

INTERNATIONAL MARITIME LAW AND DISPUTE SETTLEMENTS

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What is Dispute

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser-in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good [person]. There will still be business enough.-

Abraham Lincoln

"Justice delayed is justice denied" and justice hurried is justice buried

A 'dispute' was defined by Permanent Court of International Justice (PCIJ) in the Mavromattis Palestine Concessions (Greece v UK) 1924 PCIJ: 'a disagreement on a point of law or fact, a conflict of legal views or interests between parties'.

What is Dispute? Disputes are characterized by: (1) specific disagreements concerning matters of fact, law, or policy between (2) two or more parties so that (3) a claim or assertion by one party is met with refusal, counterclaim, or denial by another.

Methods of Dispute Resolution - International

- International Disputes Settlement
- Kinds of Disputes Settlement
- Peaceful and Cohesive Settlements
- History and Development of Dispute Settlement (PCA, PCIJ)
- UN Charter and Dispute Settlement
- International Court of Justice (ICJ)
- WTO and Disputes Settlement
- ICC and Dispute Settlement

Issues Relating to Disputes

- Institutional issues
- Jurisdiction
- Access
- Mandate of the court or tribunal
- Evidentiary rules and principles
- Procedural issues
- Judgements, awards or decisions
- Remedies and enforcement

Methods of Settlement of Disputes

- **Pacific means of settlement**
 - **Diplomatic-political means** - seek to reconcile interests and their outcome is not in itself binding
 - Negotiation - basic means of dispute settlement
 - Fact-finding - United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses of 1997
 - Mediation, Good Offices and Conciliation - Article 4 of the Convention for the Pacific Settlement of International Disputes of 1907; Article 33, UN Charter
 - **Adjudicational-legal means**
 - Arbitration – Article 15, 18, Hague Convention for the Pacific Settlement of Disputes, 1899 – PCA, PCIJ Adjudication - ICJ
- **Compulsive or forcible means of settlement**

Do states have obligation to settle their disputes peacefully?

- **UN Charter - Article 1(1)**

To maintain international peace and security, and to that end: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;

- **Art 2(3)**

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 of UN Charter

- **Art 33** : 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.
- **Pacific Settlement of Disputes**
 - Chapter VI (Art 33- Art37)
 - Arts.10,11,12,14,52(2,99.)—authorize General Assembly and Security Council.
 - Obligation w.r.t certain category of Disputes.
 - Art 2 (3) and Art 33---Customary International Law.

Peaceful Means of Dispute Settlements

- The numerous international dispute settlement treaties concluded since the 1899 and 1907 Hague Conventions for the Pacific Settlement of Disputes
- (1) bilateral or multilateral negotiations; (2) good offices; (3) mediation; (4) inquiries; (5) conciliation; (6) ad hoc or institutionalized arbitration; (7) judicial settlement by permanent courts; (8) "resort to regional agencies or arrangements" or (9) to "other peaceful means of their own choice"; and (10) dispute settlement by the UN Security Council (e.g., pursuant to Articles 34-38 of the UN Charter), other UN organs, or other in organizations

History and Development of Int. Judicial Institutions

Origin: Modern history of International Arbitration –

- **Phase I** - Jay Treaty of 1794 between the United States of America and Great Britain - creation of three mixed commissions, composed of American and British nationals in equal numbers to resolve disputes.
- **Phase II** -The Alabama Claims arbitration in 1872 between the United Kingdom and the United States - agreed to submit to arbitration claims by the former for alleged breaches of neutrality by the latter during the American Civil War.

Impact of treaties:

- sharp growth in the practice of including arbitration clause in treaties.
- conclusion of general treaties of arbitration efforts to construct a uniform law of arbitration
- proposals for the creation of a permanent international arbitral tribunal

The Hague Peace Conferences and the Permanent Court of Arbitration (PCA)

- **Phase III** - The Hague Peace Conference of 1899 (Hague), convened at the initiative of the *Russian Czar Nicholas II* – discussion - peace and disarmament.
- **Result:** Convention on the Pacific Settlement of International Disputes. Features:
 - deals with arbitration and other methods of pacific settlement, such as good offices and mediation
 - Established **Permanent Court of Arbitration**
 - created a permanent Bureau (located at The Hague), with functions corresponding to those of a court registry or a secretariat,
 - laid down a set of rules of procedure to govern the conduct of arbitrations
- **Second Hague Peace Conference (1907):** revised the Convention and improved the rules governing arbitral proceedings.

PERMANENT COURT OF ARBITRATION (PCA)

- Receive disputes referred by States if other informal means like diplomacy had failed
- Title II Good Offices and Mediation, Title IV Arbitration
 - It was designed to receive disputes referred by States if other informal means like diplomacy had failed.
 - The number of cases that it has resolved are considerably less.
- The PCA administered its first commercial arbitration in the 1935 case of *Radio Corporation of America v. China* (1935) 81 ILR 26
- which was submitted to a special board of arbitration constituted under paragraph 10 of the Traffic Agreement of 10 November 1928.
- Some leading cases decided by PCA:
 - Carthage and Manouba cases (1913) concerning the seizure of vessels,
 - Timor Frontiers (1914), and
 - Sovereignty over the Island of Palmas (1928) cases

The Permanent Court of International Justice (PCIJ)

- **Article 14**, League of Nations: gave the Council of the League responsibility for formulating plans for the establishment of a Permanent Court of International Justice (PCIJ) with power to solve dispute and give advisory opinion.
- **1920**, the Council appointed an Advisory Committee of Jurists to submit a report on the establishment of the PCIJ.
- **August 1920** - report (draft scheme) submitted to the Council - examined and amended
- **November 1920** - laid it before the First Assembly of the League of Nations in Geneva. The Assembly instructed its Third Committee to examine the question of the Court's constitution.
- **December 1920**, after an exhaustive study by a subcommittee, the Committee submitted a revised draft to the Assembly, which unanimously adopted it. This was the Statute of the PCIJ.
- The protocol was opened for signature on 16 December. By the time of the next meeting of the Assembly, in September 1921, a majority of the Members of the League had signed and ratified the protocol
- Between 1922 and 1940 the PCIJ dealt with 29 contentious cases between States and delivered 27 advisory opinions.

PCIJ Features

- Unlike arbitral tribunals, the PCIJ was a permanently constituted body governed by its own Statute and Rules of Procedure, fixed beforehand. binding on parties having recourse to the Court
- Power to decide case if parties agree and Empowered to give advisory opinion
- It had a permanent Registry - served as a channel of communication with governments and international bodies
- Its proceedings were largely public and provision was made for the publication in due course of the pleadings, of verbatim records of the sittings and of all documentary evidence submitted to it.
- Developing a constant practice and maintaining a certain continuity in its decisions - a greater contribution to the development of international law;
- Accessible to all States for the judicial settlement of their international disputes and they were able to declare beforehand that for certain classes of legal disputes they recognized the Court's jurisdiction as compulsory in relation to other States accepting the same obligation.

International Court of Justice(ICJ)

- The World Court and the Principle Judicial organ of the United Nations. Established June, 1945
- Competence depends upon the States consenting to accept its jurisdiction
- The ICJ is an organ of the UN that is regulated through the provisions in the Charter of the organization, the Statute of the Court and the rules made there under
- Since only States can be parties, some consider the Court's ability to resolve international disputes to be considerably less competent since it depends primarily upon a State consenting to accept its jurisdiction.

International Court of Justice(ICJ)

- This has not prevented it from evolving new int. legal norms of considerable significance. The Court which has an international status can also meet in a chamber, to hear particular kinds of disputes.
- Statute of the ICJ was based upon that of the PCIJ. Necessary steps taken for a transfer of the jurisdiction of the PCIJ to ICJ. April 1946 - PCIJ was formally dissolved. José Gustavo Guerrero (El Salvador), the last President of the PCIJ - President Judge to ICJ.
- The Court appointed the members of its Registry (largely from among former officials of the PCIJ) and held an inaugural public sitting on 18 April, 1946. The first case was submitted in May 1947. It concerned incidents in the Corfu Channel and was brought by the United Kingdom against Albania.

JURISDICTION OF THE COURT:

- The basis of the jurisdiction of the Court is “Consent of the Litigants”.
- In Advance or on the occurrence of the event.
- Two Fold Jurisdiction: “contentious” and “Advisory”.
- Advisory Jurisdiction : According to Article 65 of the Statute, the Court may give an advisory opinion on any 'legal question'
- It is not possible to summon any State against its will to submit to the jurisdiction of the Court.
- The Court is forbidden by its Statute and jurisprudence from exercising its jurisdiction in a case in which the parties have not given their consent.
- The consent is not required to be given in any particular form. Can be inferred from the conduct of the parties.
- The consent of a State to the jurisdiction of the Court may also be established by means of acts subsequent to the initiation of proceedings, which is referred to as the doctrine of *forum prorogatum*. The Court cannot proceed to adjudicate a dispute merely because one State files a case against another; the other party too, the defendant State, has to agree that the Court should try the case.
- When the Court decides a case, on the basis of the consent of the disputant parties, jurisdiction of the Court is called “contentious jurisdiction”.

LAW APPLIED BY THE COURT

- Statute under Article 38, Part 1 lays down that the disputes which are submitted to it are decided in accordance with 'International Law'
- 'International Law' is elaborated under the Statute in the same paragraph of Article 38 which says that the Court shall apply
 - (a) international conventions whether general or particular, as recognized by the contesting States ;
 - (b) international custom, as evidence of a general practice accepted as law ;
 - (c) the general principles of law recognized by civilized nations ;
 - (d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
- Article 38, Para 2 of the Statute states Court has a power to decide a case *ex aequo et bono*, if the parties agree thereto.

Settlement of Maritime Disputes

- The International Tribunal for the Law of the Sea (ITLOS);
- The International Court of Justice (ICJ);
- An arbitral tribunal; or
- A special arbitral tribunal.

The International Tribunal for the Law of the Sea (ITLOS)

- The International Tribunal for the Law of the Sea (ITLOS) is an independent judicial body established by the 1982 United Nations Convention on the Law of the Sea.
- It has jurisdiction over any dispute concerning the interpretation or application of the Convention, and over all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.
- Disputes relating to the Convention may concern the delimitation of maritime zones, navigation, conservation and management of the living resources of the sea, protection and preservation of the marine environment and marine scientific research.
- The Tribunal is open to States Parties to the Convention.
- Entities other than States Parties, such as state enterprises and private entities, may also have access to the Tribunal in any case expressly provided for in Part XI of the Convention, which deals with the regime of seabed mining, or in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal.

ITLOS Timeline

- **3 December 1973, New York** Opening of the Third United Nations Conference on the Law of the Sea, during which the Convention is drafted. The conference is held over nine years in New York, Geneva and Caracas. **22 September 1980, New York** The name for the adjudicatory body created by the Convention is agreed and becomes the “International Tribunal for the Law of the Sea”.
- **21 August 1981, New York** Hamburg is chosen as the seat of the Tribunal by the conference. **30 April 1982, New York** The Convention is adopted by the United Nations General Assembly.
- **10 December 1982, Montego Bay** The Convention opens for signature. And **16 November 1994, New York** The Convention enters into force.
- **1 August 1996, New York** Election of the first 21 Judges by the 5th Meeting of States Parties to the Convention. **18 October 1996, Hamburg** Ceremonial inauguration of the Tribunal in the presence of the Secretary-General of the United Nations, Dr Boutros Boutros-Ghali, who thereafter lays the foundation stone for the new premises.
- **13 November 1997, Hamburg** The first case is submitted to the Tribunal, The M/V "SAIGA" Case (Saint Vincent and the Grenadines v. Guinea), Prompt Release.
- **3 July 2000, Hamburg** Official opening of the new headquarters of the Tribunal in the presence of the Secretary-General of the United Nations, Mr Kofi Annan.

Organization of ITLOS

- The Tribunal is composed of 21 Judges elected by the States Parties to the Convention, and is assisted by the Registry, an international secretariat. The seat of the Tribunal is in Hamburg, Germany. Its official working languages are English and French.
- The Judges are elected, for renewable terms of nine years, by the States Parties to the Convention, from among persons enjoying the highest reputation for fairness and integrity and possessing recognized competence in the law of the sea. To ensure continuity, elections of one third of the Judges take place every three years.
- The bench represents the principal legal systems of the world together with an equitable geographical distribution of members from among the five geographical groups established by the General Assembly of the United Nations (African States, Asian States, Eastern European States, Latin American and Caribbean States, Western European and Other States).
- No two Judges may be nationals of the same State. If the Tribunal, or a chamber of the Tribunal, does not include a judge of the nationality of a party to the dispute, that party may choose a person to sit as a judge (judge ad hoc).

President and Registry

- The President and Vice-President are elected by the Judges of the Tribunal for a period of three years and may be re-elected.
- The President presides at all meetings of the Tribunal, directs the judicial work of the Tribunal, supervises its administration and represents it in its relations with States and other entities.
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Registrar

- The Registrar is the head of the Registry and is elected by the Judges of the Tribunal for a renewable term of five years.
- The Registrar is responsible for all legal and administrative work, including the administration of the Tribunal's accounts and finances, and is the regular channel of communications to and from the Tribunal.
- He/she is assisted by a Deputy Registrar.

Jurisdiction of ITLOS

- The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with the Convention.
- It also includes all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.
- The Tribunal has jurisdiction to deal with disputes (contentious jurisdiction) and legal questions (advisory jurisdiction) submitted to it.

Procedure of ITLOS

- Proceedings are instituted before the Tribunal by notification of a special agreement or by written application.
- A written application may be submitted to the Tribunal on the basis of an agreement between the parties to the dispute, in cases of compulsory jurisdiction of the Tribunal or pursuant to declarations made by the parties in accordance with article 287 of the Convention.
- When they sign, ratify or accede to the Convention, States are free to make a declaration under article 287 of the Convention, by which they choose one or more of the following means for the settlement of disputes: the International Tribunal for the Law of the Sea, the International Court of Justice, an arbitral tribunal or a special arbitral tribunal.
- If States choose the Tribunal, the Tribunal is competent to deal with disputes involving those States.
- In the absence of such agreement, parties may nevertheless decide to transfer the dispute to the Tribunal by way of a special agreement.
- The procedure to be followed for the conduct of cases submitted to the Tribunal is defined in the Statute of the Tribunal (Annex VI to the Convention) and the Rules of the Tribunal.

Saint Vincent and the Grenadines v. Guinea

- On 13 November 1997, Saint Vincent and the Grenadines filed an application against Guinea for the prompt release of the oil tanker M/V SAIGA, its cargo and crew. The ship, flying the flag of Saint Vincent and the Grenadines, had been arrested for bunkering fishing vessels off the coast of Guinea.
- On 4 December 1997, the Tribunal delivered its Judgment and ordered the release of the vessel and crew upon the posting of a security, consisting of the value of its gasoil cargo and a bond of US\$ 400,000.
- On 20 February 1998, the Governments of Saint Vincent and the Grenadines and Guinea agreed to submit the merits of their dispute concerning the M/V SAIGA to the Tribunal.

Case Cont...

- The case involved issues relating to, inter alia, the jurisdiction of the coastal State in its exclusive economic zone, freedom of navigation, enforcement of customs laws, bunkering of vessels and the right of hot pursuit.
- The Judgment was delivered on 1 July 1999.
- The Tribunal decided that Guinea had violated the rights of Saint Vincent and the Grenadines under the United Nations Convention on the Law of the Sea by arresting and detaining the M/V SAIGA and its crew, and that Guinea should pay compensation to Saint Vincent and the Grenadines in the sum of US\$ 2,123,357.

Malaysia v. Singapore

- On 5 September 2003, a request for the prescription of provisional measures was submitted by Malaysia against Singapore, pending the constitution of an arbitral tribunal to be established under Annex VII of the United Nations Convention on the Law of the Sea.
- The dispute concerned land reclamation activities carried out by Singapore that allegedly impinged upon Malaysia's rights in and around the Straits of Johor, which separate the island of Singapore from Malaysia.
- The Tribunal delivered its Order on 8 October 2003. It took the view that the land reclamation works might have adverse effects on the marine environment in and around the Straits of Johor.
- For that reason, the Tribunal considered that prudence and caution required Malaysia and Singapore to establish mechanisms for exchanging information on the land reclamation work and assessing its effects.
- It ordered the parties to establish a group of independent experts to prepare a report on the effects of the activities.

Case Cont..

- The Tribunal directed Singapore not to conduct its land reclamation activities in ways that might cause irreparable prejudice to the rights of Malaysia, or serious harm to the marine environment, and also decided that the parties should submit a report by 9 January 2004 on their compliance with the provisional measures ordered.
- On 26 April 2005, Malaysia and Singapore settled their dispute by signing an appropriate agreement.
- On 1 September 2005, a final arbitral award was made in the case in accordance with the terms specified in the settlement agreement.
- The provisional measures ordered by the Tribunal in 2003 were instrumental in bringing the parties together and providing a successful diplomatic solution to the dispute.

ICJ and Maritime Disputes

- ICJ is entitled to exercise its jurisdiction over any dispute concerning the interpretation or application of LOS convention which is submitted to it under Article 287 and 288.
- There are some Judgments relating to maritime boundary dispute is mentioned here which have been declared by ICJ after the enforcement of LOS Convention in 1994.
- Fisheries Jurisdiction (Spain v. Canada) 2001; Maritime Delimitation and Territorial Questions (Qatar v. Bahrain), 1998; Land and Maritime Boundary (Cameroon v. Nigeria: Equatorial Guinea intervening), 2002; Territorial and Maritime Dispute in the Caribbean Sea (Nicaragua v. Honduras), 2007; Territorial and Maritime Dispute (Nicaragua v. Colombia), 2012; Maritime Delimitation in the Black Sea (Romania v. Ukraine), 2009; Maritime Dispute (Peru v. Chile), 2014; Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), 2014

Corfu- Channel Case

- This case was instituted by the Government of the United Kingdom against the Government of Albania on a dispute arising from the incidents in the Corfu Strait, where two British destroyers struck mines in Albanian waters, damaging two British vessels and resulting in the loss of life of the members of its navy.
- Albania was not a member of the United Nations during the time of the incident. When the dispute was referred to the Security Council, Albania was invited by the body to participate in the discussions, which it did. The Security Council adopted a resolution recommending the referral of the dispute to the ICJ.
- The United Kingdom then submitted an Application to the ICJ. Albania opposed this action through a letter dated July 2, 1947, contending that the Application was not in conformity with the Security Council recommendation as it was done through unilateral application. Nevertheless, it expressed in the same letter its preparedness to appear before the ICJ.
- The ICJ interpreted the letter as a voluntary acceptance of its jurisdiction. Subsequent to this ruling, the parties concluded a Special Agreement for the ICJ to judge, among others, the questions of whether Albania was responsible for the explosions and, assuming that it was, if there was a duty to pay compensation

Corfu- Channel Case

- The Judgment of April 9, 1949 held that Albania was responsible for the explosions.
- Albania actively defended itself in the case until the ICJ rendered a judgment on the merits. It was only during the third phase of the case (the assessment of amount of compensation) 99 when Albania did not defend its case in the proceedings. Albania was of the view that it was beyond the terms of the Special Agreement for the ICJ to determine the amount of compensation due.
- The ICJ said that this issue was resolved in its Judgment of April 9, 1949 and the matter was, therefore, *res judicata*. The ICJ proceeded with the case following Article 53 of its Statute, which obliges it to determine whether the claims of the Applicant are well founded in fact and in law. In determining the soundness of the claims, the ICJ said that it was not compelled to examine the accuracy of all the details in the submissions as it was "sufficient for the Court to convince itself by such methods as it considered suitable that the submissions were well founded."

Anglo-Iranian Oil Company Case

- In 1933, the Imperial Government of Iran had an agreement with the Anglo-Iranian Oil Co., Ltd. (“Oil Company”), a company incorporated in the United Kingdom. In 1951, Iran nationalized the oil industry that eventually led to a dispute between the Oil Company and Iran.
- Adopting the cause of the oil company, the United Kingdom instituted proceedings before the ICJ against Iran on May 26, 1951. Both the United Kingdom and Iran made Declarations accepting the jurisdiction of the ICJ in accordance with the second paragraph of Article 36 of the ICJ Statute. The United Kingdom asked for the restitution of the oil company or for compensation for its expropriation by Iran.
- On June 22, 1951, the United Kingdom requested for provisional measures pending the resolution of the dispute. Iran objected to the request for provisional measures, contending that the ICJ had no jurisdiction in the case.

Anglo-Iranian Oil Company Case

- Iran did not appear during the hearing of the case.
- The ICJ subsequently made an Order issuing certain provisional measures. 104 While the Order mentioned that Iran did not participate during the hearing of the case, it did not discuss the repercussions or the implications of Iran's non-appearance.
- During the deliberation on the merits of the case, Iran submitted, in lieu of a counter-memorial, a document declaring its refusal to recognize the jurisdiction of the ICJ. Despite this, it was able to amply present its position by means of its submissions before the ICJ.
- The ICJ ultimately found that it did not have jurisdiction over the case.

Anglo—Norwegian Fisheries Case – 1951 (Between UK & Norway)

- Validity of Royal Decree of 1935 de-limiting Norwegian Fisheries Zone
- Fisheries Zone
- Territorial Sea
- Special Characteristics of Norwegian coast
- Skjergaao – Base line for measuring breadth of Territorial Sea.
- Trace parallel Method.
- Envelops of arcs of circles method
- Strait Baseline Method.
- 10 miles rule for bays.
- Length of strait baselines
- International Interest in de-limitation of Maritime areas
- General direction of the coast
- Economic dependence
- Personable & Justice etc.

WTO and Dispute Settlements

- The World Trade Organization (WTO) is an international organization designed to supervise and liberalize international trade.
- The WTO came into being on 1 January 1995, and is a successor to the General Agreement on Tariffs and Trade (GATT), which was created in 1947, and continued to operate for almost five decades as a de facto international organization.
- WTO deals with the rules of trade between nations at a near-global level. It is responsible for negotiating and implementing new agreements, and is in charge of policing member countries adherence to all WTO agreements, signed by the majority of the world's trading nations and ratified by their parliaments.
- **Functions of WTO** : Administering WTO trade agreements; Forum for trade negotiations; Handling trade disputes; Monitoring national trade policies; Technical assistance and training for developing countries and Cooperation with other international organizations

WTO and Dispute Settlements

- The WTO's procedure for resolving trade quarrels under the Dispute Settlement Understanding is vital for enforcing the rules and therefore for ensuring that trade flows smoothly.
- A dispute arises when a member government believes another member government is violating an agreement or a commitment that it has made in the WTO. Ultimate responsibility for settling disputes also lies with member governments, through the Dispute Settlement Body.
- Dispute settlement is the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global economy. Without a means of settling disputes, the rules-based system would be less effective because the rules could not be enforced. The WTO's procedure underscores the rule of law, and it makes the trading system more secure and predictable. The system is based on clearly-defined rules, with timetables for completing a case.

Thanks

Thank You for Your attention!