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International Dispute Settlement Mechanisms: An Examination of Nature of Disputes And The Intersection of Diplomatic And Legal Mechanisms

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ABSTRACT
Disputes are an inevitable part of the international system necessitating the existence of international dispute settlement mechanisms. The different strands of realism and liberalism theories in international relations provide the theoretical frameworks for understanding the factors, actors and motivations behind these disputes. Generally, all states have the options to use force or adopt peaceful ways to settle disputes. Although the use of force is prohibited in international law according to the UN charter, there are at least a few instances where the use of force can be justified. However, the United Nations through its charter encourages peaceful settlement of disputes. The international law provides for a measure of a regulated and predictable environment, principles and guidelines for peaceful settlement of disputes. These mechanisms are either legally or non-legally binding also known as legal and diplomatic mechanisms respectively. These mechanisms serve as range of measures along continuum of dispute settlement process and alternatives at times but also as complementary processes that are capable of running concurrently. For instance, while parties would prefer diplomatic means before engaging in formal litigations, diplomatic endeavors may progress, inform or serve as a conclusion to a litigation progress.

KEYWORDS: dispute settlement, international law, conflict, diplomacy, international disputes.

1.0. INTRODUCTION

International disputes are a common occurrence in the contemporary global landscape, and the effective management of such disputes is critical to ensuring stability and peace among nations. Disputes arise from various sources, including territorial claims, trade relations, human rights violations, and environmental concerns, among others. The resolution of these disputes requires a combination of diplomatic and legal mechanisms, depending on the nature and complexity of the dispute.

This article examines the nature of international disputes and explores the intersection of diplomatic and legal mechanisms in resolving such disputes. The paper also highlights the challenges associated with international dispute settlement and the relationship between non-legally binding and legally binding dispute resolution mechanisms. By analyzing various examples of coercive and diplomatic dispute resolution mechanisms, this article seeks to provide a comprehensive understanding of international dispute settlement mechanisms and their effectiveness in resolving conflicts among countries.

2.0. DEFINITION OF CONCEPTS

In this section, definition of important concepts in the article is given. This may involve a brief exploration of a few significant definitions where necessary. Providing clear definitions of concepts reflects an appreciation of the fact that different conceptualizations of the same terminologies exist and helps demarcate what conceptualizations have been adopted in the context of this discussion. However, in the section no extended discussion on the various conceptualizations of these concepts is undertaken.

Key concepts: dispute, situation, dispute settlement mechanisms.

2.1 DISPUTE, SITUATION AND DISPUTE SETTLEMENT MECHANISMS

Merriam-Webster (n.d.) defines dispute as engaging in argument, a verbal controversy, making a struggle against or calling into question or casting doubt. Similarly, The Cambridge Dictionary (n.d.) defines it as an argument or disagreement especially an official one which may occur; for instance, between workers and employers or two states sharing a border. These two definitions encompass; the existence of doubt and a disagreement, the formal nature of these disagreements as well as the existence of disputing parties.

Merrills (2017) defines dispute as a specific disagreement that involves or concerns matters related to facts, law or policies in which a claim or assertion by a party or parties is met with rejection, counterclaim or a complete denial by the other party or groups. In addition, Merrills (2014), posits that it is the specific nature of a dispute that distinguishes it from a ‘situation’.

A situation is broad with a number of disputes involved within it (Merrills, 2014). As such, the disputes in a situation would need to be identified first before they can be settled.

According to the above definitions, therefore, a dispute is not only a disagreement between different parties but also revolves around specific issues. The parties involved could be individuals, groups or states. I shall adopt the above definition advanced by Merrills (2017).

Having determined the definition to use for 'dispute', we need to explain what international disputes entail. We have seen earlier that disputes can arise between individuals or groups or states. On the same note, these disputes may be on a small scale or have consequences on an international plane (Merrills, 2014). Merrills (2012; 2014) adds that an international dispute is one that involves states, institutions, corporations or private individuals in different parts of the world.

On the same note, Mani & Ponzio (2018) posit that international disputes are those that involve not only states but also entities such as international organizations, regimes, indigenous communities enjoying special status under international law, national liberation movements and groups that are holders of the right of self-determination.

In this article, therefore, an international dispute shall be used to refer to all the disputes between parties that have consequences on the international plane. Although emphasis is typically on disputes between states, an international dispute needs not to be exclusively so. As a result, in exceptional cases, reference to relevant domestic disputes may be made.

On the other hand, when a dispute arises, measures are taken by the parties involved, or other concerned third-parties to settle it. The measures taken could range from legal or diplomatic, peaceful or coercive, and to formal or informal processes. These strategies comprise what is referred to as dispute settlement or resolution mechanisms. As such, there is need to clarify the use of the terminologies; dispute settlement and dispute resolution in this article. Dispute settlement and dispute resolution are two related but distinct concepts in the field of conflict management. Dispute settlement refers to the process of resolving disputes through binding legal mechanisms such as arbitration, adjudication, and mediation (Gómez-Luengo, 2017). These mechanisms are often governed by international law and treaties and involve the imposition of legally binding decisions on the parties involved. Dispute settlement mechanisms are often used in cases where negotiations and other non-legal means of dispute resolution have failed.

On the other hand, dispute resolution encompasses a broader range of processes used to manage conflicts, including negotiation, facilitation, and consensus building (Fisher, Ury, & Patton, 2011). Unlike dispute settlement, dispute resolution does not involve the imposition of legally binding decisions but rather seeks to find mutually acceptable solutions to conflicts. Dispute resolution is

often used in cases where the parties involved have an ongoing relationship, and the preservation of that relationship is a priority.

While dispute settlement and dispute resolution differ in their scope and outcomes, they are often used in combination to manage conflicts effectively. For example, negotiation and mediation can be used as a prelude to binding arbitration or adjudication, or they can be used in conjunction with these mechanisms to develop a mutually acceptable solution (Gómez-Luengo, 2017).

Nevertheless, while dispute settlement and dispute resolution are distinct concepts, they are complementary in the effective management of conflicts. Dispute settlement involves legally binding mechanisms, while dispute resolution focuses on finding mutually acceptable solutions to conflicts. In dealing with international disputes, both are utilized. In this article the two are used interchangeably.

In conclusion, dispute settlement mechanisms in this article shall refer to a range of structured measures, strategies or steps employed in clarifying and settling disputes between different states or parties. These disputes may arise out of various sources, including territorial claims, trade relations, human rights violations, and environmental concerns, among others.

3.0. DISPUTE SETTLEMENT

An appreciation of dispute settlement in international contexts requires a clear understanding of not only the nature and causes of international disputes but also the need for and the challenges to international dispute resolution mechanisms. These are some of the issues explored briefly in this section.

3.1 CAUSES AND NATURE OF DISPUTES IN THE INTERNATIONAL SPHERE

Theories in international security and relations could be helpful in revealing some of the dynamics in international disputes. According to the realism theoretical perspective, anarchy in international relations and the inherent competition amongst states for resources, power and hegemony, could be a source of friction and conflict. The limited nature of shared or desired resources exacerbates the situation (Merrills, 2012; 2014).

For instance, disputes have risen out of the exploitation of natural resources even when these resources are located within territories that are not contested. For instance, the Democratic Republic of Congo (DRC), its neighbors and other actors have overseen protracted wars, sometimes through proxies, over resources in the DRC (Tsabora, 2014; Burnley, 2011). In addition, the dispute can arise out of agreements that regulate the use of shared resources such as the River Nile treaty as well as the fisheries jurisdiction case between the United Kingdom and Iceland (Fischer, 1982).

Liberalist theories, on the other hand, though not giving prominence to states as the only key players in international relations and security, do not dispute that the actions of states may be a cause of conflict. They emphasize a mix of influence of a hegemon state and cooperation for mutual benefits to help prevent and settle

disputes (Jehangir, 2012). However, disputes do occur amongst cooperating states. For instance, India and Bangladesh have a long history of cooperation in areas such as trade, security, and infrastructure development. However, the two countries have had disagreements over the sharing of water from the Ganges River. In 1996, the two countries signed a treaty to share the water, but disputes over water allocation have continued (Bhaumik, 2017). In addition, The Canada-US border is the longest international border in the world, and the two countries have enjoyed a close relationship for many years. However, the two countries have had disagreements over various issues, including fishing rights, border security, and environmental concerns. In the early 1990s, there was a dispute over fishing rights in the Gulf of Maine, which was eventually resolved through arbitration (Beyer & Hasselman, 1999).

On the other hand, globalization and new technologies have transformed the relationship between individuals and nations. This has in turn caused a change in global politics, commerce and how societies operate (Spain, 2013). Spain (2013), suggests that globalization has not only affected the nature of armed conflict and the emergence of global collective problems that threaten peace and security but also a rise in the international community. This interconnectedness has implications for both international peace and disputes. Advanced technology has not only improved transport and communication but also revolutionized conflict dynamics. This has opened up new areas for disagreement, giving rise to incidences of conflicts through proxies and hybrid warfare.

On the same note, relevant to causes of international disputes are what Rummel (1979) identifies as international conflict behavior. These factors include; opposing interests and capabilities, contact and salience, significant change in the balance of powers, individual perceptions and expectations, a disrupted structure of expectations and the will to conflict (Rummel, 1979). Although a conflict may not necessarily degenerate into a full-blown international dispute, it may be a recipe for disagreements.

Having pointed out some dynamics at play in international disputes, we explore the nature of these disputes. In addition, a detailed categorization of these disputes based on their nature is provided. Real life cases are then given to illustrate each category as shown in the table below.

Table Nature Of International Disputes

	Nature of dispute	**Description and illustration**
1	Policy-based	This emanates from dissatisfaction with policies related to membership in regional or international organizations or treaties.

		Example: Britain quit the European Union (EU) membership due of concerns about their interests being overshadowed by EUs focus on more integrated union (European Commission, 2021; BBC, 2021).
2	Legal/law-based	This kind of dispute revolves around a contestation of a legal provision or involves a dispute that can easily be resolved by a clear application of the law. **Example:** In 2021, the International Court of Justice (ICJ) issued a decision on the maritime dispute between Somalia and Kenya. The dispute centered around a 100,000 square kilometer area in the Indian Ocean, which both countries claimed as part of their exclusive economic zone (EEZ) for the purposes of oil and gas exploration (International Court of Justice, 2021).
3	Fact-based	Although this kind of dispute may have a legal aspect, the crux of the matter rests on the establishment of the facts of the matter in the occurrence of the disagreement. **Example**: In 2019, Iran claimed that a U.S. Navy drone had violated its airspace, while the United States maintained that the drone was flying in international airspace. The following day, Iran's Islamic Revolutionary Guard Corps (IRGC) shot down the drone, which they claimed had entered Iranian airspace (Mazzetti, et al., 2019).
4	Politics-based	Generally, political disputes are those that cannot be resolved by mere application of law. **Example**: In January 2021, Navalny, a prominent opposition figure and critic of Russian President Vladimir Putin, was arrested after returning to Russia from Germany, where he had received medical treatment after being poisoned with a nerve agent. He was detained without trial and charged with violating the terms of a previous suspended sentence. Several countries, including the United States and the United Kingdom, imposed sanctions on Russian officials and entities in response to Navalny's detention (Gutterman & Solovyov, 2021).

3.2 THE NECESSITY AND CHALLENGES TO INTERNATIONAL DISPUTE RESOLUTION

The dispute settlement mechanisms, in the realm of international security and relations help foster interstate cooperation (Mondré, 2015). Enhanced cooperation

between states has implications for international peace and security in general as well as domestic and international economies.

On the same note, Stoica (2019, p. 115) posits that "peaceful settlement of international disputes is closely linked to concerns about the exclusion of war from society, forbidding the use of force and the threat of force in international relations, and the fight against international terrorism, which has become a real danger against humanity." In wars, such as the world wars, the world witnessed great destruction and loss of lives. The attempts at peaceful dispute settlement, mark the desire and concerted effort to minimize wars and conflicts. This would then in turn lead to preservation of lives since violent conflicts affect combatants and noncombatant alike.

In addition, disputes are economically and socially costly as well as time consuming especially when they remain unsolved. The strain in relationships, loss of confidence and the disruption caused as a result; for instance, in trade disputes, could be costly (World Trade Organization, n.d.). On the same note, Le et al., (2022) contend that an unresolved dispute that results in armed conflict not only leads to loss of lives but also to destruction of infrastructure, weakening of governments and their institutions, disruption of labor force as well as increased uncertainty. Uncertainties have devastating effects on local and international investments. The long-standing border dispute between India and Pakistan over the region of Kashmir is an example of a costly and time-consuming international dispute that has had economic and social impacts (Jaffrelot, 2019; Kumar, 2019). The conflict has had significant economic and social costs for both countries, including military spending, loss of life, displacement of civilians, and hindered economic development (Jaffrelot, 2019; Kumar, 2019).

On the other hand, the growth and development of international law and institutions have had an effect on the sovereignty of states. It has placed not only limitations on the sovereignty of states (Ferreira-Snyman, 2007). These limitations to state sovereignty may occur either through consent to treaties or through *jus cogens* norms or obligations *erga omnes*. In addition, the international system has seen transfer of some of state's powers to supranational organizations such as the European Union (Mejia-Lemos, 2018). The impact on sovereignty has implications for nationalism and has seen the rise in populism and protectionism. Populism and protectionist policies, in turn, negatively impact on international trade and relations. These can be observed in the trade tariffs stand-off between the United States and other trading partners such as China. In addition, the Brexit movement meant to claim sovereignty by the UK has, according to Jones (2022), resulted in significant economic costs and lost investments for the UK and impacted negatively on EU trade policy.

Moreover, Key to dispute settlement also are matters to do with signatory-ship to treaties and instruments as well as alignment with national interests. While existence in a group bound by a treaty has positive implications for successful settlement of disputes, the lack of such poses a challenge in choice of mechanisms

and a common ground on which to resolve international disputes. In addition, acceptance of; for instance, the jurisdiction of a court by states in case of arbitration would naturally be made based on the extent to which the courts serve their interests (De Brabandere, 2018).

3.3 INTERNATIONAL DISPUTE SETTLEMENT MECHANISMS

Broadly, there are two ways of settling disputes of any kind, be it local or international. Disputes may be settled through the use of force or through peaceful ways. Although the use of force is prohibited in international law according to the UN charter, there are at least a few instances where the use of force can be justified. The instances include when this is authorized by the UN Security Council acting under Chapter VII of the UN Charter as well as in cases of self-defense (Wood, 2013).

Explored below are some of the mechanisms used to resolve international disputes. Illustrations are provided where necessary.

3.3.1 COERCION (COMPULSION) IN DISPUTE SETTLEMENTS

The use of force may come in a variety of ways ranging from violence to application of some form of pressure short of declaring war (Singh, 2021). Some of the coercive modes of dispute settlements include.

a. **War**

This involves an armed invasion of one state by another in pursuit of their national strategic interest or in retaliation for a direct or indirect attack. It signals a breakdown in peaceful dispute resolution processes. For instance, the invasion of Afghanistan and Iraq by the USA.

b. **Retorsion**

When a diplomatic row erupts between countries, unfriendly but lawful measures may be undertaken by a state to register its dissatisfaction. For instance, a state may expel diplomats from another country in retaliation for a similar, freeze or withdraw development aid as well as thwart malicious cyber operations by deploying digital arsenals. For instance, between expulsion of each other's diplomats by Russia and seven EU countries in 2021.

c. Reprisals (embargo, blockade)

A reprisal in form of a blockade or embargo seeks to isolate and curtail freedom of and access to a state by others. For instance, the Islamic Republic of Iran seized a South Korean tanker in the straits of Hormuz issuing a demand for the immediate release of about $7 billion of Iranian funds frozen in South Korean banks. The United Nation or other powerful states have from time-to-time placed air or arms embargo on different states such as arms embargo on Somalia, Eritrea, South Sudan

and Iran as well as an air blockade on Libya during the Arab Spring and sea blockade on Palestine by Israel.

d. Intervention

This involves an armed intervention in the affairs of a state by another state or group of states to protect the rights or lives of another party. For instance, the US and NATO intervention in Kosovo in 1999 to avert a humanitarian crisis as well as the intervention by the US and its allies in the Middle East when Iraq invaded Kuwait.

3.3.2 PEACEFUL (PACIFIC) SETTLEMENT OF DISPUTES

Peaceful settlement of international disputes is anchored in international law and can be traced back in history to the signing of the Kellogg-Briand Pact in 1928 (Stoica, 2019). Stoica (2019) adds that, peaceful settlement of disputes has not only been a principle of public international law since 1928 but has also been part of contemporary international law recommending that states resolve disputes exclusively by peaceful means.

According to Brownlie (2009), international law provides a practical rounding out of principles of peaceful coexistence of states in a number of ways. It does this through, among others, provision of the definition of political and territorial limits of states, jurisdictions and immunities, basis for civil responsibilities for breaches and possible remedies as well as the principles and guidelines for peaceful settlement of disputes (Brownlie, 2009; Crawford & Brownlie, 2019).

In addition, the principle of peaceful settlement of international disputes features prominently in the UN Charter of 1945, the UN General Assembly's 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States as well as the 1982 Manila Declaration on the Peaceful Settlement of Disputes between States (Rothwell et, al., 2018).

The United Nations (UN), other than obliging its members to settle their disputes peacefully and suggesting a range of alternatives to use in this regard, also provides for the International Court of Justice (ICJ) as a platform for judicial settlement of disputes.

The following are the relevant articles of the Charter of the United Nations related to pacific settlement of international disputes.

Article 2 (3) of the Charter of the United Nations

"All members shall settle their international disputes by peaceful mean in such a manner that international peace and security, and justice, are not endangered."

Article 33 Paragraph 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, enquiry, mediation, conciliation, arbitration, judicial

settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."

3.3.3 PACIFIC MODES OF DISPUTE SETTLEMENT

Pacific modes of international dispute settlement involve the deployment of legally binding and non-legally binding settlement mechanisms also referred to as the use of legal procedures or diplomatic (political) methods respectively.

3.3.3.1 LEGALLY BINDING SETTLEMENT MECHANISMS

The option to use legally binding dispute settlement mechanisms is part of the range of alternatives provided for in the Charter of the United Nations. These mechanisms can be carried out through judicial systems or other institutions or organs established for the purposes of dispute settlement through arbitration. Under this kind of dispute settlement mechanism, parties to the dispute have the legal obligation to accept the proposals of settlement suggested to them (Hamza & Todorovic, 2017).

Article 33(1) of the Charter of the UN recommends arbitration and judicial settlement as mechanisms states would utilize to resolve disputes, in addition to a range of other diplomatic non-legally binding settlement mechanisms (United Nations, 1945; Hamza & Todorovic, 2018).

a. Arbitration

The International Law Commission (as cited in Singh, 2021) defines arbitration as a procedure for the settlement of disputes between parties through a binding award on the basis of law and as a result of an undertaking voluntarily accepted. An arbitrator is a third party who can either be a person or a tribunal.

According to Merrills (2014), arbitration is one of the oldest legal methods of dispute settlement whose current international form can be traced back to the 1974 Jay Treaty between the USA and Great Britain.

Arbitration is an alternative to litigation where the parties get to choose an impartial third party or institution and express commitment to accept as binding the decision (award) made by the arbitrator (Hamza & Torodovic, 2017). Arbitration is based on international law and other rules or laws agreed upon by the parties. Arbitration as a mechanism of settling anticipated disputes may be provided for in a treaty thus setting clear rules of engagement in cases of disputes (Merrills, 2014).

Arbitration is beneficial in resolving legal issues that may serve as obstacles to good relations. It allows the parties some degree of control as they choose the arbitrators, the issue to be addressed and the basis of the decision (Merrills, 2014). Therefore, parties tend to have substantial confidence in the process thus enhancing the overall success of the procedure. In addition, Hamza & Todorovic (2018) argue that arbitration is considered most effective, flexible and equitable as it combines elements of judicial and diplomatic dispute settlement procedures. Once initiated the process may take shorter than the judicial settlement process.

On the other hand, the process may be time consuming as the parties navigate through the hurdles of laying the groundwork for the arbitration process to commence. In addition, the enforcement of the award may be challenging even when all parties are bound by the outcome as it largely depends on responsible behavior by all parties. On the same note, states prefer diplomatic methods to legally binding ones as this keeps them in control (Merrills, 2014).

The Alabama Claims may be a great example of the deployment of arbitration to settle an international dispute. This case refers to damages sought by the USA in 1869 for attacks on the Union Merchant ships during the civil war by the confederate's navy raiders built in Britain. The CSS Alabama, featured chiefly in this dispute as it sunk many Union ships. A tribunal ruled in favor of the USA and awarded it $15.5 million. A treaty was later signed and friendly relations were established (Brent, 2021).

b. Judicial settlements (The international Court of Justice (ICJ) and other courts)

This refers to dispute settlement through the International Court of Justice (ICJ) and all other courts with international jurisdictions. The decisions of these courts are definitive and cannot be appealed.

The ICJ was Established in 1945 as a successor to the Permanent Court of International Justice (PCIJ) and serves as the apex court in dispute settlement by providing remedies when all other pacific means have failed. It draws its mandate from Article 36 of the Charter of the UN and its statutes. The ICJ usually deals with cases involving the use of force, violation of contracts, interpretation and application of treaties, sovereignty as well as land and maritime border disputes, laws of the sea, diplomatic protection to foreigners and principles of international law (Mani & Ponzio, 2018). The court sessions commence once jurisdiction is established.

Unlike arbitration, the judges of the court are not appointed by the parties in dispute. In addition, the parties have no choice in the rules or laws other than the rules and the principles of international law that are applied by the court. However, it is the states that refer disputes to the court. Other than the member states of the UN, other states can also choose to refer their disputes to the court (Merrills, 2014; Mani & Ponzio, 2018).

Other courts, other than the ICJ, which have specialized jurisdiction include; the International Tribunal for the law of the Sea, the Inter-American Court of Human rights, the European Court of Justice, the European court of Human Rights etc. These courts are not only open to states but also other entities such as organizations and can convene smaller chambers with advantages such as those of tribunals (Merrills, 2014).

Of special attention is the feature of the World Trade Organization (WTO) dispute settlement system which denies states party to WTO agreement the principle of free choice of means (Merrills, 2014). The states are not only forced to

forego the remedy of self-help but also undertake to use the WTO procedures exclusively.

The benefit of using the judicial system is based on the belief that courts are independent and professional. In addition, it is most suitable for troublesome matters whose resolution is more important than the result (Merrills, 2014). The process also protects less powerful parties who would have been intimidated or disadvantaged in the diplomatic procedures.

On the other hand, the enforcement of the courts' decisions may be challenging. In addition, since courts address issues specific to law, they may be unsuitable for matters that do not raise legal issues. On the same note, Merrills (2014) notes that in case several courts or tribunals have jurisdiction over aspects of some dispute, the resultant overlap may raise priority challenges. The process may be time consuming, too.

A recently concluded court case between the East African neighbors; Kenya and Somalia is an example of the deployment of judicial settlement in the resolution of an international dispute. It involves a maritime boundary dispute involving about 100,000 square kilometers. The case took a long time to commence since it was filed in 2014 by Somalia. The two countries are members of the UN and signatories to the UN convention on the Law of the Sea. Failure by the two countries to agree resulted in the ICJ providing a ruling on guiding the boundary delimitation. During the sessions, Kenya threatened to pull out and also rejected offering an oral presentation citing bias.

c. Institutional means

The Resolutions of the UN Security Council (SC) and other regional organizations.

In some instances, parties in a dispute have the freedom and do choose to seek assistance from regional organizations or the UN in settling disputes. In addition, the UN Charter grants the United Nations Security Council (UN SC) the mandate to facilitate the settlement of disputes. The UN SC derives the mandate to make such resolutions from Chapter VII of the Charter of the UN.

An example of a legally binding resolution made by the UN SC and related to settlement of international disputes is one that rose out of the occupation of Namibia by South Africa. South Africa (SA) captured and occupied parts of Namibia (then South West Africa) in 1915 as a trusteeship instituted by the League of Nation. The occupation continued for a long time. The UN passed a resolution seeking SA to relinquish the territory to the UN. The UN SC resolution demanded that SA ceases to occupy Namibia. SA declined. The ICJ ruled the resolution was binding and as such other countries were thus required to cease dealing with SA.

3.3.3.2 NON-LEGALLY BINDING SETTLEMENT MECHANISMS

In this section, the article provides a brief exploration of non-legally binding settlement mechanisms as well as real historical cases to illustrate them.

a. Negotiation

Parties engage directly in the diplomatic settlement of a dispute. It is also least expensive. This can be carried out through representatives, ministries of foreign affairs or government heads. Duration varies based on the dispute.
Example – Simla agreement between India and Pakistan in July 1972 which led to a ceasefire, recognition of Bangladesh, and friendly relations.

b. Good offices

This is done through a third party who only facilitates, with the acceptance of the parties involved, the commencement of negotiations. It is useful when the parties cannot initiate negotiation on their own.
Example – The Prime Minister of Britain Harold Wilson offered this to help Pakistan and India to refer their 'Rann of Kutch' dispute to a tribunal leading to The Rann of Kutch Agreement.

c. Mediation

This, just like good offices, involves a third party facilitating the process. However, the third party plays an active role. The mediator's proposals are not binding.
Example – The Soviet Union through their Premier Aleksey Kosygin mediated a dispute between India and Pakistan leading to the Tashkent peace treaty that ended the Indo-Pakistani War of 1965.

d. Inquiry

An inquiry such as a commission of inquiry sets out to establish useful and relevant facts. Facts are essential in scaling down hostilities by dispelling ignorance and misconceptions. However, the inquiry does not rule on liabilities and works through a report.

Example – When disputed elections led to post-election violence in Kenya, mediators recommended a commission of inquiry to establish the facts leading to the violence. The Commission of Inquiry on Post-Election Violence carried out inquiries and produced a report. Based on the report the International Criminal Court conducted investigations and prosecuted the masterminds of the violence.

e. Conciliation

This is also a third-party involvement in investigation of facts and formulation of proposals. It is an institutionalized form of mediation. The third-party could be a specialized conciliation commission such as the International Conciliation Commission.

4.0. THE INTERSECTION BETWEEN LEGALLY AND NON-LEGALLY BINDING MECHANISMS (alternatives or complementary?)

The Charter of the UN provides for the mechanisms for pacific settlement of disputes. As discussed above some of the mechanisms are initiated and controlled by the parties in dispute or by third parties such as negotiation, good offices and mediation. In the event these mechanisms fail, the parties still have recourse to mechanisms that still grant them some degree of control such as arbitration. In addition, parties are free to seek the service of regional and international organizations. It is when these flexible mechanisms fail that parties, mostly, resort to litigations. In this case, therefore, the legally binding settlement mechanism serve as an alternative to diplomatic methods.

The same is inversely true. When parties are reluctant to use litigations or mechanisms whose processes and decisions have no room for appeal, they would regard non-legally binding processes favorably. The only distinction would be while non-binding mechanisms allow smooth movement over to the binding mechanisms, the reverse may not be true. The parties have the options to choose control and flexibility over objective and independent processes.

As a result, the two modes of dispute settlement serve as alternatives to one another. In addition, the process may also be viewed as if on a continuum; with parties losing flexibility and control as they progress towards less flexible and formal mechanisms.

On the other hand, terms of treaties, agreements or contracts may control the choice of dispute resolution mechanism. While some treaties leave room for a choice of mechanisms to adopt, others specify the nature of dispute settlement mechanisms to use. For instance, parties to WTO agreements have a clear path for seeking recourse in case of trade disputes.

On the same note, disputes amongst parties, especially states, may be political or legal in nature. Consequently, the nature of a dispute shall to some extent determine the choice of dispute settlement mechanism to utilize. Diplomatic procedures are best suited for political disputes while judicial settlements are suitable for legal disputes. In addition, when as part of some agreements, states indicate a preference for a particular mechanism before resorting to litigation; for instance, negotiation; then that channel has to be exhausted before litigation can commence (Keane, 2019). The ICJ can refer disputing parties to not only negotiate, but also give an advisory opinion on the modalities of the negotiation (Fischer, 1982). In this case, they are less alternatives and more complementary.

On the other hand, while a case is submitted to litigation can the parties still engage in diplomatic mechanisms to settle aspects of the dispute? I think, this can be done but in exceptional cases. Firstly, just as is the case even in ordinary litigations, parties can agree to out of court settlement leading to the withdrawal of a case. The ICJ, indicated in a ruling between Greece and Turkey in 1978 that there

was no harm in negotiations and litigation progressing concurrently (Barnidge, 2013). The same was evident in the settlement agreement between the USA and Iran over an aerial incident of 3rd July, 1988 (International Court of Justice, n.d.).

In addition, the spirit of the charter of the UN gives preference to friendly diplomatic means before litigation. If there is still room to diplomatically resolve an impasse, then this would save the court time and stabilize interstate relations. Related to this, notes and files showing progress during pre-adjudicative period can inform the court during its proceedings and post- adjudicative period can involve some form of negotiation to enforce compliance (Wellens, 2014).

CONCLUSION

In this article, the dynamics in international dispute settlement have been explored in detail. While the use of force may be justifiable in certain circumstances such as when authorized by the United Nations Security Council or in self defence, the United Nations and the international law encourages and provides for principles, guidelines as well as mechanisms for peaceful resolution of international disputes. Other than delineating the dispute resolution mechanisms as either coercive or peaceful, the same can also be classified as either legally binding or non-legally binding or diplomatic and legal mechanisms respectively. This article has strived to show how these mechanisms may not only be regarded as comprising a range of measures along a continuum of dispute settlement processes and alternatives at times but also as complementary processes that proceed concurrently. For instance, while parties would prefer diplomatic means before engaging in formal litigations, diplomatic endeavors may progress, inform or serve as the conclusion to litigation progress.***

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