

Public International Law

Chapter 6- International Dispute Resolution

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- Main Topics for Discussion:

- **Negotiation, Arbitration and Mediation**
- **The International Court of Justice**
 - **The Organization of the Court**
 - **The Jurisdiction of the Court**
- **Other International Tribunals (ICTY, ICTR, ICC and Others)**

Introduction

- ***International disputes are solved in two general methods:***
- ***In the first category*** lie Arbitration, Negotiation, conciliation and Mediation- ***diplomatic means*** of dispute resolution mechanisms.
- ***In the second category*** lie the ***International Court of Justice*** and ***Other International Tribunals.***

Negotiation, Arbitration, Conciliation and Mediation

Arbitration

- ***Arbitration*** is a dispute resolution process where ***the opposing parties select or appoint an individual called an Arbitrator.***
- ***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.

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- 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.***
- ***Costs of the arbitration*** are disposed of in the ***Arbitrator's award***, unless the parties have some agreement to the contrary.

Mediation

- Here, ***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.
- He also helps the parties in ***framing the issues*** under the dispute.

- **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

- 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 parties generally ***share equally in the cost of the conciliation***.

Negotiation

- Negotiation is ***a less structured form of ADR.***
- The negotiator's role is ***to keep the parties talking and bargaining.***
- The parties may be individuals or teams.
- The negotiator ***keeps record of party positions, and points of agreement they reach*** as discussions proceed.

- The facilitator will ***prepare a memorandum of agreement*** containing all of the points agreed.
- The parties generally ***share equally in the cost.***
- On any matters unresolved, ***the parties are free to pursue other options.***

The International Court of Justice

- ***The International Court of Justice acts as a world court.***

- The Court has a ***dual jurisdiction***:

1. Contentious Jurisdiction- It decides, in accordance with ***international law, disputes of a legal nature that are submitted to it by States*** in which the court ***produces binding rulings between states that agree, or have previously agreed, to submit to the ruling of the court;***

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2. Advisory Jurisdiction

It gives advisory opinions on legal questions at the request of ***the organs of the UN or Specialized Agencies*** authorized to make such a request or International Organizations.

Contentious Jurisdiction

- In the exercise of its jurisdiction in ***contentious cases***, the ICJ 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.

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- ***Only States*** may apply to and appear before the International Court of Justice in its ***contentious jurisdiction***.
- ***International organizations, NGOs, other collectivities and private persons are not entitled to institute proceedings before the Court.***
- However, ***International Organizations*** can be ***a party to ICJ in its Advisory Jurisdiction***.

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- ***Article 35 of the ICJ Statute*** defines the conditions of ***access for States to 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***

Basis of the Court's Contentious Jurisdiction

- The jurisdiction of ICJ in contentious proceedings is based on the ***consent of the States to which it is open.***
- The following are the ***most common basis by which ICJ can acquire contentious jurisdiction to entertain cases between states.***

1.SPECIAL AGREEMENT

- ***Article 36, paragraph 1***, of the ICJ Statute provides that the jurisdiction of the Court comprises ***all cases which the parties refer to it.***
- ***If the disputant states agree to take their case to the ICJ when the dispute arise, it can entertain the case.***

2. 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.***
- This is called a ***“Jurisdictional Clause”***.
- ***Here if there is a provision in a treaty that refers any future dispute among the parties to the ICJ, ICJ can entertain the case.***

- *The States parties to the present Statute may at any time declare that they recognize as compulsory..., in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:*
 - 1. The interpretation of a treaty;***
 - 2. Any question of international law;***
 - 3. The existence of any fact which, if established, would constitute a breach of an international obligation;***
 - 4. The nature or extent of the reparation to be made for the breach of an international obligation.***

3. 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.*

Advisory Jurisdiction

- The court's advisory opinions have no binding effect.
- Although 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, have peace-keeping virtues and strengthen peaceful relations between States.

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- In accordance with the Article 96(1) of the UN Charter "the General Assembly or the Security Council may request the ICJ to give an advisory opinion on any legal question".
- Article 96(2) of the UN Charter provides that "Other organs of the United Nations and specialized agencies may request an advisor opinion from ICJ."

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- In theory, “So far as the parties to the case are concerned, a judgment of the Court is binding, final and without appeal.”
- In practice, the Court's powers have been limited by the unwillingness of the losing party to abide by the Court's ruling, and by the Security Council's unwillingness to enforce consequences.

Other International Tribunal

- In addition to the ICJ, ***the international Community also establishes permanent or ad hoc tribunals for the achievement of its objective.***
- There are many international tribunals established by the United Nations General Assembly or the Security Council.

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- *Some of the major famous international tribunals which are created by the UNSC are:*

- 1. The War Crimes Tribunals of Nuremberg and Tokyo,**
- 2. International Criminal Tribunal for the former Yugoslavia (ICTY),**
- 3. International Criminal Tribunal for Rwanda (ICTR) and**
- 4. Others...**

The International Criminal Court (ICC)

- The **International Criminal Court (ICC)** was officially established on ***July 1, 2002***, and is located in ***The Hague, The Netherlands***.
- This court is established by the ***Rome Statute of the ICC***.
- ***ICC has more than 100 state parties.***
- In fact, ***the United States, Russia, and Japan*** are among the major industrialized states ***that have yet to ratify this document.***

- ***ICC has a universal jurisdiction to try some grave and heinous international crimes such as:***

- ❖ ***Genocide,***
- ❖ ***The crime of aggression,***
- ❖ ***The crime against humanity,***
- ❖ ***Torture and***
- ❖ ***others.***