

# Peaceful Settlement of International Disputes

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## Abstract

Disputes (disagreements) between States are an evitable part of international relations and have frequently led to armed conflicts. Under Article 2/3 of the UN Charter, all member States are obliged to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. It is a natural corollary to the obligation of States to refrain from the threat or use of force as enshrined in Article 2/4 of the Charter of the United Nations,

The maintenance of international peace and security has always been the major purpose of the International Law. It was the basic objective behind the creation of the League of Nations in 1919 and the United Nations in 1945. Since the direct cause of war and violence is always a dispute between States, it is therefore in the interest of peace and security that disputes should be settled. Methods and procedures for the peaceful (pacific) settlement of disputes have been made available in the International Law.

The methods of peaceful settlement of dispute can be classified into three principal categories: diplomatic, adjudicative, and institutional methodologies

## INTRODUCTION

Disagreements among States are an inherent aspect of international relations, often culminating in armed conflicts. The realm of settling disputes between States demands meticulous attention for a comprehensive understanding of international law. A thorough examination of this matter is therefore imperative

Throughout history, the international community has perceived International Law as a tool to establish and uphold global peace and security. The principal objective of International Law has consistently revolved around maintaining international peace and security, evident in the formation of the League of Nations in 1919 and the United Nations in 1945.

Given that disputes between States directly contribute to the outbreak of war and violence, prioritizing the peaceful resolution of conflicts becomes crucial for the interest of peace and security. International Law has devised methods and procedures for the pacific settlement of disputes. Numerous multilateral treaties have been established by States to facilitate the peaceful resolution of their differences. Key treaties include the 1899 Hague Convention for the Pacific Settlement of International Disputes, revised in 1907, and the 1928 General Act for the Pacific Settlement of Disputes (also known as the Kellogg-Briand Pact or Pact of Paris), which was crafted under the auspices of the League of Nations. (Farh, 2014)

In addition to these general treaties, regional agreements such as the 1948 American Treaty on Pacific Settlement (Bogotá Pact, Colombia), the 1957 European Convention for the Peaceful Settlement of Disputes, and the 1964 Protocol of the Commission of Mediation and Arbitration of the Organization of African Unity contribute to the array of mechanisms available for dispute settlement. Alongside these

general treaties, many bilateral and multilateral agreements incorporate specific clauses related to dispute resolution. (Treaty, 1948)

### **THE PRINCIPLES OF PEACEFUL SETTLEMENT OF UNITED NATIONS**

The Charter of the United Nations provides in its Chapter I (Purposes and principles) that the Purposes of the United Nations are:

"To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about **by** peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace." (Article 1, paragraph 1). (UNCharter)

Under Article 2/3 of the Charter, all member States are obliged to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. It is a natural corollary to the obligation of States to refrain from the threat or use of force as enshrined in Article 2/4 of the Charter of the United Nations, which states:

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". (UNCharter)

The Pacific Settlement Of Disputes under UN charter in its chapter VI provides methods of settlement to the states involved to settle their disputes in peaceful manner, according to Article 33 of the charter "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means. (Handbook on the peaceful settlement of disputes between states, 1992)

The 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, states:

"States shall seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their choice" (THE GENERAL ASSEMBLY, DECLARATION, 1970)

### **METHODS OF PEACEFUL SETTLEMENT OF DISPUTES**

Methods of peaceful settlement of dispute can be classified into three principal categories: diplomatic, adjudicative, and institutional methodologies.

#### **Diplomatic Methods of peaceful settlement of dispute**

Diplomatic methods of peaceful settlement of disputes involve attempts to settle disputes either by the parties themselves or with the help of other entities (third parties), Chapter VI, UN Charter. The Diplomatic methods of dispute resolution are Negotiation, enquiry, Mediation, Conciliation and good offices.

**Negotiation:** Negotiations are a flexible means of peaceful settlement of disputes in several respects. It can be applied to all kinds of disputes, whether political, legal or Technical. Because, unlike the other

means listed in Article 33 of the Charter, it involves only the States parties to the dispute, those States can monitor all the phases of the process from its initiation to its conclusion and conduct it in the way they deem most appropriate.

**Normally**, the negotiating process starts as the result of one State perceiving the existence of a dispute and inviting another State to enter into negotiations for its settlement. The start of the negotiating process is conditional upon the acceptance by the other State of such an invitation. It may occur that a State invited to enter into negotiations has valid reasons to believe that there is no dispute to negotiate and therefore, that there is, no basis for the opening of negotiations. It may also occur that a State, while agreeing to enter into negotiations, subjects the opening of negotiations to conditions unacceptable to the first State. The discretion of States with respect to the initiation of the negotiating process is, however, subject to certain limitations. (Handbook on the peaceful settlement of disputes between states, 1992).

A number of treaties place on the States Parties thereto an obligation to carry out "negotiations", "consultations", or "exchanges of views" whenever a controversy arises in connection with the treaty concerned. Examples of such treaties are the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (General Assembly resolution 34/68, annex, art. 15, para. 1), the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character (art. 84), the 1982 United Nations Convention on the Law of the Sea (art. 283, para. 1) and the **1959** Antarctic Treaty (art. VIII, para. 2). Under some of those treaties, parties to a dispute arising from the interpretation or application of the treaty are under an obligation to start the consultation or negotiation process without delay (see art. 283, para. 1, of the United Nations Convention on the Law of the Sea; art. 15, para. 2, of the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies; and art. VIII, para. 2, of the Antarctic Treaty). (Handbook on the peaceful settlement of disputes between states, 1992)

### **Enquiry**

After negotiations, parties may agree to appoint an impartial body (fact-finding body) to carry out an enquiry. The object of enquiry is to investigate the issues and produce an impartial finding of disputed facts. Under the Hague convention in 1899 for the pacific settlement of international disputes established commission of inquiry as formal institutions for the pacific settlement of international disputes. Under Article 10 the International Commissions of Inquiry are constituted by special agreement between the parties in conflict. (Hague CONVENTION, 1899 ).

**The** Powers in dispute engage to supply the International Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to be completely acquainted with and to accurately understand the facts in question. The International Commission of Inquiry communicates its Report to the conflicting Powers, signed by all the members of the Commission. The Report of the International Commission of Inquiry is limited to a statement of facts, and has in no way the character of an Arbitral Award. It leaves the conflicting Powers entire freedom as to the effect to be given to this statement. (Hague CONVENTION, 1899 )

The agreement for the inquiry defines the facts to be examined and the extent of the Commissioners' powers. It settles the procedure. On the inquiry both sides must be heard. The form and the periods to be observed, if not stated in the Inquiry Convention, are decided by the Commission itself. Commissioners shall act in strict conformity with their mandate and perform their task in an impartial manner. Upon accepting appointment, each commissioner shall submit to the International Bureau a declaration

confirming his or her independence from the parties. Unless the parties agree otherwise, or unless disclosure is required by the law applicable to a party, the members of the Commission and the parties shall keep confidential all matters relating to the fact-finding proceedings, including the investigations, hearings, deliberations and findings of the Commission. Unless the parties agree otherwise, the Commission shall meet in camera. (OPTIONAL RULES FOR FACT-FINDING COMMISSIONS OF INQUIRY, , 1997)

### **Mediation, Conciliation and Good Offices (facilitators)**

Mediation, conciliation and good offices are three methods of peaceful settlement of disputes by which third parties seek to assist the parties to a dispute in reaching a settlement. All involve the intervention of a supposedly disinterested individual, State, commission, or organization to help the parties. When the parties are unwilling to negotiate, or fail to negotiate effectively, assistance by a third party through its mediation, conciliation, or good offices may be necessary to help in procuring a settlement. This assistance may be requested by one or both of the parties, or it may be voluntarily offered by a third party.

**Mediation:** a third party (mediator) is more active and takes part in the negotiation and suggest solutions.

**Conciliation:** refers the dispute to a group of persons or an institution whose task is to elucidate facts and to make a report containing proposals/recommendations for settlement.

The recommendations are not legal binding.

**Good offices:** a third party tries to persuade parties to enter into negotiations. Good office merely brings parties together (not offer solutions (Farh, 2014)

### **Adjudicative**

The preference for adjudicative methods in settling disputes arises from their ability to issue binding decisions, in contrast to the mere recommendations offered by diplomatic approaches. It is the binding nature of decisions reached through adjudicative methods that sets them apart from alternative dispute resolution methods.

Adjudicative dispute settlement comprises two primary procedures, namely "arbitration" and "judicial settlement." Both methods involve resolving differences between States through legal decisions rendered by tribunals. In judicial settlement, the decision is rendered by an established permanent court (such as the International Court of Justice) or an ad hoc court. Conversely, in arbitration, a single arbitrator or an arbitral tribunal makes the decision. The key characteristic of these methods lies in the fact that a judicial decision (judicial judgment) or an arbitral award is binding on the involved parties and must be carried out in good faith. Under revised general act for the pacific settlement of international disputes adopted by the general assembly stated that;

All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under article 39, be submitted for decision to the International Court of Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal. It is understood that the disputes referred to above include in particular those mentioned in

Article 36 of the Statute of the International Court of Justice. (General act FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES, 1949)

**Arbitration** is considered the most effective and equitable means of dispute. It combines elements of both diplomatic and judicial procedures. However, it is much more flexible than judicial settlement. It gives the parties to a dispute the choices to appoint the arbitrators, to designate the seat of the tribunal, and to specify the procedures to be followed and the law to be applied by the tribunal. Moreover, the arbitration proceedings can be kept confidential. Arbitration is quicker, less expensive, and more informal than a court proceeding. Arbitration cannot be initiated without the agreement of the parties to a dispute. An agreement of arbitration may be concluded for settling a particular dispute, or a series of disputes that have arisen between the parties. It may be in the form of a general treaty of arbitration.

**Appointment of arbitrators** the usual model in arbitration agreement as regards the appointment of arbitrators is that each of the two parties has to appoint one arbitrator or more, and the appointed arbitrators have to appoint the arbitrator, who is known as an “umpire”.

Usually, the arbitral tribunal consists of three (3) arbitrators, who can decide by majority vote. The parties may agree to refer their dispute to a single arbitrator, who may be a foreign head of a State or government, or a distinguished individual.

**Arbitration:** A technique for the resolution of disputes outside the courts, where the parties refer a dispute to one or more persons ("arbitrators", "arbiters" or "arbitral tribunal"), by whose decision (the "arbitral award") on the basis of law the parties agree to be bound.

It is a resolution technique in which a third party reviews the evidence in the case and imposes a decision that is legally binding for both sides and enforceable.

**Judicial settlement** (judgment) is a settlement of dispute between States by an international tribunal in accordance with the rules of International Law. The international character of the tribunal is in both its organization and its jurisdiction. International tribunals include permanent tribunals, such as the International Court of Justice (ICJ), the International Tribunal for the law of the Sea (ITLOS), the European Court of Justice, the European Court of Human Rights and the Inter-American Court of Human rights, and include ad hoc tribunals, such as the United Nations Tribunal in Libya. (Farh, 2014)

### **Institutional methods of peaceful settlement of disputes**

Institutional method for peaceful settlement of international dispute Regional agencies or arrangements deal with most of the means of peaceful settlement of disputes under Article 33 of the Charter of the United Nations and provide for the technical aspects of the resort to such means. Those regional agencies aimed at performing wide functions in the field of the maintenance of international peace and security have their own mechanisms for the peaceful settlement of disputes, either by reference to negotiation, inquiry, mediation, conciliation, judicial settlement and arbitration or by endowing permanent organs with specific functions for this purpose. (Handbook on the peaceful settlement of disputes between states, 1992)

The United Nations Charter confers broad powers on the Security Council in the settlement of disputes that threaten, or might threaten, international peace and security. This mandate, however, was not meant to exclude regional organizations from considering such disputes. Article 52 of the Charter states that nothing in the present Charter precludes the existence of regional arrange

meant for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action. The activities of such organizations, of course, must be compatible with the aims and principles of the United Nations Charter. The United Nations Charter, in fact, explicitly states that members of the United Nations should "make every effort" to place local disputes before regional organizations. The Charter further states that the Security Council should encourage this procedure by referring local dispute to regional organizations it self, if necessary. Thus, the Charter assigns regional organizations a clear role in the peaceful settlement of disputes. It even implies that the parties to local disputes should seek to settle their claims through the offices of regional organizations before taking them to the Security Council. (Ramphul, 1983).

## CONCLUSION

This provision is in harmony with the general approach of the Charter related to the pacific settlement of disputes which requires the parties themselves to seek a solution to their dispute by any peaceful means of their own choice, and that the Council should give every opportunity to the parties to do so. If the parties have referred their local dispute to the Security Council before making any effort to achieve a settlement through the regional arrangements or agencies, then the Council is under a duty to remind them of their obligation, or to refer such dispute at its own initiative to such arrangements or agencies, the legal consequences resulted from, and the implementation of such responsibility.

Peaceful settlement of International disputes can be:

1. Non-judicial methods: Negotiation, Enquiry, Mediation, Conciliation and good office.
2. Quasi-judicial methods: Arbitration
3. Judicial methods: Courts-international courts and Tribunals. (Farh, 2014).

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