their dispute because of Vietnam War.

5.5. Arbitration

By this means of settlement the dispute is resolved through the referred persons called arbitrators. Their decision is known as "award". These arbitrators are selected or appointed by the disputant parties. Their decision is binding on both the disputant parties. Under the Article 15 of the Hague Convention 1899, it provides: "International arbitration has for its object the settlement of differences between states by judges of their own choice and on the basis of a respect for law." This definition gives two object_[13]

1. Consent of both the parties
2. Settlement on the basis of law

Some important and remarkable cases by which settlement was done through arbitration are as follows:

- In the year 1872, Alabama Claims Arbitration was the case of 1968, when the America claimed compensation from England on the ground of violating the Laws of Neutrality.

[12] Id. at 532.
[13] Supra note 10 at 712.

The arbitrators gave their decisions in favour of America and held make England compensated.

- Some of the most important decisions by the permanent court of arbitration was North Atlantic Fisheries case in the year1910, Savarkar's case of 1911, The Island of Palmas case of 1928, Canberro's case of 1912, Russian Indemnity Case of 1912 and so on.

- In the year 1968, the kutch arbitration award was settled. In this case there was a conflict between India and Pakistan over some parts of land in kutch. There took place an Armed conflict in 1965. After ceasefire the matter went through the arbitration and Arbitrators were nominated by both the disputant states and the arbitral court gave it's award on 19th February, 1968.

5.6. Conciliation

It was said by the Judge Hudson, Conciliation is "a process of formal proposal of settlement after an investigation of the facts and an effort to reconciliate to accept or reject proposals formulated."

In wider sense, Conciliation is that method of settlement of an international disputes by which the other states or the impartial(third) persons try to settle the dispute peacefully through different means. Conciliation is the process which is made to bring the disputant parties to an agreement through the report having proposals for a settlement. But the proposal is not binding upon the states and it's nature of not being a judgement of the court. This method is different from mediation, enquiry and arbitration, because in Conciliation a dispute is referred to a group for finding out facts and implicating appropriate terms for the dispute settlement, while in mediation third party participates in the meeting together with both states and can't ascertain the facts. Also it differ from arbitration because the award of the arbitration settlement is binding on both the parties. It differs from settlement of enquiry as well where the main object is to ascertain the facts. Suggestions or proposals are not part of Inquiry. Procedure of Conciliation has been seen on many occasions such as:[14]

[14] Supra note 2 at 534.

- After the First World War treaties had made a provision for Conciliation, in case when the disputes arises between states.

- After Second World War, obligation to submit disputes to settlement of conciliation has been made in several multilateral treaties such as 1948 American Treaty of Pacific Settlement , 1957 European Convention of settlement of disputes, 1982 Convention on law of the sea etc.

5.7. Auspices of United Nations

A detailed discussion has already been made under the heading 3 i.e., role of United Nations and Security Council. However, briefly mentioning, following are the some provisions under the UN Charter for the international dispute settlement:

- The fundamental function of the United Nations that the state should settle their disputes through peaceful means.

- The general assembly and the UN for that purpose may make recommendations.

- Article 33 to 38 of the Charter prescribed the provisions for pacific settlement of disputes if there is threat to international peace and security by way of any Pacific means or any other method. In this regard, security council can also make recommendations to the settlement of disputes through any peaceful means.[15]

5.8. Judicial Settlement

When a dispute is solved by the 'International tribunal' in accordance with the rules of international law, the process is called Judicial Settlement. The expression tribunal is relevant here. A tribunal may acquire an international character when it formed itself into an organization and having it's own jurisdiction. At present, the most important tribunal is International court of justice, established under the league of Nations. It has its own rules, regulations and procedures which are binding on all the disputant parties who submit their

[15] Article 33 of the Charter.

disputes to the court.[16] The International Court of Justice is open to all the states but it's jurisdiction depends upon the consent of the states.

Under the Article 36(1) of the statute of ICJ, the court has jurisdiction over all the matters related to multilateral and bilateral treaties. And it can be initiated by any party by way of unilateral application against another party. The most important cases solved by ICJ were as follows:

- The corfu Channel case
- Qatar Airways and Saudi Arabia case of 1955
- Kulbbhushan Jadhav case of 2017
- Rohingya genocide case

6. COERCIVE MEANS OF SOLVING THE DISPUTES

If the settling of International disputes are not solved through pacific methods then the state resort to use coercive or compulsive means. Coercive or compulsive means of disputes settlement are non-peaceful methods. Such kind of measures required pressure on a state to settle the dispute. However, it is not necessary that in coercive methods there must be the use of armed forces in all cases. These means are as follows: (1) Retorsion; (2)Embargo; (3)Reprisal; (4) Pacific Blockade; (5)Intervention; (6)War

These are discussed in detail below.

6.1. Retorsion

The word 'Retorsion' is the another term for retaliation. It is based on the concept of tit for tat. Retorsion is said to be done when an act is done by a state similarly to what is done previously by another state. The acts which are done by the state is not illegal. In actual they are permitted under international law. The cases where Retorsion are employed as a means to solve the dispute are numerous. For example, if citizen of one state are given unfair treatment in another state through rigorous passport rule then that state may also make similar kind of rule in respect of the citizens of the latter state. Again, if a State announces persona non grata to a diplomatic

[16] Supra note 10 at 716.

agents of one state, then another state also make similar announcement in respect of an ambassador of the former state in retorsion.

In the year 1992, when India declares two Pakistani High Commission officials as persona non grata, then Pakistan also announces of three Indian officials as persona non grata. The purpose of retorsion is to take retaliation and the legitimate use of it is covered under the Charter of the United Nations.

6.2. Reprisal

It is another coercive means of solving the International disputes. According to Starke, "Reprisal connotes coercive measures adopted by one state against another for the purpose of settling some disputes brought about by the latter's illegal or unjustified act." Earlier, reprisal were confined only to the seizure of the property or persons, but later, it include other methods such as bombing, illegal occupation of territories of state, seizure of ships, freezing of assets of its citizens and so on. The Naulilaa Incident is leading case on Reprisal. In this case, the principles laid down by the tribunal are as follows:

- "Reprisals are illegal unless it was based upon a previous act contrary to International law.
- For the legitimacy of the Reprisal there must be a certain proportion between the offence and the Reprisals.
- Reprisal can only be legitimate when they have been preceded by an unsuccessful demand of redress."[17]

Recent example of the use of this means as dispute Settlement is the Israeli action in bombarding some areas of lebanon in response to that, the Arabs Guerillas operated attacks then in different parts of the territory of Israel. But after the formation of the United Nations, the principle of non-violent and methods of peaceful dispute Settlement makes the Reprisal prohibited. And this has been confirmed by the Friendly Relations declaration of 1970 which clearly stated that: "States have a duty to refrain from acts of reprisals involving use of force."

[17] Supra note 10 at 725.

6.3. Embargo

Embargo is yet another means of compulsive settlement of International disputes. Also a type of Reprisal. The word 'Embargo' is of Spanish origin meaning 'detention', but in International law it has practical meaning of detention of ships, meaning thereby that if a State violate any international law or commits international crime then the effected States is made to create obstacle in the transport of the other state ship within its territory of the state.[18] When State confined its own vessel in order to interrupt or limit the trade relation with other states, it is known as civil or pacific embargo. And when the state detained ships of the another states in order to force disputant state to settle the dispute, this is known as hostile.

Embargo can be applied by state, individually or collectively under the authority of the United Nations. And if it is applied by the state it should not risk the peace and security. If happens then it would become illegal. Collective Embargo may be applied but only under the authority of security council.

6.4. Pacific Blockade

When one state blocked the coast of another state for the reason of precluding ingress or egress of vessels of all Nations by the use of warships and other means in order to create pressure economically or politically on that state, this act is known as blockade. And if this blockade is applied during peace time it will be Pacific blockade. Pacific Blockade was first employed by British, French and Russian in 1827 of the Greece coast which were occupied by the Turkish troops. The advantage of using this coercive method of disputes settlement is that it is resistant than war. An example of peaceful Blockade was that of the America blockaded Cuba in the year 1962. It was the port of Cuba that was blockaded and the contention of America was that Russia was going to supply some nuclear weapons to be stationed at Cuba port. And it might prove unfavourable for the security of America. As far as the validity of the Pacific blockade is concerned, there are different views of the jurists. According to one view, blockade is contrary to the law of the sea in the time of peace and cannot be enforced by the state during peace time. But after the coming of the United Nations, application of Pacific blockade becomes illegal as it threatens the peace and security. At present the application of individual

[18] Id. at 726.

blockade is illegal. Collective blockade can be applied only under the authority of the security council.

6.5. Intervention

Intervention is yet another coercive way of settling International disputes between the states ready for war. According to the professor Oppenheim, "it is the dictatorial interference by a state in the affairs of another state for the purpose of maintaining or altering the actual condition of things."

Professor Winfield has categorised Intervention in three ways:

1. Intervention Internally
2. Intervention Externally
3. Intervention Punitively

Examples of some intervention are the French assisting the United States in 1778 during the revolutionary war, the demand of the US government in April 1898 that Spain to withdraw it's troops from the island of Cuba, India's Intervention in the Bangladesh war of 1971 etc.

6.6. War

When all the methods of coercive disputes settlement fails, the final resort aimed at settlement of disputes through the application of force in the form of war. But they are the non-violent or non peaceful methods involving those techniques and strategies which has potential to create pressure upon a country to function in a particular way that the disputant state desire of. This is nothing but involve unfriendly acts towards a particular state. Weapons of mass destruction is used in war i.e. biological, chemical and nuclear weapons. It has the capacity to cripple any state in a matter of hours. It threatens the state in such a way as to make them dysfunctional permanently without any hope of recovering.

Example: First World War (1914-1919), Second World War (1939-1945), War between Russia and Ukraine, Israel Palestine War, Most historical Bombing of Hiroshima and Nagasaki by the US on August 6 and 9 in 1945 etc.

7. CONCLUSION

A dispute Settlement at an international level is a kind of conflict or disagreement either on the point of law or a fact, a conflict of legal or political views or the different interests. In UN Charter under the article2(3), parties must solve their disputes at international level peacefully. It is the function of the security council to determine the existence of a threat to the peace, any breach to the peace or an act of aggression. The main cause of International disputes arising can be the i differences of ideology, claim for territory, National prestige, extreme colonialism, liberation movements, National integrity etc. Efforts have always been made to promote peace and international security. And the International law has always been on forefront in solving those disputes and considered it's main purpose to be the maintenance of peace.

Pacific or peaceful and Coercive or Compulsive means are used under the International law for the settling the disputes. In order to ensure harmony these means have been undertaken but they itself pose many challenges and also have failed at establishing a political and economic balance among the states. Pacific means are more friendlier and less hostile. But often a time States use coercive means to solve the disputes in order to accomplish their objectives which again creates problem of residual animosity.

REFRENCES

Journals

1. B louis Sohn, "The Security Council's Role in the Settlement of International Disputes." The American Journal of International Law, vol. 78, no. 2, 1984, pp. 402–04. JSTOR, https://doi.org/10.2307/2202283. Accessed 9 Mar. 2024.

2. Sardar Muhammad, "RESOLUTION OF INTERNATIONAL CONFLICTS: AN ANALYTICAL FRAMEWORK." Strategic Studies, vol. 4, no. 2, 1981, pp. 65–81. JSTOR, http://www.jstor.org/stable/45181529. Accessed 9 Mar. 2024.

3. Thomas Giegerich, "Prevention and Containment of War — Two Fateful Missions Unaccomplished." A Wiser Century?: Judicial Dispute Settlement, Disarmament and the Laws Of War 100 Years after the Second Hague Peace Conference., edited by Thomas Giegerich And Ursula E. Heinz, 1st ed., vol. 173, Duncker & Humblot GmbH, 2009, pp. 11–52. JSTOR, http://www.jstor.org/stable/j.ctv1q69rfd.4. Accessed 2 Mar. 2024.

4. Bakshi, P. M. Journal of the Indian Law Institute, vol. 33, no. 1, 1991, pp. 153–56. JSTOR, http://www.jstor.org/stable/43951341. Accessed 2 Mar. 2024.

5. K Savitri, THE UNITED NATIONS CHARTER FRAMEWORK FOR CONFLICT RESOLUTION: PROCEDURES AND PRACTICES OF PACIFIC SETTLEMENT OF DISPUTES, 1997, India Quarterly, 53(3/4), 61-100. http://www.jstor.org/stable/45072899. Accessed 2 Mar. 2024.

Books

1. Dr. S.K. Kapoor, International law and human rights 719(Central Law agency, prayagraj,22nd edn.,2021)

2. I A Shearer, Starke's International law 441(Oxford University Press, New Delhi,11th edn., 1994)

3. Dr. H.O. Agarwal, International law and human rights 528(Central Law Publications, Allahabad,8th edn.,2002)

4. J.G.Merrils, International Dispute Settlement, (University of Sheffield, 5th edn.,2012)