Settlement of International Disputes by Pacific means and its effectiveness

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ABSTRACT

International Law is regarded by the International community as a means to ensure world peace and security. The purpose of this research is to provide a general idea about the various means adopted by different countries to settle international disputes and to examine their effectiveness. Peace cannot be established in the world unless all the States collaborate. The various instruments used for peaceful settlement of international disputes include negotiation, conciliation, good offices, mediation, inquiry, and arbitration. This research work is divided into 3 parts. The first part deals with the meaning of disputes, international disputes, the history of settling disputes, and the obligations on the States to settle the international disputes. The second part discusses the methods of peaceful settlement of disputes and then critically examines its effectiveness in ensuring world peace. The third part concludes by saying that the States must find out an amicable solution for the settling of disputes and sparingly use other coercive methods.

Keywords- International law, the international community, world peace, security, international disputes, peaceful settlement

PART-1

INTRODUCTION

Dwight D. Eisenhower has rightly stated that "If the United Nations once admits that international disputes can be settled by using force, then we will have destroyed the foundation of the organization and our best hope of establishing a world order."[1 [1]]The main purpose of international law is to ensure the establishment and preservation of international peace and security. Generally, there are two methods to settle disputes, one is the peaceful method and the other is the coercive method. The compulsive method ultimately leads to war, which in turn might turn the world chaotic instead of bringing peace. Thereby, the UN has successfully

[1] Dwight D. Eisenhower, *The Change for Peace speech*, SOCIAL JUSTICE SPEECHES,(Nov 29, 2020, 4:50 pm),http://www.edchange.org/multicultural/speeches/ike_chance_for_peace.html.

adopted the norm and the practice of peaceful settlement of disputes. The settlement of disputes by peaceful means can be categorized into three parts- diplomatic, adjudicatory, and institutional methods. The diplomatic means attempts to settle the disputes by the parties themselves or by referring to other entities or persons. The adjudicatory means settle the disputes judicially or arbitrarily like tribunals and in the institutional methods the parties refer their disputes to institutions or regional organizations. It is interesting to note how disputes are inevitable in almost all countries with one or the other countries, and thereby it is necessary to discuss all the possible means to settle the disputes and maintain peace. However, these disputes are no longer between the States themselves, it can be between States and other non- State actors or international organizations or among themselves.

MEANING OF DISPUTE-

The term 'Dispute' is not precisely defined anywhere. In the Mavromattes case[2][2], the Permanent Court of International Justice defined the dispute as "a disagreement on a point of law or fact, a conflict of legal views or interests between two persons."

MEANING OF INTERNATIONAL DISPUTE-

The international dispute is defined to mean a disagreement that arises between one or more States concerning their relations with one another.

J.G Merrills says-

"A dispute may be defined as a specific disagreement concerning a matter of fact, law, or policy in which a claim or assertion of one party is met with refusal, counterclaim, or denial by another. In a broad sense, an international dispute can be said to exist whenever such a disagreement involves governments, institutions, juristic persons (corporation) or private individuals in different parts of the world."[3][3]

The following are the elements of international disputes as per the above-said definition-

1. "The disagreement must be specific to have a reasonable ground for such dispute.

[2] MavrommatisPalestine Concessions (Greeks v. UK), 1924 P.C.I.J. (ser. B) No. 3 (Aug. 30).

[3] Nicholas Sunday, *SettlementofInternationalDisputes*, GRIN, (Nov 29,2020, 4:56 pm), https://www.grin.com/document/233214.

2. The second element is that there must be one party or State which asserts a manifestation and the other party must deny it through its statements or conferences.

In the case of Nicaragua v. Honduras[4[4]], the court held that it is only concerned with the legal disputes i.e., capable of being settled by the application of rules and principles of international law.

SOURCE OF LAW FOR SETTLEMENT OF INTERNATIONAL DISPUTES

The major purpose of international law has always been the maintenance of peace and security and with the same objective League of Nations was established in 1919 and after its failure the United Nations in 1945 was established.

CHARTER OF THE UNITED NATIONS- Chapter 1 of this charter says- "the purposes of UN 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 place, and the suppression of acts of aggression or other breaches of the peace, and to bring about 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 peace."[5[5]]

1. DECLARATIONS AND RESOLUTIONS OF THE GENERAL ASSEMBLY-The General Assembly have re-affirmed the principle of peaceful settlement in several resolutions including resolution 2627(XXV) of 24, October 1970, etc.

1. OTHER PRINCIPLES- The declaration on Friendly Relations has dealt with the principles such as- "the principle that the States shall refrain from the threat of the 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." In the conference on security and cooperation in Europe, adopted at Helsinki on 1st August 1975 says that-"all the principles set forth in the Declaration on principles considering relations between participating states i.e. sovereign equality, respect for the rights inherent in sovereignty;

[4] Nicaragua v. Honduras, ICJ GL NO 120, ICJL 23 (ICJ 2007).

[5] Chapter 1, Charter of the United Nations,(Nov 30, 2020, 3:45 PM)https://www.un.org/en/sections/un-charter/chapter-i/index.html.

refraining from the threat or list of fore; inviolability of frontiers; territorial integrity of states; peaceful settlements by disputes; non interventions in internal affairs; respect for human rights and fundamental freedom, including the freedom of thought, conscience, religion or belief; equal rights and self-determination of people; cooperation among states; and fulfillment in good faith of obligations under international law are of primary significance and accordingly they will be equally and unreservedly applied, each of them being interpreted taking into account the others."[6[6]]

STATES OBLIGATION TO OBSERVE THE PACIFIC MEANS OF SETTLEMENT

The United Nations Charter specifies that the State must resolve its international disputes with others amicably; some of the provisions relating to it are given below-

Article 2(3) of the UN Charter- "All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered……."

Article 33;

1. "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, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means."[7[7]]

Article 34, gives the power to the Security Council to investigate any situation which might lead to a dispute, which is likely to endanger peace and security.

Article 35 gives the right to the States to bring to the attention of the General Assembly or Security Council any dispute.

Article 36 says that the Security Council shall at any stage of dispute take such appropriate measures or procedures in the cases reported as per Article 33.

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[6] Supra note 3

[7] Chapter VI, Pacific settlement of disputes, (Nov 30, 2020, 9:30 PM),http://www.unaslovenia.org/en/book/export/html/209.

Article 38 gives the power to Security Council at the request of all parties involved in a dispute to make such recommendations for pacific means of settlement.

PART-2

PACIFIC MEANS OF SETTLEMENT OF INTERNATIONAL DISPUTES

It can be classified into 3 methods- diplomatic, adjudicatory, and institutional methods. Diplomatic and institutional/political means come under the head of extrajudicial means whereas the adjudicatory method is known as a judicial settlement. They are as follows-

EXTRA-JUDICIAL MEANS-

NEGOTIATION- It is one of the oldest and most commonly used methods of settlement. In negotiation, the concerned parties enter into discussions with each other to reach a settlement by understanding the positions and opinions and thereby reconcile their differences. Negotiation is a voluntary bilateral and self-help method to settle disputes. There are four stages in negotiation, first is the pre-negotiation stage where the issues are identified and also identifies the forum of discussions. The second stage is the conceptualization stage the subject matter is found and also the position of parties. In the bargaining stage, the parties do their discussions and bargain. The last stage is the settlement stage where the parties agree.

Defects- Even though negotiation is very much satisfactory, it has certain defects. It becomes difficult in most cases to precisely and accurately identifies the facts of the case. Sometimes it may also happen that negotiations are carried on by one big State and another a small State in power, so there is a possibility that the big State influences the other. However, if the negotiation does not prove to be useful the parties can always go for the next method.

Examples of negotiation- India, and Pakistan solved their outstanding differences by negotiation at Shimla conference 1976.

GOOD OFFICES- It is similar to negotiation. The difference lies in referring the case to a third party, which is not done in the case of negotiation. The third-party can be a State or an individual. If an individual then he must be usually an eminent citizen of a third State. The main object of the third party is to bring together the parties who failed to negotiate. Here, the party is not allowed to participate in any meeting or give suggestions.

Example- Wilson, the former Prime Minister of the UK gave his good offices to India and Pakistan. It resulted in both States agreeing to refer their issue of Kutch to arbitration.

MEDIATION- In this case, the third party endeavors to bring the parties together and also assists in reaching a solution. However, the parties are not bound by the decisions of a mediator. The consent of parties plays an important role in mediation. Here, the mediator unlike in good offices actively participates in the mediation process. However, the recommendations have no binding force.

Advantages- Mediation is more flexible because there is more room for the mediators and parties to put forth their wishes and to take initiative by the mediator.

Example- Mediation of Soviet Premier Kosygin in the dispute between India and Pakistan. It resulted in the Tashkent Agreement(1966).

CONCILIATION- When the parties refer their dispute to a commission or a committee to investigate the basis of the dispute, it's called conciliation. Such a commission or committee makes a report after finding out the facts and makes proposals for settlement. Again, these proposals are non-binding. "Conciliation committee can be either permanent or Adhoc."[8][8] The General Assembly and Security Council can appoint commission under Article 10 and Article 24. The conciliators are generally appointed by the parties to a dispute.

Example- Belgo-Danish Conciliation Commission of 1952

JUDICIAL MEANS

ARBITRATION- International Law Commission defines arbitration as " a procedure for the settlement of disputes between States by a binding award based on law and as a result of an undertaking voluntarily accepted."[9][9] ICJ defined arbitration in Qatar v. Bahrain[10][10] as "the settlement of differences between the states by judges of their own choice, and based on respect for the law." Arbitrators are appointed by the disputant parties who may be individuals

[8] Mayank Shekhar, *Means for Settlement of International Disputes*, LEGAL BITES, (Dec 01, 2020, 8:12 AM),https://www.legalbites.in/means-settlement-international-disputes/.

[9] Ibid.

[10] Qatar v. Bahrain, (1994) ICJ Rep 112, ICJG 81 ICJ (1994).

consisting of the arbitration commission. The Permanent Court of Arbitration was established at the Hague Peace Conference of 1899. Its headquarters are in Hague.

INTERNATIONAL COURT OF JUSTICE- It is the most important international tribunal. It is the principal juridical organ of the United Nations and all members of the UN are ipso facto parties to the ICJ. The ICJ has to apply the principles of International Law including Article 38 of the Statute of the court. The parties have to follow the decisions of the ICJ.

INSTITUTIONAL MEANS-

REGIONAL ARRANGEMENTS OR AGENCIES- According to Article 52 of the Charter, the members of the United Nations can establish regional arrangements or agencies while dealing with the issues related to maintaining peace and security. Paragraph 2 of this article also states that the member States have to first find out the solutions amicably before resorting to Security Council.

PART- 3

ANALYSIS ON EFFECTIVENESS OF PACIFIC MEANS OF SETTLEMENT

Even though international law imposes an obligation on the States to adopt the pacific means of settlement unless the States agree they don't have to peacefully settle the issues. They can even resort to compulsive means. Secondly, only if the parties agree, the decisions are binding. So, there are no real bindings of the decisions. However, it gives the parties a lot of options to settle their disputes. They can first negotiate, if that does not work then they can use the help of good offices, and if that fails to other methods. However, to the above said there is an exception. In arbitration the decisions given in the form of the award are binding and if States do not follow it, the UN can impose punishments by way of sanctions. ICJ is rigid, its decisions have to be implemented by parties, however, parties can opt for adjudication by the chamber, where they can influence the designation of judges. The use of force, war, or compulsive means is often regarded as a failure of international law. Still in real economic and political rather than law is used as a means to settle disputes.

Despite its shortcomings, the United Nations is successful in establishing the trust and legitimacy of its working among the States of International Community. The increase in the number of cases

in front of ICJ is an example of it. So undoubtedly one can say that the UN has played a vital role in averting violence and assist the disputant parties to settle their issues amicable.

SUGGESTIONS

The States always can get into violent means for resolving their disputes. This should be avoided and parties must try to adopt the amicable means and bind themselves to such decisions. According to the Manila Conference, "it appeals to the States to manifest by their acceptance of this compulsory jurisdiction a world governed by law and not by force."[11][11]

"The Security General is also expected to emphasize on the importance of creating partnerships with civil society and the business community in implementing the 2030 Sustainable Development goals and 2015 Paris Climate Change Agreement, as in his views creating the conditions for an inclusive and sustainable development as the best way to prevent crisis and conflicts in today's world."

CONCLUSION

Albert Einstein rightly stated that "Peace cannot be kept by force; it can only be achieved by understanding."

It was intending to replace aggression and violence, the peaceful means of settlement developed and the UN imposes the obligation on States to do the same to maintain peace. Despite its shortcomings, peaceful methods are increasingly being adopted by the States. The question arises as to whether it is illegal to use coercive means for settlement. However, it is nowhere prohibited by the UN as to the use of compulsive means. Disputes are inevitable in any country. Sometimes it may also happen that the big nations try to influence the small countries. To avoid it peacefully and understanding each other's position States must resolve their disputes. If these disputes are not resolved it may lead to bigger problems in the future, so it's best to act when a dispute arises. On the other hand timing of dispute settlement is also crucial. At one point a particular method of resolution might be useful but at some other point, it may not. Diplomats, international lawyers, and jurists must have to learn more about when and how to settle the disputes. Thus, the States

[11] Giorgio Bosco, *New Trends on Peaceful Settlement of Disputes between States,* Vol 16, North Carolina Journal of International Law and Commercial Regulation, 12-25, pg no. 22, (1991).

having free choice in settling a mode for settlement must ensure to take an effective yet peaceful method for settlement of disputes.