PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTE

Introduction
This article is concerned with the various ways through which disputes are resolved in the international framework. There are binding as well as non-binding procedures available within the international order for the peaceful resolution of disputes and conflicts. Basically the techniques of conflict management fall into two categories- diplomatic procedures and adjudication. This article also talks about the landmark case of Kulbhushan Jadav, the peaceful settlement of the Farakka Barrage gunfire issue, the role of International court of Justice and the Naulilaa case. These cases along with other examples have been added for a better understanding of the topic.

Legal and Political Disputes

In order to understand the process of settlement of disputes in the International substructure, there is a prima facie need to understand the meaning of ‘disputes.’ The dispute has a wide range of interpretation and hence it becomes to give a precise definition of the same. In a rudimentary stage, it means a disagreement between two persons, on either a point of law or fact. The prerequisite of having a dispute is that the parties involved must show opposing views.

There are two grounds on which a disagreement can arise between two parties; political or legal. The distinction between the two is purely subjective. It is primarily the attitude of the states that decide whether a dispute is a legal or a political one. Owing to the involvement of the states, it becomes difficult to distinguish the two. For a dispute to be regarded as a legal one, States must desire to settle it on the basis of law, or else it becomes a political dispute.

However, the distinction between the two becomes extremely important because the procedure for settlement of disputes as laid down in International Law deals only with the legal disputes. In Nicaragua v. Honduras, a case concerning Border and Transborder Armed Action, the court clearly stated that it is only concerned with the legal aspects of disputes. If a case so arises involving both political and legal aspects, the court cannot concern itself merely with the political aspect. In an advisory opinion given in the Legality of the Threat or Use of Nuclear Weapons that the presence of a political aspect along with the legal aspect does not deprive the case of its a legal question. However, when a question arises whether the disputes of the State are legal or not, then such a question is solved in accordance with Article
36, para 6 of the Statue, that says the matter shall be settled by the decision of the court. Therefore in International Law ‘dispute’ must be taken in a restricted sense as it does not concern all forms of disputes but only legal disputes. In International Law, there have been two methods devised for settling legal disputes- amicable or pacific means of settlement, and coercive or compulsive means of settlement.

**Amicable Means (Pacific Means)**

Historically International Law has been regarded as an international community to ensure the establishment and preservation of global peace and security. The basic objective of the creation of the League of Nations, 1919 and the United Nations 1945 has been the maintenance of international peace and security. Various multilateral treaties have been concluded that aim for the peaceful settlement of disputes. One of the most important ones is the Hague Convention, 1899 for the Peaceful Settlement of disputes. Article 2 para 3 of the UN Charter provides that all international disputes must be settled by the member by peaceful means while maintaining international peace, security, and ensuring justice is not endangered. The Charter under Article 33, Para 1 enumerates a number of means for the peaceful settlement of disputes. Negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies are among the few choices they have. The various peaceful methods of settlement can be broadly divided into two categories- extra-judicial and judicial method of settlement.

**Extra-Judicial Peaceful Means**

In the extra-judicial settlement, a dispute is settled by means of an agreement between the disputant parties. This method is also known as the political means or diplomatic measures.

**Negotiation**

This is regarded as the oldest and the simplest form of settling disputes. When the disputant parties settle the dispute themselves by discussion or by adjusting the disagreement, the process is called a negotiation. The dictionary meaning of negotiation defines it as a discussion aimed at reaching an agreement. Hence in a case of disagreement, the method of negotiation can be used to reach a state of peaceful agreement. This process of negotiation may be carried out by the Heads of the State, or by their representatives or by diplomatic agents. But the success of this method depends largely upon the degree of acceptability of
claims of one party by the other. However, it has certain weaknesses too. On various occasions, it has been seen that it becomes difficult to come to a consensus.

Another striking fact is that when the disputant States are unequal, the ‘small state’ has to abide by the decisions of the ‘big state’. India and Sri Lanka had settled their boundary dispute in the year 1974 by the negotiation method. In 1976, India and Pakistan settled their pending boundary disputes in the Simla Conference through the negotiation method. The Farraka Barrage gunfire issue, between India and Bangladesh, was also settled with this method.

Good offices and Mediation

Mediation and Good offices come into picture when parties are not willing to go for the negotiation method or they fail to reach a state of settlement through a healthy negotiation. A third person assists them in resolving their legal matters. Such a third person may either be appointed by the parties themselves or by the Security Council. There have been many instances where the appointment has been made by the Security Council. McNaughton in 1949, in 1950 Dixon, in 1951 Graham, in 1957 Jarring were a few. It is also important to note that the third party is under no obligation to accept such appointments. The good offices by Robert Menzie- the PM of Australia- were rejected by India for the settlement of the Kashmir issue. The views of the third party acquire the character of ‘advice’ and they by no means have a binding force. There are two ways of settling a dispute by the third party: mediation and good offices.

MEDIATION

The third-party involved is known as the mediator. The mediator is always expected to be just and impartial. In the process of mediation, the mediator participates in the discussion, gives his views and suggestions in resolving the dispute. The mediator is usually known to settle the disputes as he may even help in signing the treaty embodying the settlement that is reached.

A famous example of mediation is when the Soviet Premier Kosygin settled the dispute between India and Pakistan by signing the Tashkent Agreement in 1966.
GOOD OFFICES

Where in mediation, the mediator is required to be present in the process, Good offices is basically the act through which the third party either arranges for a meeting between the disputant parties or he acts, in ways through which a peaceful settlement can be reached. It is important to note here that the third party is not directly involved in this process. When the parties have failed to come to terms through negotiation, it is the third party that provides for their good offices for the peaceful settlement of disputes. Once the disputant parties are brought under one roof the third party has no active role to play. Although Para 1 of Article 33 does not refer to good offices as a means of settlement of dispute but it may not be read in an exhaustive manner.

The Prime Minister of the United Kingdom, James Harold Wilson, had lent his good offices to India and Pakistan to reach an agreement in reference to the Kutch issue. In 1947, there was a dispute between the Republic of Indonesia and the Netherlands, wherein the Security Council rendered its good offices.

Conciliation

The process where a Commission or a Committee is appointed and the dispute is referred to them and it is required by them to find out about the facts and then to write a report for the settlement of the dispute, is called conciliation. Here an effort is made for a peaceful compromise, to sign an agreement but important to note that the proposals made by the commission are never binding on the parties to the dispute. This method is unique in its own way and completely differs from mediation, inquiry or arbitration. Here, proposals are made for the settlement after finding facts about the dispute but in mediation, the third party is part of the meetings with the parties in dispute. Also, it is not for the mediator to ascertain facts about the case, like in conciliation.

Such commissions or committees that provide for conciliation may either be permanent or ad hoc in nature. The idea of the Conciliation Commission was born in 1899 and 1907 Hague Conventions for the Pacific Settlement of Disputes. Several treaties after the end of the First World War were made through the Conciliation Commission. The General Assembly under Article 10 and 14 and the Security Council under Article 34 has the power to appoint a commission to settle disputes.
Among the various treaties that have been signed through the Conciliation Commission the most important ones are:

- Pacific Settlement (1948)
- Pact of Bogota (1948)
- The Vienna Convention on Protection of the Ozone layer

Earlier the Secretary-General was required to present the list of persons nominated by the member states for the inclusion in the panel for conciliation. The States, however, did not show an encouraging or positive. So, at present, the process of conciliation is mainly utilized by the States. In 1952, the Belgo-Danish Commission and the 1956 Greco-Italian Conciliation Commission were the key examples of the appointment of a conciliation commission for the settlement of disputes with reference to International Law.

**Inquiry**

One of the most common obstacles that prevent the successful settlement of disputes in International Law is the ascertainment of the facts, as it has been observed for the years that different views are put forward by the disputant parties. A majority of International disputes get stuck because of the unwillingness and inability of the parties to agree to the facts.

The dictionary meaning of the term ‘inquiry’ suggests that it is an act of asking for information. Similarly, for the settlement of disputes in International Law, a Commission is to be appointed, consisting of honest and impartial investigators, so that they can verify the facts of the issue. The sole function of the Commission is known to be the ascertainment of issues. This procedure for the settlement of international disputes was born at the Hague Conference 1899. It was said that the States who were not willing to end their disputes by agreement might use the process of inquiry.

It consisted of a ‘special agreement’ between the parties in dispute. The ‘special agreement’ was truly special as it enjoyed a wide range of powers, ranging from examination of the facts, mode of investigation and examination, the time frame for the formation of a Commission, the place where the Commission will sit, the language that is to be used. And the extent of the powers of the Commission. Article 11 states that Hague was chosen to be the place where the Commission would sit if the ‘special agreement’ chose to remain silent on the place of the meeting.
Towards the end of the First World War, the trend for settling International disputes was seen to shift to the process of Conciliation. States chose to invoke Conciliation rather than to sit for inquiry. In 1967, a United Nations Register of Experts was established by the General Assembly. Its function was primarily fact-finding, wherein the names of the persons whose services could be used by the States were mentioned in accordance with the fact-finding for the agreement required for the peaceful settlement of the dispute.

By the United Nations

Peaceful means of settlement of disputes is one of the principles of the United Nations provided under para 3 of Article 2 of the Charter. The General Assembly and Security Council are the two organs of the United Nations that have been empowered to discharge functions regarding the same.

1. General Assembly

Despite the fact that the Assembly has not been empowered to settle the disputes using any specific means, it holds a wide range of powers to discuss the same under Article 11 para 2 and may make recommendations under Article 14 to the parties in dispute which may help them to arrive at peaceful and friendly conclusions. Thus, in simpler words, it can be said that the Assembly holds the ‘general’ power for the peaceful settlement of international disputes.

There have been various instances where the Assembly has suggested for the peaceful settlement of disputes. In 1974, the Assembly called upon the Member States to make full use and seek improved implementation provided for in the Charter of the United Nations for the exclusively peaceful settlement of any dispute or any situation.

Manila Declaration

In 1982, the Committee successfully drafted a declaration that was to be adopted by the assembly. The same declaration was known as the Manila Declaration. The declaration mentioned that the States shall seek any peaceful way of settlement of a dispute in good faith and a spirit of cooperation. It also mentioned that the States had absolute liberty to make full use of the United Nations.

Declaration on Prevention and Removal of dispute
This declaration was drafted by the special committee, which was said to threaten International Peace and Security. This declaration is said to have been approved by the Assembly in the same year. Some of the important provisions of the declaration are as follows:

1. Foreign Ministers level meetings to be held sometimes by the Security Council.

2. The appointment of a Secretary-General as a rapporteur in a specific dispute must be considered by the Council.

3. Fact-finding or good offices should happen at an early stage.

4. In order to prevent a dispute, the Secretary-General must consider approaching the States concerned.

This declaration is said to be the first instrument that deals with the prevention of international disputes and promotes international peace, harmony, and security.

Fact-finding Activities

In 1990 the Special Committee was asked to give priority to the impending questions on maintaining international peace and security. For this purpose, the fact-finding activities were to be primarily considered. In 1991, a declaration on the fact-finding committee was adopted by the General Assembly. It had a major role in strengthening the role of the United Nations in the maintenance of international peace and security and also to promote the settlement of disputes through peaceful means. The fact-finding mission was either taken by the Security Council, the Assembly, and the Secretary-General. Secretary-general was expected to use the find finding activities at an early stage for an easier and more peaceful contribution in matters of dispute.

He was required to prepare a list of the experts in various fields who could carry out the fact-finding activities.

Hand-book on the peaceful settlement of disputes

Again with the help of Special Committee’s recommendations to the Secretary-General to prepare a hand-book on peaceful settlement of disputes and also to provide special powers, functions, and duties to the Assembly, the Council, and the Secretary. An elaborate draft handbook is said to have been drafted by 1992.
2. Security Council

Chapter VI of the Charter provides the various modes by which the Council settles the disputes peacefully.

Judicial Settlement

Judicial settlement is the process of solving a dispute by the ‘international tribunal’ in accordance with the rules set by the International Law. Here it is important to understand the expression ‘international tribunal.’ A tribunal acquires an international status because of its jurisdiction. At the present day, the International Court of Justice, although not the only tribunal but it is indeed the most important tribunal around the globe. There are ad hoc tribunals and mixed commission also. It is important to note that the International Tribunal is different from the Municipal Tribunal. As the name suggests, International Tribunal applies International Law and similarly Municipal Laws are applied by Municipal Tribunal. To what extent can International Laws be applied by the Municipal tribunal depends entirely on the relationship between the fields of law. Arbitration and settlement of disputes by International Law have become two very important modes of settlement of disputes today.

Arbitration

Arbitration is the process of using the help, advice and recommendation of a third party called arbitrator to settle disputes. The International Law Commission defines it as ‘a procedure for the settlement of disputes between states by a binding award on the basis of law and as a result of a voluntarily accepted undertaking’. Owing to its tendency to blend civil law procedure and common law procedure, International arbitration is sometimes also referred to as a hybrid form of international dispute resolution. The International Court of Justice in the case of Qatar v. Bahrain, stated that the word arbitration for the purpose of international law, usually refers to ‘the settlement of disputes between states by judges of their own choice’.

An agreement was concluded between India and Pakistan to refer the Kutch dispute to an arbitral tribunal. Consent of the parties is also obtained before a dispute comes into existence. There are four main characteristics of arbitration:
1. A tribunal is constructed to hear a particular case only and its composition is also
majorly determined by the parties to the dispute.

2. An arbitral tribunal does not determine its own jurisdiction but has to decide the
dispute as submitted by the parties.

3. It is required to make its award with reference to the rules adopted for that purpose or
by rules which are otherwise binding.

4. The parties are known to have control over the procedure to be followed.

The best-known rules of arbitration include those of the International Chamber of Commerce
(“ICC”), the London Court of International Arbitration (“LCIA”), the International Centre for
Dispute Resolution of the American Arbitration Association (“ICDR”), and the rules of the
Singapore International Arbitration Centre (“SIAC”) and the Hong Kong International
Arbitration Centre (“HKIAC”). Although the award in the Kutch case was vehemently
criticised on the ground that it has political overtones, it was accepted by India.

**International Court of Justice**

The headquarters of the International Court of Justice is situated in Hague, Netherlands. It
was founded on 26th June, 1945 San Francisco. Originally the purpose of Article 34, para 1
was to exclude individuals from bringing claims against States before the Permanent Court of
Justice. However a proposal was made in 1929 to the Committee of jurists that Article 34
must be amended. However, presently although they still do not have access to the Court in
contentious cases they can seek advisory opinion.

The Permanent Court of International Justice is known to be the predecessor of the ICJ.
Which means before the creation of the International Court of Justice, disputes of the parties
were to be settled by the Permanent Court of International Justice. Its jurisdiction depends
entirely on the willingness of the parties involved. This along with arbitration is commonly
known as the judicial way of settling a dispute. Consent of the parties is a prerequisite for the
cases to be heard in the ICJ. While the judges of the court are appointed by the General
Assembly and the Security Council of the United Nations, the arbitrators are appointed by the
parties themselves. There are three ways by which the International Court of Justice resolves
the cases are that brought before it:
1. Parties can settle their dispute by themselves and cases can be withdrawn by the state or the court can give the verdict.

2. International Court of Justice uses International Laws are it’s guiding light.

3. Writing by experts is also referred to.

ICJ’s primary function is known to be resolving disputes between sovereign states. Only States can be parties to the dispute that is brought before it. The International Court of Justice has recently decided the Kulbhushan Jadhav case. India and Pakistan were the parties to the dispute in this case. Jadhav was a retired Indian Navy Officer and was sentenced to death by the Pakistani Military Court. The charges that were pressed against him were of terrorism and espionage. In a major win for India, after a 4 year long battle from being arrested on 3rd March, 2016, he finally sought relief after the suspension orders of his hanging were delivered by ICJ in 2019.

Compulsive or coercive means

The meaning of the words, compulsive and coercive itself suggests that these are non-peaceful means of settling a dispute. This method may sometimes also involve force and pressure to resolve the issue raised. Force in this method does not indicate to the extent of armed forces but methods that are short of war.

Retortion

Retortion is based on the principle of tit for tat and is also a synonym for retaliation or to say it is the technical term. It is an act done by one state in a manner similar to what was done earlier by another state. Such acts done by the States are not illegal but are permitted under International Law. It is an effective tool of law enforcement although the method of implementation may seem unfriendly. There are numerous cases where retortion has been used as a means to settle disputes. The classic example for a better understanding is if citizens are treated unfairly in another State, the former may also make similar rigorous rules in respect of citizens of the latter state. The very purpose of retortion is retaliation. It is employed not to secure redress. The legitimate use of retortion has been affected to a large extent by the UN Charter. In retortion those actions cannot be legitimately taken which are likely to endanger international peace and security, such if taken are treated as illegal.

Reprisals
If the problem is not solved by Retorsion the States have the right to resort to Reprisal. In retaliation, the state can initiate such a proceeding where the problem may be resolved. However, reprisal is one such method that can only be resorted against a State when it has indulged in some illegal or inappropriate activity. The method and process of reprisals were clearly defined in the Naulilaa case, (Germany v. Portugal).

For example, Israel has resorted to reprisal many times against Lebanon. It has bombarded those regions of Lebanon where Arab terrorists attacked the territories of Israel. The members of the UN cannot indulge in reprisals of such a type which endangers international peace and security. It is commonly accepted that Reprisal becomes justified and legal when the other country has committed an international tort or violates the norms of International law. In the provocative action and reprisal, there must be an adequate proportion that is in proportion to the violation, the damage should be caused. The reprisal is valid only when demand for reparation was made and this was not fulfilled.

**Embargo**

Embargo is of Spanish origin. It is also a kind of Reprisal. Ordinarily it means detention. But in International it has a technical meaning of detention of ships in port. If the ship belongs to a State which has committed an international tort or has committed some other international wrong and is available in the territorial waters of the State against which tort or wrong has been committed then such vessels can be restrained from traveling through that area as a matter of right by the other State. The purpose of such an embargo is to compel another state to settle the dispute. In reprisals also vessels of one state may be detained by another state. If the vessel is detained for the purpose of seeking redressal, embargo is deemed as a form of reprisal. But if the detention is for any other purpose then it is not regarded as reprisals. Embargo may be applied individually or collectively under the authority of the United Nations. Maintaining international peace and security still remains the most important prerequisite.

**Pacific Blockade**

A pacific blockade is a blockade used for the purpose of bringing pressure exercised by a great power to bear on a weaker state without actual action. When the coast of a state is blocked by another state for the process of preventing ingress of vessels of all nations by use of warships and other means in order to exercise economic and political pressure on that
state, the act is specifically called a blockade. Requirements for a pacific blockade are similar to those that are needed for a normal blockade during a wartime. It has been regarded as an aggressive means for the settlement of international disputes because it consists in temporary suspension of commerce of the offending state by closing of access to the coasts. The numerous cases of blockade that have occurred during the nineteenth century have established the admissibility of pacific blockade for the settlement of political as well as legal international differences. At present while blockade is illegal when it is applied by the state individually, collective blockade applied under the authority of the security council to settle the dispute is lawful.

**Intervention**

Intervention by state in the affairs of another state is a recourse to the settlement of disputes. It is important to note that after the establishment of the United Nations a state has been substantially prevented from taking compulsive actions to settle international disputes. Any measure that is likely to threaten or endanger international peace and security has become illegal. Thus, the compulsive measures are lawful as long as they are able to maintain international peace. Intervention is therefore regarded as unlawful and is not justified.

**Conclusion**

In a nutshell, it is important to understand that in the long march of man from cave to computer and his journey from age of stones to the modern world, the central idea has always been that of order and security. Efforts and attempts have always been made so that any form of chaos is minimised and peace is promoted. Law has proved itself to be that element which binds the members of the society. It is fair to say that international law has always considered its fundamental purpose to be the maintenance of peace. Peaceful as well as compulsive means are used under International Law for the peaceful settlement of disputes. This article includes recent cases and other examples for a detailed understanding.