International Dispute Resolution

CHPATER 8

International Dispute Resolution

Introduction

International disputes are solved in two general methods:

- the International Court of Justice and Other International Tribunals and {court method}
- Arbitration, Negotiation, and Mediation- diplomatic means of dispute resolution mechanisms. {Out of courts}

Objectives

- Modest ways of dispute resolution mechanisms at the international level;
- The scope and duties of the ICJ;
- The varying jurisdictions of the ICJ;
- basis of the Court's Jurisdiction;
- Organs and agencies of the United Nations authorized to request advisory opinions;
- The relationship between the ICJ and the Security Council; and
- Other international tribunals (Tribunal for the Former Yugoslavia, International Criminal Court.)

Negotiation, Arbitration, and Mediation

- Arbitration is a dispute resolution process where the opposing parties select or appoint an individual called an Arbitrator.
- Upon appointment, the Arbitrator will arrange the process to hear and consider the evidence, review arguments and afterwards will publish an award in which the items of dispute are decided.
- In some cases the Arbitrator can conduct the arbitration on documents evidence only. When published the Arbitrator's decisions are final and binding on the parties. It is rare for an arbitration to be appealed to the courts. Arbitration may comprise a sole Arbitrator, or may be a panel of Arbitrators.

- A dispute resolution process in which the parties freely choose to participate and any agreements reached to settle disputes is done solely by the parties, without interference.
- The Mediator is selected by the parties and once selected; the Mediator will arrange the mediation process.
- The Mediator makes no decisions; instead he/she acts as a facilitator only to assist the parties to understand the dispute, provide structured discussion and to help the parties reach a dispute settlement agreement.
- If the parties can't reach a settlement agreement, they are free to pursue other options. The parties generally decide in advance how they will contribute to the cost of the mediation. Mediation is a very important form of ADR, particularly if the parties wish to preserve their relationship.

- Conciliation is a less frequently used form of ADR, and can be described as similar to mediation. The Conciliator's role is to guide the parties to a settlement.
- The parties must decide in advance whether they will be bound by the Conciliator's recommendations for settlement.

The International Court of Justice/ICJ/

- The ICJ acts as a world court.
- It has a dual jurisdiction: it decides, in accordance with international law, disputes of a legal nature that are submitted to it by States (jurisdiction in contentious cases); in which the court produces binding rulings between states that agree, or have previously agreed, to submit to the ruling of the court; and
- it gives advisory opinions on legal questions at the request of the organs of the United Nations or specialized agencies authorized to make such a request ***(advisory jurisdiction***). Advisory opinions do not have to concern particular controversies between states, though they often do.

Contentious Jurisdiction

- In the exercise of its jurisdiction in contentious cases, the International Court of Justice has to decide, in accordance with international law, disputes of a legal nature that are submitted to it by States.
- An international legal dispute can be defined as a disagreement on a question of law or fact, a conflict, a clash of legal views or of interests.
- Only States may apply to and appear before the International Court of Justice. International organizations, other collectivities and private persons are not entitled to institute proceedings before the Court.
- The Court can only deal with a dispute when the States concerned have recognized its jurisdiction. No State can therefore be a party to proceedings before the Court unless it has in some manner or other consented thereto.

- **Basis of the Court's Contentious Jurisdiction**
- The jurisdiction of the Court in contentious proceedings is based on the consent of the States to which it is open. The form in which this consent is expressed determines the manner in which a case may be brought before the Court.

(a) Special agreement

- Article 36, paragraph 1, of the Statute provides that the jurisdiction of the Court comprises all cases which the parties refer to it. Such cases normally come before the Court by notification to the Registry of an agreement known as a special agreement and concluded by the parties especially for this purpose. The subject of the dispute and the parties must be indicated (Statute, Art. 40, para. 1; Rules, Art. 39).

Cases provided for in treaties and conventions

- Article 36, paragraph 1, of the Statute provides also that the jurisdiction of the Court comprises all matters specially provided for in treaties and conventions in force.
- In such cases a matter is normally brought before the Court by means of a written application instituting proceedings; this is a unilateral document which must indicate the subject of the dispute and the parties (Statute, Art. 40, Para. 1) and, as far as possible, specify the provision on which the applicant founds the jurisdiction of the Court (Rules, Art. 38).
- Article 37 of the Statute of the International Court of Justice stipulates that whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the Statute, be referred to the International Court of Justice.

Compulsory jurisdiction in legal disputes

- The Statute provides that a State may recognize as compulsory, in relation to any other State accepting the same obligation, the jurisdiction of the Court in legal disputes. These cases are brought before the Court by means of written applications. The conditions on which such compulsory jurisdiction may be recognized are stated in paragraphs 2-5 of Article 36 of the Statute, which read as follows:
- *"2. The States parties to the present Statute may at any time declare that they recognize as compulsory* ***ipso facto*** *and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:*
- *(a) the interpretation of a treaty;*
- *(b) any question of international law;*
- *(c) the existence of any fact which, if established, would constitute a breach of an international obligation;*
- *(d) the nature or extent of the reparation to be made for the breach of an international obligation.*

(d) Forum prorogatum

- If a State has not recognized the jurisdiction of the Court at the time when an application instituting proceedings is filed against it, that State has the possibility of accepting such jurisdiction subsequently to enable the Court to entertain the case: the Court thus has jurisdiction as of the date of acceptance in virtue of the rule of forum prorogatum.

(e) The Court itself decides any questions as to its jurisdiction

- Article 36, paragraph 6, of the Statute provides that in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court. Article 79 of the Rules lays down the conditions which govern the filing of preliminary objections.

Advisory Jurisdiction

- available only to international organizations
- It has no binding effect
- the advisory opinions of the Court nevertheless carry great legal weight and moral authority. They are often an instrument of preventive diplomacy and have peace-keeping virtues. Advisory opinions also, in their way, contribute to the elucidation and development of international law and thereby to the strengthening of peaceful relations between States.

Organs of the UN entitled to request

- the General Assembly, Security Council , Economic and Social Council, Trusteeship Council, Interim Committee of the General Assembly.

Also the United Nations, Specialized Agencies:

- The (ILO), Food and Agriculture Organization of the United Nations (FAO) UNESCO), (WHO), International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC) , International Development Association (IDA), (IMF), International Civil Aviation Organization (ICAO), International Telecommunication Union (ITU) , International Fund for Agricultural Development (IFAD), World Meteorological Organization (WMO), International Maritime Organization (IMO), World Intellectual Property Organization (WIPO), United Nations Industrial Development Organization (UNIDO) are the beneficiaries of advisory opinion of the International Court.

Other International Tribunals

- In addition to the ICJ the international Community also establishes permanent and/ad hoc tribunals for the achievement of its objective. Below a brief look at is made to introduce some tribunals established by the United Nations General Assembly or the Security Council.

International War Crimes Tribunals

- International war crimes tribunals are courts of law established to try individuals accused of war crimes and crimes against humanity.
- Despite the often terrible nature of the crimes that individuals commit during intractable conflicts, including genocide, torture, and rape, it has become common practice to offer the accused an opportunity to explain his or her actions in front of the victims and their families, as well as the media. Tribunals have almost entirely replaced retributive justice's summary executions

- Following a conflict, crimes that have exceeded the normal parameters of war behavior (jus in bello) must be dealt with before a society can begin the peace building process of reconciliation.
- War crimes tribunals do not offer the accused a chance for forgiveness as truth and reconciliation commissions do. Tribunals do, however, offer victims and their families the opportunity to confront those responsible for what happened to them, and hopefully to put the horrors of war behind them. A tribunal can be a forum for honoring the memory of those lost, as well as punishing those responsible.
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- The war crimes tribunals of Nuremberg and Tokyo, in which legal justice was used to punish the upper echelons of the German and Japanese military following World War II, continue to be regarded as the most successful tribunals to date.
- The democratic, progressive success of both nations following these tribunals is often given as evidence of the effectiveness of war crimes tribunals in helping a society that has perpetrated war crimes to return to stable diplomatic relations and the road to peace.
- One of the arguments in support of war crimes tribunals is that they act as a deterrent to potential war criminals. In fact, this idea is one of the main arguments behind a push to construct a permanent international war crimes tribunal. Currently, tribunals have to be sponsored by an organization like the U.N. or a national government. Without a permanently-established war crimes court, military and government leaders may feel encouraged to commit crimes such as the mass murder of ethnic groups in East Timor in the 1980s and 1990s or in Rwanda in 1994.

- War crimes tribunals offer a rare chance for the world's leaders and citizens to scrutinize both the deplorable decisions made by particular leaders, and the atrocities committed by the soldiers and agents of those leaders. Without such a forum, there would be no method for assuring that the masterminds and perpetrators of genocide and other war crimes are justly punished.

The Creation of an International Criminal Court

- The International Criminal Court (I.C.C.) was officially established on July 1, 2002, and is located in The Hague, The Netherlands. However, all of the world's nations have not ratified the Rome Statute of the I.C.C., the document outlining the purposes, capabilities, and restrictions of the I.C.C. In fact, the United States, Russia, and Japan are among the major industrialized states that have yet to ratify this document. However, a sufficient number of nations have ratified the Rome Statute, and in accordance with its rules, the court now officially exists.

- A key component of the I.C.C. is that only war crimes committed after the I.C.C.'s establishment can fall under its jurisdiction. Another aspect is that only those nations that ratify the document will fall under its jurisdiction. In general, the I.C.C. will have jurisdiction over crimes brought to its attention by outside parties or by its own investigators. The I.C.C. will not replace national tribunals, but will complement them by offering an arena for hearing claims that may be too complicated or extensive for a national court.
- One could argue that until all of the nations of the world ratify the Rome Statute, the Court cannot truly be considered an international criminal court. However, the establishment of the Court is a significant step toward the creation of an international system of war crimes justice.

- **International Criminal Tribunal for the former Yugoslavia**

- The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, more commonly referred to as the International Criminal Tribunal for the former Yugoslavia or ICTY, is a body of the United Nations (UN) established to prosecute serious crimes committed during the wars in the former Yugoslavia, and to try their alleged perpetrators. The tribunal is an ad-hoc court and is located in The Hague in the Netherlands.

- It was originally proposed by German Foreign Minister Klaus Kinkel and established by Resolution 827 of the United Nations Security Council, which was passed on May 25, 1993.
- It has jurisdiction over four clusters of crime committed on the territory of the former Yugoslavia since 1991: grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide, and crime against humanity.
- It can try only individuals, not organizations or governments. The maximum sentence it can impose is life imprisonment. Various countries have signed agreements with the UN to carry out custodial sentences. The last indictment was issued March 15, 2004. The Tribunal aims to complete all trials by the end of 2009 and all appeals by 2010. There are achievements the tribunal has made since its establishment as criticisms and failures it has faced on the other features.