

Course – LL.B sem 2
Public International Law
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**Method / Techniques/
Instruments of peaceful
Settlement of International
disputes**

Introduction

- The main purpose and objective of the UNO is to maintain international peace and security & develop friendly relation among nations based on the principle of equal right and self determination of people. It is a objective of the UNO is to settle the disputes of the nations with peace full methods.
- Disputes may arise among nations. When one nation attacks on another nation.
- The conflict arises among nations due to the many reasons.

- **Territorial claim :** The War Between many States may be started from territorial claim such as territorial boundary claim, seas, rivers; channels are also the sources of war.
- **Feeling of extreme nationalism:** Feeling of nationalism may arise conflict between states. Strong nation wants to attack against weaker nation.
- **Misunderstanding due to arm race:** Arms race between the neighboring states creates suspension of other state and increases the disputes between the neighboring states.

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- ***Supremacy through economic control:***
International trade is the source of the richness of a nation. Domination over the world made some countries rich and the competition between these nations created world wars

Method / Techniques/ Instruments of peaceful Settlement of International disputes

- **Negotiation:** It is the first and the simplest method of peaceful settlement of disputes. It is most common form of disputes resolution. Usually the negotiations are carried on either by the head of the states or their appointed authority. The actual negotiations are preceded by an exchange of correspondence to clear up the point of controversy.

- ① Negotiation is a non-binding procedure in which discussion between the parties are initiated without the intervention of any third party.
- ① In negotiation process parties should determine what they want, their own interests as distinguished from their opponents. Each party should identify all their interest, motivation and perceptions.

- There are four characteristics of a good negotiated settlement 1.Fairness 2.Efficiency 3.Wisdom 4.Stability.
- Each party needs to explain its own interests and listen carefully opposition wish and understand his sympathy.
- The negotiation should take place without the intervention of third party.

- In international disputes the negotiating parties have to take in the cognizance (knowledge) the national interests and the public opinion while negotiating.
- Negotiation developed cordial future relations and keep the friendly relations among the states as the issue of dispute settled with mutual understanding. In negotiation though the disputes is completely solved, it reduces the area of tensions between two states.

- Negotiations took place between India and Pakistan when the Indian prime minister Mr. Vajpayee and Pakistan President Mr. Pervez Musharraf met at Agra (India) to settle all the disputes pending between India and Pakistan including Kashmir.

- ① **Mediation:** The term mediation is sometimes used as a synonym for intervention but mediation differs from it in being purely a friendly act.
- ② Mediation is a methods under which the third party either at its own initiative or at the request of the disputant parties, assumes responsibility for the settlement of the dispute. To mediate means to interpose between parties to interest them to each other.

- Mediation is a non-binding procedure in which an impartial and neutral third party, (the mediator) assists (to help) the parties to a dispute in reaching a mutually satisfactory and agreed settlement of the dispute.
- The mediation process is informal and an assisted negotiation of a dispute settlement.
- The mediator actively participates in the dispute. However, the suggestions made by the mediator are not binding on the parties.

- Example: Tashkant agreement between India and Pakistan in 1965-66.
- The soviet Russia took initiative steps to reduce the conflicts between India and Pakistan and created a propitious atmosphere for settlement.

- **International Arbitration:** It has been in place from the last several centuries. A dispute of two nations is referred to an arbitrator to whom they appoint with their mutual consent. The arbitrator hears both sides and gives his decisions, which is called AWARD.
- According to John Parris, arbitration is “A settlement of a dispute by an arbitrator who has absolute control and who is chosen by the parties to decide a disputes”.

- Arbitration is the judging of a dispute between states by someone not involved in the disputes whose decision both parties agree to accept.
- Art.15 of The Hague convention of 1899 lays, “International arbitration has for its object the settlement of differences between states by judges of their own choice and on the basis of a respect for law”.

- The permanent court of arbitration was established at The Hague as per the first Hague conference of 1899. It functions as an arbitrator for the willing states. It had given its decision in most of the cases and solved the problems amicably. Examples are north Atlantic fisheries case 1910, Muscat Dhows case 1905. Savarkar case 1911. The AWARD given by this court is according to the principles of the international Law & is binding on the parties.

- The League of Nations made arbitration compulsory in all cases. It permitted the permanent court of arbitration setup under The Hague convention of 1899 to continue.
- The UNO charter has mentioned arbitration as a method of Pacific settlement of dispute. Under the UNO (United Nation Organization) charter the permanent court of arbitration was replaced by the court of international justice.

- However, arbitration as a method of pacific settlement of disputes has not proved very effective. Arbitrator can succeed only when both the parties have been able to find a yardstick acceptable to both as a valid basis for settlement.
- The Kutch arbitration award 1968 there was an armed conflict between India and Pakistan. Pakistan claimed 3500 sq. miles of land situated at the Rann of Kutch. India & Pakistan agreed to cease-fire, & to refer the matter to arbitration.

- Three arbitrators were appointed with mutual consent. The arbitral court gave its award in 1968 allotting 320 sq. miles to Pakistan and the rest to India. Both the countries criticized the award, but were obliged to implement it.

Advantages of Arbitration: -

- Arbitration can be conducted without publicity.
- It is more appropriate to technical disputes.
- It is less expensive.
- Its procedure is flexible. Enough to be combined with the fact finding processes.

- **Conciliation:** The United Nations (U.N.) Charter has mentioned conciliation as a method of political settlement of disputes. The term conciliation has been used in broad as well as narrow terms.
- Broad sense: - It covers the great variety of methods where by a dispute is amicably settled with the help of other states or of impartial bodies of inquiry or advisory committee.
- Narrow sense: It implies reference of a dispute to a commission or committee to make a report with proposal to the parties for settlement.

- It is process of formal proposals of settlement after an investigation of the facts and an effort to recon ciliate to accept or reject proposals formulated. The parties are not bound to accept conciliation.
- Conciliation, sometimes used interchangeably with mediation. Frequently, conciliation is more structured than mediation. Conciliation is sometimes right based then interest based.

Advantages of conciliation

- It offers a more flexible alternative, for a wide variety of disputes, small as well as large.
- It obviates or opposes the parties from seeking resource to force.
- There is complete secrecy. It is committed to maintenance of confidentiality throughout the proceedings.
- Non obligation to accept of the commission's proposals no loss of rights or abandonment of position.

- ① It takes full account of the sensitivity, susceptibility and prestige of governments in that it is easier to accept a third party's solution than that offered by the opponent.
- ② It produces quicker resolution of dispute.
- ③ It reserves the freedom of the parties to withdraw from conciliation.

- **Judicial settlements:-** the international court of Justice was established by the charter of U.N.O. . The states may settle their dispute through the international court of justice. Article 92 to 96 of the charter of U.N.O. explains about the international court of justice. Each member of the U.N.O. is obliged to comply with the decision of the court in any case to which it is a party. It is situated in Hague; it has permanent body of U.N.O.

Thank you !!!

