

2020/22/22
Wednesday Bibek Sam

Settlement $\rightarrow$ to solve, resolve.

Dispute $\rightarrow$ conflict.

International $\rightarrow$ not national

South China Sea Case

1. Peace. We study Settlement of I. dispute to maintain peace.

Platform to maintain peace $\rightarrow$ Judicial bodies internationally.

S. of ID is prerequisite to the maintenance of I. peace and security.

Creation of mechanism for S of ID $\rightarrow$ effectiveness of the I. legal system

I. legal system $\rightarrow$ I. forum, structure, substance, functionality.

Peaceful Settlement of I. Dispute occupies a central place within I. law.

International Dispute (I. D)

$\rightarrow$ I. D might emerge from variety of factors, such as strategic, political, economic, cultural and religious factors.

Dispute over South China Sea, territorial dispute between China, Vietnam, Taiwan, Malaysia, Philippines

Recent fisheries dispute between UK and France, east Baltic (grey dispute) 2021.

Mavromatis judgement of 1924 by PCIJ.

2. Dispute.

A disagreement over a point of law or fact, conflict of legal views or of interests between 2 persons.

I. Conflict v. I. Dispute.

General state of hostility or a wider antagonism between states should be called I. Conflict.

I. Dispute in traditional sense signifies a specific disagreement between subjects of I. law concerning a matter of fact, law or policy in which a claim of one party is positively opposed by the other.

Dispute always arises from conflict, while the existence of a conflict does not always lead to a dispute.

A dispute exists when it is demonstrated.

(Peaceful) S. of dispute & obligation?

Art 2(3) of UN Charter.

All members shall settle their I. disputes by peaceful means in such a manner that I. peace and security and justice are not endangered.

Art 2(4) of UN Charter.

Modes of settlement of I. disputes.

Art 23(1) of UN Charter.

The parties to any dispute, the continuance of which is likely to endanger the maintenance of I. peace and security shall:

1. first of all seek a solution by negotiation.

2. enquiry.

3. Mediation (third party)

4. Conciliation (same like mediation but 3rd party plays major role)

5. Arbitration.

6. Judicial settlement.

7. Report to regional agencies or management

8. or other peaceful means of their own choice.

is this exhaustive list?

-no

Diplomatic means

A. Direct diplomatic mean;
negotiation.

B. Indirect mean with the involvement
of third party.

Legal means.

A. Arbitration (ad hoc)

B. Judicial settlement

non-adjudicative means

negotiation, good offices,
mediation.

Adjudicative or quasi ad-
judicative means.

1. Arbitration

Judicial Settlement of dispute.

Two Approaches can be followed.

1. Some authorities put arbitration and S. of dispute by permanent i. Courts and tribunals together under judicial settlement

2.

Principle of Consent

Any recourse to judicial settlement - or to any other means of peaceful S. of i. disputes - is conditioned by an acceptance of the seized court's jurisdiction by all the states in dispute.

The ICJ has strictly maintained this requirement of an express or a clear implicit to the consent to its jurisdiction of all states in dispute

But,
fundamental principle of consent to the judicial settlement of inter-state disputes is less absolute than it may look (never respected, not always possible)

Similarity between judicial settlement and arbitration.

1. A body composed of independent and impartial members.
2. Is called to take a binding decision upon parties to conflict.
3. After an adversarial procedure.

Judicial Arbitrator

1. Judicial bodies for resolving dispute between States.

Sean D. Murphy.

Common point between ICJ, WTO, and ITLOS: (features) appellate body.

1. Establishment by I. agreement / Governed by I. law
2. permanent institution / Quasi-permanent Adjudicators.

ICJ → Hague

ITLOS → Hamburg

WTO appellate body → Geneva

Independent
Judiciary
envision.

3. General dominance of States / Exclusion of non-State actors

4. Broad and yet limited jurisdiction

5. Final and Binding decisions.

Systemic functions served by These Judicial bodies;

1. promoting the Conclusion of Major Sectoral agreements.

2. " negotiated resolution of dispute.

3. " and protecting a coherent legal System.

4. $\rightarrow$ This role may be seen in 3.2 discrete functions:

i) promoting stability and predictability in interstate relation.

ii) Advisory opinions on 'Constitutional' ~~bodies~~ issues.

iii) Interim measures of protection.

4. Authoritative resolution of Imp. disputes.

5.

20/01/24
Monday (Bibek Sir)

The proliferation of I. Judicial Bodies: The pieces of the puzzle.

CESAIRE P.R. ROMANO.

Entities should not be multiplied unnecessarily

William of Ockham.

An I. Judicial body to be classified^{as} such, must meet 5 basic criteria.

1. It must be permanent
2. It must have been established by an I. legal instrument
3. They must resort to int. law (in deciding the cases)
4. They must decide those cases on the basis of rules of procedure, which preexist the case and usually can not be modified by the parties (prospective law)
5. The decision must be binding.
6. Moreover, parties don't appoint the panel.
7. Amongst → at least one is a foreign state or an I. organisation (entities of dispute ~~should~~ be other than state)
 → eg. one party, individual or company (निवृत्त) !.

Open
Fold

IG, ITOL

ECMR

TPCHR.

ECT - Court of Justice of European Communities.

CAJ $\rightarrow$ central american court of justice.

TVAC $\rightarrow$ root of justice of Andean community.

5. End of bi-polarism and the advent of multi-lateralism

2. The abandonment of Marxist - Leninist interpretations of international relations.

4 eg → dispute arises only with Capitalist and Socialist.

"Don't" in Socialist and Socialist but it is raised.
So, they all realise ^{the need for} vbading to solve dispute.

3. The capitalist market based economies and (laissez faire economy)

2020/07/31

Monday (Bibek Sir)

Jurisdiction of dispute settlement body and Arbitral tribunals.

⇒ Why we need IJ to settle I. Disputes?

↓
have 2 jurisdiction

1. Contentious jurisdiction
2. Advisory " " " "

If we → Treaties
→ CIPIL, Customary I. Law
→ writings of authors
→ precedents to settle dispute.

1. Contentious (Two party fight).

I. Dispute Settlement bodies

- IJ
- ITLOS
- WTO appellate Body

ECtHR

ECJ

I

List could include;

ICTY

ICTR

We can say "European Court of Justice". "Europe Court of HR"
or the "Inter American Court".

Jurisdiction.

- the authority of a court or official organisation to make decisions and judgments (Cambridge).

Jurisdiction

Article 36 of ICJ Statute.

The jurisdiction of a court is a tribunal signifying the power to decide a dispute in accordance with law.

Jurisdiction is exercised on the basis of the consent of states and no state is bound to submit its disputes with other states to the court without its consent.

Int. court or tribunal has the power to decide on the existence and extent of its own jurisdiction concerning any dispute before it.

↓
This is called the principle of *la compétence de la compétence*. (A(36)(6)).

Contentious Jurisdiction

State's consent can be given via four different ways;

- i) Special agreement
- ii) a compromissory clause in a treaty
- iii) forum prorogatum and (A.38(2) of 1978 rules of Court)
- iv) the optional clause. (A.36(2) 74 things)

- Jurisdiction of ICJ - A. 36 of the ICJ statute 1945.

i) Special agreement.

- if both party make agreement to settle dispute (highest number of cases)

ii) A compromissory clause in a treaty

- if treaty mentions (eg. if dispute arises, go to ICJ)

iii) Forum prorogatum

- first time written in rules of the Court 1978.

- A has to wait with expectation to go to court B.
- that B will come, and if come jurisdiction established.

Article 36 of ICJ Statute.

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the charter of the UNs or in treaties and conventions in force.

2) Opt - clause.

3) Reservation.

↳ State can do unilateral declaration accepting, (accepting state's jurisdiction (Article 36))

- the interpretation of treaty
- any question of I. Law
- the existence of any fact which, if est., would constitute a breach of an I. obligation

- The nature or extent of the reparation to be made for the breach of an international obligation.

Eg → India ने बरमो Sign करे दो है, but reservation बरमो border dispute में

3 → Reservation clause.

4) Such declaration (of 2) → shall be deposited with the Secretary-General of UN,
- who transfer copies thereof to the parties to the statute and
- to the g. registers of the Court.

5) ICJ continue to PCIJ.

Special agreement.

Article 36(3).

→ Article 40(1).

concluded after a dispute arises.

Case

1. ~~Agion~~ Aegean Sea Continental shelf (Greece v. Turkey)

2. Libya/Malta → Compromissioy (pudo).



Eg → The 1948 American treaty on politic..

3. Corfu Channel case → Forum prorogatum.

Advisory Jurisdiction.

↳ it is enshrined in;

1. UN Charter A(96).

2. ICJ Statute (A 65-68)

3. Rules of Court (102-109.)

4. practice directions (A).

2080/02/03

Thursday (Bibek Sir)

Combine class

Settlement of Dispute

Reservation To optional Clause (Article 36(2) and 36(3) of ICJ Statute

→ Responsibility not only to declaration but also for reservation (is needed).

Switzerland V. USA judgement of 21 March 1959, ICJ report.

Eg → either If any of the party has reservation on or, the issue concerning to such Or is not entertained.

The Scope of the jurisdiction of the Court is defined by the narrower of the two acceptance.

↳ Eg → 36(2) मा more reservation राख्ने party has narrower acceptance to A.36(2)
↳ 36(2) मा 2 रा party गरेर पछे मा reservation छुट्ने no (नर).

Anglo - Iranian Oil Co.

Case

↓
'As the Iranian declaration is more limited to scope than than UK " ; it is Iranian declaration on which the Court must base itself.

• Principle

• ~~The~~ Nicaragua case.

Types (categories) of reservation.

1. Reservation ratione personae
2. " " temporis.
3. " " Materie.

1. Ratione personae

• aim to preclude litigation of dispute ^{with} ~~with~~ specific categories of state.

eg only commonwealth nations can.

ICJ may determine jurisdiction;

1. Non-existence of diplomatic relations,
2. Member of a certain group or region.
3. a time element.

1. Non-existence of diplomatic relations.

Israel ^{only} → if you recognise me as country and est. dip. relation ^{only} then only you can file me (me).

Israeli declaration of 1956.

2.

eg jurisdiction to members of commonwealth nations.
↳ declaration made by Botswana in 1980.

3. A Time Element

Why?

- To prevent surprise application.

- India v. Portugal, 1960,

the validity of the surprise application was at issue in the right of passage case.

Here, India made declaration under 36(2).

किरण शर्मा

Portugal also made " " " and file case.

Here, Portugal is in factual advantage.

Now, India is in a weak position.

To avoid that UK said, मलई को हटाना 12 month के बाद declare करना (जोकि सुनपदे).

2.

3 Types.

1. It seeks to limit the time scope of the acceptance of the optional clause with regard to dispute arising from or before date.

2. 2nd point to avoid litigation relating to a particular period of national history.

3. 3rd type is from the date of declaration.

Double exclusion formula:

- find date of emergence of issue and date of emergence of initiation of facts of.

3. Reservation Ratione Materiae:

- aims to exclude from the Court's jurisdiction certain categories of disputes.

Australia reserves any dispute in regard to which the parties there to have agreed or shall agree to have recourse to some other method of peaceful settlement.

In 1992 Shulton phosphate land in "Nauru Case"

On 19 May 1992, Nauru instituted proceedings against Australia concerning the dispute over the re-habilitation of certain phosphate lands in Nauru, worked out before Nauruan independence on the basis of Article 36(2) of ICJ Statute.

The declaration of Nauru stipulates that its acceptance of the Court's jurisdiction doesn't extend to any dispute with respect to which there exist a "settlement mechanism under an agreement between Republic of Nauru and other State."

In this regard, Australia contended that Nauru was placed under trusteeship system by a trusteeship agreement approved by GA on 1st Nov 1947 and that any dispute which arose in the course of the trusteeship between the administering authority and the indigenous inhabitants fell within the exclusive jurisdiction of the UN Trusteeship Council.

2080/02/07

Monday (Bibek Sir)

United Nations Organisation.

• — members

• It is called global International Organisation.

↓
1. universal membership.

Global forum for dispute settlement.

2. Independence.

because it not dependent on any nation.
It act as a third party to settle dispute.

Eg: I.C.J., Security Council.

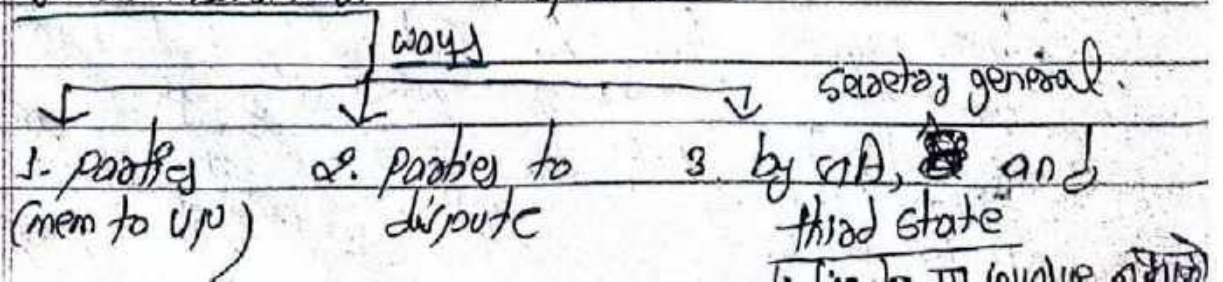
3. permanent nature

→ Continuously and consistently address d. dispute.

* Role of U.N. in dispute settlement.

Three processes: (in dispute settlement)

1. Submission of a dispute.



Eg → parties can submit a dispute if there is a threat to I. peace.

Non members can submit only when the state in which that state file submit a dispute accepts it.

2. Adoption of agenda and examination of dispute.

3. Determination of specific measures.

* Inter-Relation between SC and ICJ

1. "Advisory opinion"	2. Political body	3. Judicial body
2. "Passipashu"	nature	

→ SC can request ICJ to give advisory opinion on any legal questions under Art 96 of ~~Art 12~~ of UN Charter.
↳ advisory jurisdiction.

• Same dispute can be submitted to ICJ and SC in same time because of their nature.

passipashu → Both have equal footing

7.2. • One dispute may be submitted to ICJ and SC at the same time.

1984, Nicaragua case.

→ Court ruled that, Council has functions of political nature whereas Court exercise purely judicial function.

Both organs can therefore perform separate but complimentary with respect to the same event.

↳ Situation of paapashu

Q.

* Role of OIA in dispute settlement

1.) Article 11(2) of UN charter. enables OIA to discuss any questions relating to maintenance of international peace and security

2.) Article 85(2) of UN charter.

↳ makes recommendations to state or states or SC.

note* Only mem. states (who can vote) can't participate in OIA. (unlike SC).

* Role of UN Sec in Int. dispute settlement;

1.) Article 98. of UN charter

make annual report of OIA. In that report Sec can suggest means by which the function of UN may be improve in the field of peaceful settlement of Int. dispute.

2.2 Article 99 of UN Charter.

SC may bring to attention of the SC any matter which in his opinion may threaten the maintenance of int. peace and security.

⇒ 5 types of practices under A.99 (or Scope of A.99).

1. preventive diplomacy
2. Fact finding. (help in
3. Oag. of peace keeping operations
4. good offices and mediation.
↳ for pacific means
5. Ruling of dispute.
↳ can give decision
↳ example.
Rainbow warrior case. (France vs New Zealand).

10

Why ICS in int. dispute settlement?
↳ because.

1. It is not affected by differences in political, economic and military power between states. (it is neutral)
2. ICS is the only court with the general jurisdiction at the global level.

3. IIT contributes in the development of ^{rules of} Int. law far higher than Ad hoc tribunals through its case law.

4. Decisions of IIT have authority over the interpretation and application of rules of Int. law.

2081/02/14

Monday (Bibek Sir)

Settlement of dispute and Security Council's Role;

Chapter VI of UN Charter → Pacific settlement of dispute.

In broad terms, the procedure of the UN Security Council can be divided into 8 stages:

- i) Submission of dispute.
- ii) adoption of agenda and discussion and
- iii) determination of specific measures.

Dispute settlement procedures under Chapter VI of the UN Charter are set in motion by referring a dispute to a SC.

I. Disputes can be referred to the Council by:

- i) the parties to a dispute or
- ii) by other " (i.e. non-binding parties)
- iii)

i) Submission of dispute, Article (35).

SC look to submitted disputes ~~at~~ any time unlike GA (looks only at Annual Sessions)

Adoption of agenda and Discussion;

- It determine whether it should discuss these issue (dispute).

- The decision is a procedural matter and is not subject to veto.
So, veto is only applicable in non-procedural matter.

↓
• 37(1) - through - issue is submitted.

↓
to determine
↓

i) Whether the continuance of the dispute is in fact likely to endangered the maintenance of peace and security.

ii) Whether peaceful settlement has been exhausted.

OR
iii) " the dispute is essentially within the domestic jurisdiction of any state.

Determination of Specific measures

- dispute subject of discussion arises it take the specific measures for dispute settlement.

↓
Chapter VI.

A 36(3) → it refers case to ICJ

of legal nature as can't be address through political measures.

Ways used by SC for it;

i) Calling for negotiations;

ii) Good offices and mediation and;

iii) Inquiry;

Veto

- Can be used by permanent members.

A 27(1) $\Rightarrow$ Each member of the SC shall have 1 vote.

A 27(2) $\Rightarrow$ Decisions of the SC on procedural matters shall be made by an affirmative vote of 9 members.

A 27(3) $\Rightarrow$ in non-procedural matters an affirmative vote of all permanent members of the Council is required under A. 27(3).

Double veto?

- The negative vote of a permanent member is veto.
- The abstention of a permanent member is not considered as a veto and it does not affect the decision of the SC.

non-procedural matters include;

- Admission of any state to membership in the UN (A. 4)
- Suspension of the rights and privileges of membership (A. 5)

- Expulsion from the United Nations. (A.6)
- App. of the Secretary-General (A.97)
- Amendments of the UN Charter (A.108)
- Recommendations or decisions under Charter VIII,

Settlement of dispute and UNGA's Role;

A 11(2), 35(2) → main provisions.

Case presentations

Aegean Sea (continental) shelf case (Greece v. Turkey) → special

The Libya/Malta case,
(formally known as the continental shelf (Libyan Arab Jamahiriya / Malta) → ~~forum prorogatum~~.
↳ special agreement

Corfu Channel case.

Forum prorogatum.

2081/02/21
Monday (Bisk day)

Agreement establishing the world trade organisation (WTO);
↳ Marrakesh agreement.

WTO.

- Int. organisation with legal personality.

Purpose: to "facilitate the implementation, administration and operation and further the objectives of the covered agreements";

- Acts as a negotiating forum.
- Administers the Dispute Settlement System.
- " " trade policy review
- Cooperates with other IOs (IMF, World Bank, ISO etc.)
- 164 members.
- Nepal has been a member since.
- ↳ Marrakesh agreement, Est. the WTO.
↳ Signed in 15th April 1994.
- Weighted vote. ↳ No concept.
↳ USA has more weight. than ours.
↳ Concept of 1 mem - 1 vote. ↳ 60, member driven organisation.

Decision making;

- 1 mem 1 vote
- by consensus
- Frequent use of informal procedures (eg, Green Room meetings, preamble of maastricht agreement).
- Objective $\rightarrow$ Trade liberalisation.
 - $\hookrightarrow$ Reduction of tariffs and other barriers to trade
 - $\hookrightarrow$ elimination of discriminatory treatment in int. trade relations.
- To raise standard of living and real income (with effective demand) by allowing through optimal use of world's resources,
 $\downarrow$
in accordance with obj of Sustainable development

Art. 1; Establishment of WTO;

Article 2; Objectives; 'Scope.

- 1). It shall provide institutional framework for the conduct of trade relations among it's members.
- 2).

Article 3; functions of the WTO.

- provide forum for negotiations among its members
- dispute settlement (understanding) 'DSU'
- shall administer the trade policy review Mechanism "TPRM"
- shall cooperate with IMF and Int-bank for reconstruction and development.

Article 4; Structure of WTO.

- 1) Ministerial Conference composed of representatives of all the members.
- 2) General Council " " " "
- 3) ↳ Shall convene or appropriate to discharge the responsibilities of the dispute settlement body provided for in the DSU.

Article 5; Relations with other organization.

- general council shall make appropriate arrangement for effective cooperation.

Article 6; The Secretariat.

Article 7; Budget and Contributions.

Article 8; Status of the WTO.

Article 9; ↳ have legal personality.

↳

Article 9: Decision-making.

1. Decision making by Consensus

↓ if decision can't be arrived at by
↓ Consensus.

Then, matter shall be decided by voting.
(1 member 1 vote).

Annexes;

[Annex 1]

Multilateral Agreement in trade in goods.
- or related to trade in services.

- " " " to trade related aspect of IP
- Annex 2.

[Annex 2]

Rules + procedures governing the S.D. Settlement...

[Annex 3]

Trade policy review mechanism 'TPRM'

[Annex 4]

Plurilateral trade agreements.

Wto.

- Concept of Most favored nation. (MFN). - Same treatment for every ^{mem.} state
- Moreover, least developed countries receive more concessions and special treatment.
- 3 broad agreements; General agreement (GTA).
- 1. GTA on tariffs and trade.
- 2.
- 3.

Decision Making → 1. By Consensus
2. Informal procedures. 3. (consensus)

- ↓
- Lack of transparency and predictability.
 - Shifts power to big players.

Wto Secretariat

- Director General
- 600-700 staff
- Tasks; provides technical and professional assistance.
- No policy making procedures.