

International Arbitration by Diplomatic Means to Resolve Disputes Between the Parties

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Abstract

Direct diplomatic negotiations are the most important and most common means to settle international disputes. Studies indicated that, historically states had felt a legal obligation to negotiate before resorting the use of force, even if that commitment does not exceed the formal framework. This concept played its role in the efforts made by jurists during the middle-age to determine the nature of war and the necessity to negotiate before everyone agreed to use the legal forces. The negotiation of subsequent countries was considered to be one of the necessary preconditions for the recognition of fair use of power. Even if it is clear that the negotiations are nothing more than a demonstration, it still remains necessary, without it the use of power is condemned. The present study aims to provide an analytical discussion on the peaceful means of settling international disputes. Specific focus is provided to the diplomatic means of dispute settlement, especially in the gulf countries. The effectiveness of diplomatic means of dispute settlement is further studied by analyzing the case of border issues held between Qatar and Saudi Arabia. The overall discussion indicated that the role of negotiations has increased, especially after the World War II. The group witnessed a new era characterized by the propagation of alliances in various fields and the complexity of international relations, intertwining and developing in the economic, political, military, cultural, social and other areas. This helped the negotiations to flourish as the central tool of diplomacy was described as a negotiation stage. With this in mind, all the principles that regulate relations between countries are reflected in the application of method of international dialogue. The analysis revealed that though diplomatic means take long to settle disputes, they are still the most effective methods to resolve the rising conflicts between different nations. However, in cases where conflicts remain unresolved through dialogue law enforcement organizations are approached to seek solution.

Keywords: diplomacy, dispute resolution arbitration, meditation, conciliation, Supreme Council and The Arabian Gulf

1. Introduction

The establishment and the preservation of world peace is held through different means such as the international law, which is designed to ensure peace and security of people around the globe. This was regarded as the fundamental purpose behind the development of the league of Nations in 1919 and the United Nations developed in 1945. In most severe cases, the direct cause of disputes results in unstable relationship between the states, therefore it is in the interest of law that such disputes must be settled through conventional means such as, law.¹ However, whenever there is a dispute between the two parties or states, it is preferable to settle their disputes through a court system resulting in peaceful solution. It is a private procedure, which is consensual leading towards the final and binding resolution of the obligations and the rights of the two parties.² Historically, diplomacy for settling international disputes, security and peace is the basic pillar of a contemporary, prosperous and developed international community that raises the banner of justice.

The maintenance of peace and security requires a number of characteristics and methods such as, parties to the conflict must adhere to peaceful means to resolve disputes and these countries must abide by the United Nations

¹ Hamza, Mohamed Abdualla, and Todorovic, Miomir. Peaceful Settlement of Disputes. 11 *Global Journal of Commerce and Management Perspective*, (2017).

² United Nations Conference on Trade and Development. International Commercial Arbitration. In *Dispute Settlement*. 1 (2005).

Charter, which stipulates the need to settle disputes peacefully.³ Dispute settlement and prevention includes eliminating the possibilities of conflicts through prior planning to reduce them before it escalate into formal arguments.⁴

International disputes could be both legal and political. However, the identification of dispute is highly dependent on the parties who raised the disputes. If the dispute could be terminated through legal operations then it is called to be a legal dispute but if any one of the parties does not settle on legal obligations of resolving the dispute then it is termed as a political dispute.⁵ According to Iacob, the involvement of the secretary general in maintaining peaceful settlement could take different forms. It is asserted that efficient international inquiry offices, negotiation, attribution and mediation have proved as the most proficient ways to resolve international disputes.⁶ In negotiation, third party plays a dominant role by performing investigation operations to identify the causes of dispute. Whereas, in mediation the third party offers non-binding assistance for the conciliation, while in attribution, the third party give binding decisions. The international law significantly evolves to settle the dispute by combining existing process rather than establishing new process needed for dispute adjustments.⁷

According to Goh, mediatory model has a significant relationship between parties and dispute settlement.⁸ Although arbitration law for international conflicts is not newly born, and has been in practice since the emergence of states. Still, the solutions to resolve disputes vary from one period to another.⁹ In the present time, the Charter of the United Nations is considered as the first step in organizing ways to solve international disputes. In this regards it is stated that the parties of the dispute causing any threatening situation to international peace and security should seek for negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.¹⁰ Since the peace conferences were held, the approaches to peaceful settlement of disputes is one of the basic principles upon which the modern international organizations are settling international disputes through diplomatic means. International organizations and parties that are interested in the conviction have shown high interest towards strong and efficient functioning for the peaceful settlement of disputes and considered it as one of the important substantive element. The League of Arab States is one of the regional international organizations which emphasized that a peaceful way should be used to settle disputes between two or more countries while ensuring the maintenance of security and stability of the league.¹¹ Mechanism to prevent conflicts has been the main objective to solve disputes but several challenges such as: lack of resources in deciding the common contract which is unseen by the arbitral institutions prevent the arbitrators for peaceful dispute resolution. Following its importance, it is valuable to consider some critical aspects of the approach, where arbitration, judicial settlement, and resorting to regional agreements are held by choosing peaceful means through international law. These conflict resolutions are based on;

- 1) That this arrangement and invitation are not binding on the parties to the conflict, yet the parties to the conflict can freely choose any means they consider useful. The important thing is that this conflict should not negatively affect international peace and security.¹²
- 2) The international legislator links the severity of international conflict with the concept of international peace and security and performs the functions far from what it practices originally.¹³

³ Merrills, John Graham. *International dispute settlement*. Cambridge university press, 2017.

⁴ UNCTAD, Franck, and Joubin-Bret A. DS. *Investor–State Disputes: Prevention and Alternatives to Arbitration II*. In *Proceedings of the Washington and Lee University and UNCTAD Joint Symposium on International Investment and Alternative Dispute Resolution*, held on, vol. 29. 2010.

⁵ Lissitzyn, Oliver James. *The International Court of Justice: Its Role in the Maintenance of International Peace and Security*. The Lawbook Exchange, Ltd., 2006.

⁶ Iacob, Oana-Adriana. "Un Secretary-General's Forms of Involvement in the Peaceful Settlement of International Disputes. *The Diplomatic Means. Challenges of the Knowledge Society* (2016): 399.

⁷ Goh, Gérardine Meishan. *Dispute settlement in international space law: A multi-door courthouse for outer space*. Vol. 2. Martinus Nijhoff Publishers, 2007.

⁸ Id.

⁹ Lapidoth, Ruth. "Dispute Settlement under the 1997 Convention on the Law of the Non-Navigational Uses of International Watercourses." *International Studies* 75 (2015): 231-246.

¹⁰ United Nations Organization. *Charter of the United Nations: UN Charter*. Chapter VI: Pacific Settlement of Disputes, Article 33. Available at: <https://www.un.org/en/sections/un-charter/un-charter-full-text/>

¹¹ Yale Law School. *Treaty of Joint Defense and Economic Cooperation between the States of the Arab League*, Article 1, 1950. Available at: https://avalon.law.yale.edu/20th_century/arabjoin.asp

¹² Romano, Cesare P.R. *International dispute settlement*. In *Oxford Handbook of International Environmental Law*. (2007).

¹³ Gowlland-Debbas, Vera. *Security council change: The pressure of emerging international public policy*. 119 *International Journal*, (2010).

Since this topic is of utmost importance for security, safety, development and prosperity of international community, this study focuses on diplomatic means of resolving disputes namely diplomatic negotiations, good offices and mediation, investigation, and conciliation. A detailed explanation of these methods along with their practical implication is provided along with their advantages and disadvantages. The most important objective of this study is that, it defines international conflict that exists between persons of general international law on legal, economic, political or matter that are associated with moral or material interest.

These observations are held through an analytical approach, where the author first sheds light on the detailed analysis of peaceful methods to resolve international disputes. Second important consideration is the role of international organizations in settling international disputes, along with the examination of their effectiveness. Third and the final part of this study provides an in-depth analysis for the application of means in the settlement of international disputes between Qatar and Saudi Arabia.

2. The Concept of International Peace and Security

Peace is a state which represents the situations without war. Peace might be contended as war must be genuinely dismissed, regardless of reasons, to sustain a peaceful environment. It is the terminology used to define the surety of the situations that is required for independence. Therefore, peace is a combine effort that is connected to mutual terms of individuals.¹⁴ The peace and security journey has a very prominent value at international level, as it is associated with international bodies.¹⁵ The present concept of peace emphasizes on both positive and negative aspects of peace as well as its understanding as a firm procedure.¹⁶

Due to the global impact of the word peace, scholars and researchers found it difficult to propose a single adequate word that defines peace in a precise manner.¹⁷ The relationship between Germany and Britain from 1938 and 2007 is illustrated as an example by Collin Gray. According to that study, word peace has two disciplines. One is simply described as no war state, whereas, other is asserted as a political relationship that restrains from war.¹⁸

The obligations of peaceful settlement of global conflicts and the concrete mediums for tackling are the consequence of a long-chronicled advancement of relations among states, followed by advancement and enhancement of the organizations and standards of universal law. Internationally the practices of resorting peace have distinguished meanings to peacefully resolve the dispute. Recently, numerous agreements have been made to negotiate the disputes by the states which either resulted in resolving dispute or created the authority for conflict resolution. To build the foundation of peaceful and prosperous obligation Charter of United Nations has declared a meeting resulting in the development of International justice and law.¹⁹

Communication is the basic aspect which reduces the consequences of disputes. Previously mass media such as; television, radio, newspapers etc. were widely used and acknowledged as an integrated part to deliver information or message to the target audience. These tools can be used to communicate the factors that can reduce violence and promote peace.²⁰ In communication, peace building grant program is effective and can be used to reduce the impact of violence as its main purpose is to eliminate the causes of violence, build peace and deliver information. Several ways have been highlighted that are important to control unpeaceful situations, such as helping, supporting or providing leverage which will eventually help in peace building and helping the inflow of information that can escalate the dynamics.²¹ Following are some theories used for communicating purposes in case of dispute settlements:

2.1 Deterrence Theory

In deterrence theory, armed force is used to coerce the opponent and force the opponent party to retreat from his position and not allow the opponent's demand, no matter how complex the threat they constitute. This method

¹⁴ Yajurveda, Shukta. Concept of Peace in International Relations. (n.d.).

¹⁵ Kikkawa, Gen. Broadening the Concept of Peace and Security. 287 Social and Economic Development (2010).

¹⁶ Ariye, Ekpotuatin Charles. The United Nations and its peace purpose: an assessment. Journal of Conflictology, no. 1 (2014).

¹⁷ Umoh, Ubong Essien, and Idara Godwin Udoh. La hipòtesi de Sapir-Whorf i la conceptualització de la pau amb adjectius. Journal of Conflictology, (2011).

¹⁸ Gray, Colin S. War, peace and international relations: an introduction to strategic history. Routledge, (2013).

¹⁹ Yakoviyk, I., K. Smyrnova, O. Y. Tragniuk, A. A. Donets, and S. S. Shestopal. The issue of the international legal personality of sub-national units of the EU member states (a case study of german sub-federal units). Turkish online journal of design art and communication. 653 (2018).

²⁰ Search for Common Ground. Communication for Peacebuilding: Practices, Trends and Challenges. United states Institute of Peace. (2011).

²¹ United states Institute of Peace. Communication for Peacebuilding Priority Grant Program Learning Group Report. (2012).

depends on the state's ability to bear losses and severe punishment against the opponent.²²

2.2 Bargaining Theory

This theory provides a method in which negotiation is a basis for the position, and the principle is that negotiation means willingness to give up some initial positions in exchange for the opponent's relinquishment of some of the demands. It further serves as a compromise which depends on negotiation, where the negotiator begins with a strict stance, while abdicating gradually until reaching the minimum limits that he cannot concede after. This tactic is done either verbally or non-verbally that is favorable for each party in order to reach the desired outcome.²³

2.3 Game theory

The zero equation and conflict management theory provides an explanation and a method where decisions may take place in cases where interests or existence of one party depends on the loss of another party or depends on the presence of the judiciary. Game theory is an efficient way to solve the interactive disputes.²⁴

3. Peaceful Methods to Resolve International Disputes

The modern International law has preserved the responsibility of the resolution of state's disputes exclusively through peaceful means.²⁵ Peaceful means are further divided into three types which include, diplomatic means, institutional method and judicial or arbitrational method.²⁶ A detailed description of each type is provided below:

3.1 Diplomatic Means of Dispute Settlement

Political or diplomatic solution can be applied in all types of international disputes, whether they are of economic, legal or political nature.²⁷ It is also observed that political settlement of disputes is remarkably practiced by many developing countries.²⁸ The political structure plays primary role in international formation of political orders, functions of enforcement, decision making etc. which affect the obligation of individual or state.²⁹ Different means of political or diplomatic settlement of disputes have been identified which are preferable instead of judicial solution. Some of them are discussed below.

3.1.1 Negotiation

Negotiation is the method of settling disputes among parties by compromising to the agreement and avoiding the conflicts and arguments.³⁰ Negotiation facilitates the parties with the involvement of third party who possess as the intermediary to eliminate the necessary barriers of negotiation in dispute settlement.³¹ It is the most common practice of political dispute settlement which is the combination of various features involving good office to meditation.³² Since negotiation is a typical method of solving disputes peacefully, permanent court stated that, "Before a dispute can be made the subject of an action at law, its subject matter should have been clearly defined by diplomatic negotiations".³³

In negotiation, it is necessary to have good communication between both parties, sense of equality and sovereignty, but still, disputes could not be resolved by just accepting the method of negation. Through Compromising, waiving claims and making agreeable equal commitments disputes are usually resolved peacefully.³⁴ The challenge in dispute resolving through negotiation is that they could be never-ending, however if there is will between parties to resolve conflict then it could be the quickest method among the rest.³⁵ For instance, successful results of

²² Hobbes, Thomas. Early Classical Philosophers of Deterrence Theory. 99 Criminology. (n.d.)

²³ Lawler, Edward J., and Rebecca Ford. Bargaining and influence in conflict situations. (1995).

²⁴ Grzyl, Beata, Magdalena Apollo, and Adam Kristowski. Application of Game Theory to Conflict Management in a Construction Contract. 1983 Sustainability, (2019).

²⁵ Pinteală, Gheorghe. The Peaceful Settlement of International Disputes. 96 Quaestus, (2018).

²⁶ Supra

²⁷ Supra

²⁸ Davis, Christina L. The political logic of dispute settlement: Introduction to the special issue. The Review of International Organizations, 107 (2015).

²⁹ Supra

³⁰ Supra

³¹ Supra

³² Supra

³³ United Nations. Codification Division, ed. Handbook on the Peaceful Settlement of Disputes Between States. New York: United Nations, 9 (1992).

³⁴ Pinteală, Gheorghe. The Peaceful Settlement of International Disputes. 96 Quaestus, (2018).

³⁵ Palmer, Geoffrey. Perspectives on international dispute settlement from a participant. Victoria U. Wellington L. Rev. 39 (2012).

negotiation could be witnessed in case of settlement between different states such as; Uruguay and Argentina had their disputes on River Plate and Maritime Front, while Argentina and Brazil had their dispute settlement on the usage of water of River Parana, likewise dispute between Panama and United States was resolved by the establishment of Panama Canal.

Many negotiation cases are still not solved since many years without any adequate outcome.³⁶ According to the peace agreement of 1979 and 1994 in Egypt-Israel and Jordan the disputing parties have accepted negotiation to resolve conflicts. However, conflicts that could not be settle through negotiation shall be submitted to the arbitration.³⁷ Furthermore, negotiation aims to resolve dispute among parties in a consensual manner. Such perseverance pulls the justice from agreement, but this justice is contaminated by supremacy gaps.³⁸

Mediation

In mediation the involvement of third party is initiated under the following conditions: a) when the conflicts are long and complex, b) when parties fail to negotiate or accept the escalation or cost of disputes, c) when the disputants acts as a stalemate, d) when disputants are ready to compromise with the terms to settle dispute by communicating with each other.³⁹

The mediator's involvement varies from dialogue fostering to proposing effective offer between the parties to settle the dispute.⁴⁰ The officials performing mediation functions are international organizations, such as; secretary generals of the UN, state representatives, non-profitable organizations including Red Cross or various respectable religious personalities such as Pope, Imam, etc. The consent of the parties is important before designating the person as the mediator. The mediation is the most flexible method to solve the dispute but simultaneously finding the efficient mediator that is accepted by both parties of the state is one crucial step.⁴¹

3.1.2 Investigation or Inquiry

Investigation is also known as inquiry or fact-finding. International investigation comprises of authenticating the causes either privately or by collaborating with the team of international organizations, resulting in factual evidences to any legal problem and draw conclusion to end the dispute between parties in optimal manner.⁴² International investigation or fact finding is the most efficient way to deal with the highly complex or technical disputes which helps to clarify the terms and objective of disputes.⁴³ The concept of investigation has been reappraised in the recent era. The establishment of inquiry commission was formed after the failure of illegitimate regime on national and international plane. The Commission for Historical Clarification (CEH) is an important example to be characterized as the institution of hybrid by its own coordinators that is located between international and domestic law.⁴⁴ Contrarily, the more complex meaning of inquiry or international investigation is to assist the institution which intended to clarify only particular facts. The inquiry commission was first introduced by the Hague Convention in 1899 and 1907, intended to settle the international disputes peacefully.⁴⁵ In the field of human right, investigations for peaceful settlement of dispute has gained attention from the International Labor Organization.⁴⁶ According to Van, inquiry may work differently in reference to the nature of conflict. Disputes based on diverse factual perceptions are seen to be settled independently through inquiry, whereas, conflicts that are related to legal aspect cannot be dealt through inquiry alone.⁴⁷

³⁶ Aćimović, Ljubivoje. Peaceful settlement of international disputes: current initiatives and perspectives. (1980).

³⁷ Temelkovska-Anevaska, Elena. Peaceful Means for Settlement of Inter-State Disputes: Reflections, Advantages and Disadvantages. 6 International E-Journal of Advances in Social Sciences, (2017).

³⁸ Peters, Anne. International dispute settlement: a network of cooperational duties. 1 European Journal of International Law, (2003).

³⁹ Bercovitch, Jacob. International mediation and dispute settlement: Evaluating the conditions for successful mediation. Negot. J. 7 (1991): 17.

⁴⁰ Supra

⁴¹ Supra

⁴² Supra

⁴³ Tanzi, Attila Massimiliano. The Means for the Settlement of International Cultural Property Disputes: An Introduction. Transnational Dispute Management (TDM).

⁴⁴ Supra

⁴⁵ Supra

⁴⁶ Supra

⁴⁷ Van den Herik, Larissa J. An Inquiry into the Role of Commissions of Inquiry in International Law: Navigating the Tensions between Fact-Finding and Application of International Law. 507 Chinese Journal of International Law (2014).

Conciliation

Conciliation is the method of solving dispute by the partial conciliator who listens to the views and facts of both parties leading to solution to settle the relationship between them.⁴⁸ Some elements of conciliation are also considered as the combination of mediation and investigation but this practice to resolve disputes has integrated conventionally quite late. As a conciliation trait, finding the cause of dispute is carried out by an independent individual rather than the third-party mediator.⁴⁹

Conciliation has gained great importance in settling disputes as it can solve different types of conflicts including legal disputes. Another important element of conciliation is that dispute settlement is not held through court and the decisions of dispute resolution through conciliation are not bounded by any legal authorities.⁵⁰ The disputes solved by conciliation are based on the will of the parties to solve issues through the process of conciliation. The four conciliators collaboratively hire the fifth one to take the final decision for dispute settlement. The commission listens to the claims of parties, observe and examine and make offers to the parties of the disputed state and the conciliation procedure is regarded as an important means to resolve dispute, still it applies to very few cases.⁵¹

3.2 Judicial Means of Settling Disputes

It is important to understand that how each method to solve the dispute works. Scholars that are related to international dispute settlement usually focus on a single technique for example mediation, arbitration, judicial or negotiation. These various methods are used under the supervision of any single or particular organization or institution such as, Court of Arbitration, World Trade Organizations and International Court of Justice etc. In numerous Western legitimate frameworks where the judicial operation of the national courts is characterized by the rule of forces, the national courts are frequently observed as an improper medium to settle politically complex cases. Though, the requirements of conflicts settlement internationally are progressing, it is important to consider whether they are changing the field of settlement or not. By all appearances, the appropriate answer is no. By all means, the old style of diplomatic and judicial methods has been solidified by a century-long practice, and it is difficult to envision any new system for the settlement of conflicts that could not follow them back.⁵²

Standing court perform the operations of Adjudication. The appointment of judges and authorities are pre-chosen, the process is controlled through pre-determined laws of the court. The role of International Court of Justice is the most prominent in this regard and is the sixth regulating body of the United Nations. Another eminent element of the ICJ is its far-reaching purview, which isn't restricted by geology or topic. Furthermore, it also has the cases with universal judicial which involves international public.⁵³ The International Court of Justice has developed a body which offers the states with a composed legal procedure of systematic international power.⁵⁴

3.2.1 International Arbitration

Undoubtedly, arbitration implies the settlement of conflicts between the parties by arranging an agreement without turning to court. It is generally willful; however, sometimes it requires legal actions. When both agree to the terms, the decision of arbitration turn into binding arbitration.⁵⁵ It is the most commonly used and well-established medium to end disputes. It is one of a few sorts of Alternative Dispute Resolution, which facilitate parties with a discussion resulting in final decision rather than prosecution. In contrast to lawsuits, arbitration happens out of the court boundaries, where parties from both the sides select a neutral external party, known as arbitrator who correspond to conform to the authority's honor; and afterward listens to the evident and claims of both parties.

The decision of arbitration is mostly final and the court does not re-examine the case.⁵⁶ Comparably, arbitration offers the possible settlement to the disputant states. This would also drive to the legal mechanism that will required

⁴⁸ Catherine, Mwangi Nyambura. The Role of International Law in Conflict Resolution: A Compliance Case Study of the Bakassi Peninsula and China vs Philippine Case. 763 International Journal of Social Science and Humanities Research, (2017)

⁴⁹ Supra

⁵⁰ Boris, Krivokapich. Conciliation as a means for the Settlement of International disputes. Вестник Казанского юридического института МВД России, (2019).

⁵¹ Supra

⁵² Supra

⁵³ Supra

⁵⁴ Holder, William E. Towards Peaceful Settlement of International Disputes. 102 The Australian Year Book of International Law Online, (1971).

⁵⁵ Hasan, Md. A Comparative Study between Arbitration and Judicial Settlement as Means of Maritime Boundary Dispute Settlement. 75 Beijing L. Rev. (2018).

⁵⁶ Supra

more punishment to solve the dispute. Hence, both the methods of judicial means is associated with the problems of punishment.⁵⁷ Arbitration is further divided into three types which includes: mixed settlement, state to state settlement and international arbitration corporation. States that desire to set up in their negotiation standards concerning the arbitration can either construct those obligations themselves or may consolidate in their contract a reference to any of the arranged model.⁵⁸

3.2.2 International Jurisdiction

The jurisdiction of the Court involves all the conflicts between the States which concerns the understanding of a settlement, any inquiry of International Law, and the presence of any reality of comprising break of international rule, and the nature or degree of the compensation of the breach for an international regulation.⁵⁹ The dispute itself includes the clarification or use of multilateral agreements arranging the global law that governs political and consular associations that falls within the nature of international jurisdiction. Contrary, the United State legitimate standards of power, Security Council do not organize the jurisdiction of the World Court to take the decision on the legal crises of the disputes even when it is similar to the case of Security Council. The involvement of the Security Council is not the reason to willingly cease the world court to practice the jurisdiction.

3.3 *Dispute Settlement through International Organizations*

This type of solution is considered as a prime source for the settlement of international disputes. The settlement of the disputes through outsource organizations began to take place in the beginning of the twentieth century, due to the emergence of international organizations as a representative of public international law. This type of dispute settlement solution was held by the League of Nations and United Nations. A study by Wood ⁶⁰ stated that the commission implemented the 2nd reading articles on international organizations responsibility and the general assembly has taken the note of it. In the year 2002, the commissions working group stated about the responsibility of international organizations that there is a need to improve the methods for settling disputes. In the year 2010 and 2011, the commission conducted a general debate on the peaceful settlement of disputes which discussed different suggestions for future topics.

3.3.1 League of Nation

League of nation is the first institution created intentionally to prevent the disputes by avoiding war that was formed under the supervisor of the international law.⁶⁰ The development of the league resulted after first world war that took initiatives to serve as the diplomatic group for dispute settlement. The nation league has been resulted favorable in the area of humanitarian organization but has proven wrong in ceasing the aggression and establishing global peace. It has a record of both victories and failures as it sometimes prioritizes self-interest before involving in the conflict resolution. The national league concept becomes popular in 1922 which was entrusted to resolve the disputes. By the year 1940, this solution acquired a large number of bilateral and multilateral agreements and was regarded as the peaceful method of resolving disputes.⁶¹

The League of Nations commissions were somewhat progressively appeasing in nature. In any case, their recourse to international law was still moderately uncertain.⁶² In the 20th century, the efforts for dispute resolution were characterized by the general act 1928 which was revised in 1949. League of nation was added in 1928 which contributed a large share to the peaceful settlement of disputes. At this time, successful initiatives regarding the implementation of institutional procedures of conflict resolution were based on the codification and convention of multiple treaties.⁶³

3.3.2 United Nations and the Security Council

United Nations play an important role in the settlement of international disputes. According to the Charter of the United Nations, it is the task of the United Nations through peaceful means, while taking initiatives following the principles of justice and international law. Chapter VI of the Charter is of significant value in this regard as it provides the suitable mechanism of resolving disputes. However, in cases where United Nations fail to resolve

⁵⁷ Koremenos, Barbara, and Timm Betz. The design of dispute settlement procedures in international agreements. 371 *Interdisciplinary perspectives on international law and international relations: The state of the art* (2013).

⁵⁸ Supra

⁵⁹ Supra

⁶⁰ Wood M. The settlement of international disputes to which international organizations are parties. Report of the International Law Commission on the Work of its Sixty-eighth Session' (2 May-10 June and 4 July-12 August 2016) UN Doc A/71/10. 2017 Jul 25.

⁶¹ Supra

⁶² Supra

⁶³ Supra

disputes powers are granted to the Security Council for peaceful initiatives.⁶⁴

The Security Council is planned as the essential U.N. body for the preservation of settlement and peace of between states. The extensiveness of Security Council capability is emphasized by Article 34, whereby disputes and circumstances creating global pressures are considerate. Article 35 allows the state Security Council to ignore their presence as the including parties that are not counted as the UN charter. Article 36 states that there is a power for the adequate procedure to settle the disputes and maintain peace.⁶⁵ The General Assembly and the Security Council are similarly allowed to solicit the Secretary-General from the United Nations to choose an agent in order to submit a request regarding the problems that falls under their obligations⁶⁶.

Surely, the systems of the U.N and Security Council are beneficial to the conventional strategies for peaceful settlement of conflicts. General Assembly and the Security Council deals with the conflicts that are usually based on the diplomatic means which are regulated by the nature of conflicts and nature of resolution of the dispute. These UN bodies also adopt the binding decision in case of any threat and peace breach which precisely act under the provision of Chapter VII of Charter United.⁶⁷ The primary element to adopt these solutions is to identify whether any conflict endangers the regulation of peace and security of the world. It is certain that all the disputes do not fall into the category of bilateral conflicts. The Security Council act towards the dispute in the following ways:

- 1) Calling the parties to resolve the dispute when it is considered important.
- 2) Inspecting the disputes whether they are causing any international friction.
- 3) Suggesting an adequate process and solution for the settlement or adjustment.
- 4) Resolving the conflicts that are associated with the parties whether they are settled or not.
- 5) Parties agreeing to request the suggestion for the settlement of disputes.⁶⁸

4. Challenges in International Dispute Management

The Problem of Building Contacts and Alliances at Home and Abroad

Diverse sources of opinion, even at the level of narrow circles, can help to take appropriate decisions. This first requirement is the need to ensure the source and credibility of the claims. It is necessary to give public opinions whenever possible, as a general framework at the time of conflict as a shield against the opposition. These are issues that negatively affect the plan, so there can be no control over managing the conflict abroad in light of proper disintegration. This eventually gives successful results as it does not turn into a mess. In many Third World countries that interfere in the affairs of managing many of the powers and interests to the extent interfere with the owner of the decision.

4.1 Manipulation of Concepts

Concepts have a great importance in identifying and managing the disputes. They do not only define the states' conflicts and crises, but also reveal philosophical convictions. States adopt this concept either with the intention of disrupting or emphasizing certain intellectual, political premises or to justify illegal and immoral action to achieve some purposes. Hence the importance of controlling the terminology and its role, the manipulation of concepts related to the conflict process which remains an important subject to numerous maneuvers. It may employ the concept of the crisis based on sudden and dangerous international position that threatens security and peace regionally or internationally. It may intentionally explain an ordinary military maneuver in a country, following that it is a military build-up on the borders of a state which intended to invade as a legitimate defense.

Settling International Disputes: The Case of the Gulf States.

Dispute Resolution is a temporary body established by a decision of the Supreme Council of the Gulf Cooperation Council (GCC), and in each case it is formed according to the nature of the existing dispute based on the basic system for establishing the Cooperation Council.

⁶⁴ Dr. Abdulrahi, Walid. Peaceful Settlement of Disputes. Private Site for legal research and studies. Available at: <https://sites.google.com/site/walidabdulrahim/home/my-studies-in-english/14-peaceful-settlement-of-disputes>

⁶⁵ Supra

⁶⁶ United Nations. Codification Division, ed. Handbook on the Peaceful Settlement of Disputes Between States. New York: United Nations, (1992).

⁶⁷ Supra

⁶⁸ Supra

4.2 Alternative Dispute Resolution (ADR)

Arbitration and alternative dispute resolution laws regulates the foreign arbitral award, namely a decision handed down by an arbitration institution or individual arbitrator outside the jurisdiction of the Republic of Indonesia, or put forward by an arbitration institution or individual arbitrator which is considered an arbitration award internationally.⁶⁹ More particular ADR processes available are neutral evaluation of ministerial, summary jury trial, and the judicial settlement conference.

Disputing parties use these ADR methods because they are expeditious, private, and generally much less expensive than a trial, while each of these ADR processes may be effective in various circumstances. Mediation in the United States has proven to offer superior advantages for the resolution of disputes that resists resolution.⁷⁰

Establishment

It is clear that the United States would have used its veto to prevent the criticism of its action, peaceful settlement of the situation and the establishment of machinery to facilitate a cease-fire such as peacekeeping, in other words anything that would have vaguely hindered or criticized the US/OAS operation.⁷¹ The court case law, international dispute settlement has played most important role to establish the relationships with international agreements and internal effects.⁷²

In international system, before the foundation of the United Nation, peace also had the similar concept of settling international dispute based on the institutional justice. Therefore, just the perspective of no war means that peace is continually establishing but ensuring that anything which causes dispute are eliminated.⁷³

Structure

The structure of peaceful settlement of disputes emphasizes on the conditions that are rationally created and requires the implementation of particular structures of authority. However, the peaceful settlement of disputes is dependent on the existence of adequate decision-making structures.⁷⁴ The tenth article of the statute of the Gulf Cooperation Council stipulates the establishment of dispute settlement, affiliated with Supreme Council that is responsible for forming the body.

If a dispute arises over the interpretation or application of the statute and it was not settled within the framework of the Ministerial Council or the Supreme Council, the Supreme Council may refer it to the dispute settlement authority. The authority shall submit its report including its recommendations or a fatwa, to the Supreme Council to take whatever action it believed appropriate. The Supreme Council is the supreme authority of the Cooperation Council and consists of the heads of member states, while its presidency is periodic according to the alphabetical order of country names.

According to article 10, “No provision of this Treaty shall in any way affect, or is intended to affect, any of the rights or obligations devolving upon the Contracting States from the United Nations Charter or the responsibilities borne by the United Nations Security Council for the maintenance of international peace and security.”⁷⁵

Following are some specifications that are needed to be followed to resolve any dispute in the premises of Saudi Arabia.

Headquarters

The headquarters of the organization shall be in the city of Riyadh, in the Kingdom of Saudi Arabia, and its meetings shall be held in the country of the headquarters, and it may, when necessary, meet in any other place.

Membership of the Commission

The commission shall be formed with the adequate number of citizens of the member states that are not parties to

⁶⁹ Suherman, Suherman. Arbitration and Other Alternative Dispute Resolution for Commercial Dispute (Reviewed from the Strengths of ADR and Decision of Arbitration). 104 Brawijaya Law Journal, (2019).

⁷⁰ Sgubini, Alessandra, Mara Prieditis, and Andrea Marighetto. Arbitration, Mediation and Conciliation: differences and similarities from an International and Italian business perspective. Bridge Mediation LCC (2004).

⁷¹ White, Nigel D. The United Nations and the maintenance of international peace and security. Manchester University Press, 1990.

⁷² Hillion, Christophe, and Ramses A. Wessel. The European Union and international dispute settlement: mapping principles and conditions. The European Union and International Dispute Settlement. Hart Publishing, Oxford/Portland (2017), 7-30.

⁷³ Soltani, Rasool, and Maryam Moradi. The Evolution of the Concept of International Peace and Security in light of UN Security Council Practice (End of the Cold War-Until Now). 133 Open Journal of Political Science, (2017).

⁷⁴ Spur

⁷⁵ Spur

the conflict, who the Council considers to be chosen in each individual case according to the nature of the dispute and their number shall not be less than three. The articles of association allow the commission to seek the assistance of experts and consultants. The Commission's budget is part of the Secretariat's budget.

Commission's Decision

Unless the council decides, the mission of the commission ends with submitting its recommendations or fatwas to the Supreme Council. The Basic Law allows the committee to be called after the end of their mission at any time to explain or clarify what was stated in its recommendations. Article 5 obliges that, the commission to hold its meetings in the presence of all members, and the Cooperation Council Secretariat prepares a system for the procedures necessary for the functioning of the body. Each party to the conflict shall have representatives prior to the commission, and they shall have the right to follow the procedures and express their defense. Additionally, each member of the commission has one vote, and "the commission issues its recommendations or fatwas on the issues by a majority of the votes of the members."

4.3 Case Analysis: Border Issue of Qatar and Saudi Arabia

This issue emerged from 1909, when Al-Ahsa and Qatif, and Qatar were under the authority of Ottoman and Britain was in the protection of leader of Gulf Arab treaty except for Qatar which was under the protection of Ottoman since 1871-1915. The boundary line was not created between the two countries till 1913. But soon the citizens from both sides started to migrate to different places either for exploring or site gazing. Hence, the boundary issue first rose in July 1909, when Ottoman dispatched its soldier force to the island of Zakhnuniyah, which created the border between two countries and raised the flag of Ottoman over the Island. Consequently, the British government protested against Ottoman government by targeting Coast of Qatar and cost of appeasement and arguing that the island is a part of the state plan to which the ottoman empire threatens the Britishers to withdraw their forces from the treaty immediately. But due to inability of Ottoman Empire to engage into military clash with Britain, they were forced to bring back their forces from the Island on 21st November 1909.

In eastern Arabia the power sharing agreement was signed between both the states, Britain and Ottoman Empire on 29 July 1913. Qatari-Saudi borders were defined under this agreement, however, still this agreement did not end the dispute of border between the two countries. The relationship between both countries further wounded up by the beginning of oil exploration by both American and British companies. Britain, which had been in the protection treaty with Qatar, has tried to resolve the border conflicts with Saudi Arabia by holding meetings with Saudi delegates before and after the Second World War, but all these attempts failed as both parties remain persistent to their positions.

The dispute over the area of Qatar "Doha Salwa" started in 1965AD upon which the two parties agreed to understand the conflict, where land and sea borders were established between the two countries. To obtain the Qatari recognition for dependency of many creeks Anpak and railways were migrated to Saudi Arabia. The border crisis between the two countries remained unsolved until 3 September 1971 when Qatar gained independency from Britain. The border issue then reappeared in 1992 due to the failure of installing the borderline between the two countries on which some border fights took place resulting in increased tension between the two countries.

Following the situation, a consensual summit between Saudi-Qatar was held in Medina on 20th December 1992, under the supervision of Egypt, which followed the issuance of joint statement. The border dispute ended after the meeting between King Fahad Bin Abdulaziz (the custodians of two holy mosque) and Sheikh Hamad bin Khalifa Al Thani (the former emperor of State of Qatar). This meeting was followed where an agreement was signed by both parties in the presence of the President of Egypt Mohamed Hosni Mubarak. After the agreement, the joint Saudi-Qatari committee was formed in accordance with article five of the agreement, which was entrusted to implement all the provisions stated in the agreement of 1965, jointly.

Shortly after this agreement, Egypt once again set the example of successful good offices which managed to resolve the dispute and forming acceptable settlements between the two parties. After the ruling period of Sheikh Hamad bin Khalif Al Thani, Saudi government intensifies that the agreement which ended the long-standing border dispute should be carried in a similar friendly and fraternal way. This Saudi-Qatari joint statement for the border dispute settlement was issued by the foreign minister on 7th March 1996. According to that statement, parties from both sides agreed to end the demarcation of the borders between them and resumed the technical work of selecting the international survey company to define the points of border between the two countries. For this purpose, French Company (I-G), specialized in resolving border disputes between two countries in 1996 signed the final map of border agreement on 4th December 1965 due to the need to clarify the final binding boundary for both the parties.

On 7th April 1996, both countries officially announced the end of the demarcation of the border between them and

decided to resume their work of the Joint Border Technical Committee. It took three years for the completion of this process; however, the boarded issue was still not settled until a decade.⁷⁶ On 7th June 1999, the technical committee finalized the map of the land borders between the two countries by setting the boundary line in Doha Salwa. This agreement of map was further signed by both parties after two and a half months of negotiation and meetings in Riyadh, Paris and Doha on 21st March 2001. The signed agreement also attached the map of border which numbered 15 maps and documents to demarcate 60 kilometers from the common borders. On 6th July 2008, the agreement of the border was signed by the Prime Minister and Minister of Foreign Affairs of Qatar, Sheikh Hamad bin Jassim bin Jabr Al Thani along with Saudi Prince and Minister of Interior of Saudi Kingdom Nayef bin Abdulaziz Al Saud on the dispute that lasted for years.⁷⁷ The announcement of the Gulf Cooperation Council was released on 25th May 1981 which aimed to strengthen the corporation between the six states of the council. This was due to security concerns raised due to national and international changes, which generated immense concern for the establishment of this council in order to deal with security and political challenges.

One of the powerful element of Gulf Cooperation Council (GGCP) is that it gains strength by depending on social, religious, cultural, political and economic perspective and by maintaining friendly connections with families and people of the state. The Gulf Cooperation Council also includes an active body called Dispute Settlement Authority that deals with the disputes between the members that submit reports, recommendations and Fatwas regarding the disputed cases to the Supreme Council.

Under the GCC Dispute Settlement, the decision of disputes was taken by the Supreme Council based upon the Article X of the Basic Law for the Establishment of the Cooperation Council for the Arab Gulf States. Although the Basic Law attached special importance to the Dispute Settlement Authority still it was not activated till March. For instant, the Bahraini dispute regarding the Hawar Islands was the object of dissatisfaction of the Supreme Council in its summit held in Riyadh 7th to 9th March 1982. The final statement contained a reference content which pinpointed that Qatar and Bahrain dispute was ignored by the dispute settlement body.

Therefore, it is suggested that, there should be a mechanism for resolving disputes and differences between the GCC states and this is obviously the truth of all local and worldwide coalitions that doesn't forestall the rise of various reservations or perspectives considering the repercussions experienced by the country. These allegations hinder the joint work, and as long as this body exists, converting it to the reality by developing and expanding it with the compatibility of the current status of the Cooperation Council would be an efficient solution. This outbreak of the crisis between sister countries of Gulf had led other countries to intervene in the dispute either to support one country over other or to solve the dispute by mediating. This support has a successful effect in near future. The ambition is that the Dispute Settlement Authority must be strengthened so that it can issue its decisions in a final way, where Supreme Council does not need to interfere to propose a solution in a way that entails resolving the dispute and to remove the embarrassment from the Supreme Council. Individuals with judicial experience and commission members must grant with independency and independent budget. The current case suggested that it is necessary to have an adequate plan that should be imposed immediately when even the slightest issues arises for example, an agreed mechanism for resolving such differences includes the interference of Council countries.

5. Conclusion

Following the above discussion, there is a need to emphasize on the settlement of international dispute should be based on respect for the principle of sovereign equality between states, and in accordance with the principle of providing them the free choice of means of settlement. It should also consider that the failure of the state to use its right, to choose the means of settlement and the method presented to resolve the existing conflict should be appropriate.

Arbitration is among the manifestations of obstruction of efforts for an early and justified resolution of international conflicts and peaceful ways to settle disputes, including political, direct negotiations, mediation, conciliation and settlement through regional organizations and arrangements, which are endless means for binding solutions to the parties. Further, it is the choice of the parties to the conflict either to take all or some of these solutions or reject them completely. Legal or judicial methods, such as arbitration, resorting to the International Court of Justice, decisions and rulings issued by these methods that are binding on the parties to the conflict must get implemented. If the settlement of disputes by peaceful means is a legal obligation, then the determination of the means of settlement is because of the parties' will to determine it, either by agreement between them before

⁷⁶ Al Jazeera. Timeline of Qatar-GCC disputes from 1991 to 2017. (2017). Available at: <https://www.aljazeera.com/indepth/features/2017/06/timeline-qatar-gcc-disputes-170605110356982.html>

⁷⁷ Id.

any dispute arises, or by agreement after the conflict actually arises. The voluntary choice of the means of settlement is due to the principle of sovereignty, and the state is bound only by its consent. This is considered as one of the difficulties in imposing the principle of the obligation to settle disputes because it leads to opportunities of the procrastination to the party which is in weak position in the conflict or to the party that finds prolonging dispute and not settling it, allowing it to achieve legal or real gains at the expense of the other party. In cases when, the drafters of the United Nations Charter fail to attempt or procrastinate to resort the conflict through peaceful means and no settlement of the conflict has been reached, this represents the failure of dispute resolution efforts. According to article (33-1) if the parties fail the settlement of the dispute by peaceful means they must turn to the Security Council. The Charter also made it the prerogative in the General Assembly, which recommended the measures to settle any position or dispute, despite of its origin by a peaceful settlement, the situation is considered harmful or causes disturbance to the friendly relations between nations.

According to Article 36, it is important to consider that at any stage of conflict, if it endangers international peace and security it is recommended that the parties to the conflict should follow specific settlement methods peacefully, considering previous parties as example to resolve the disputes. The Council must ensure that while presenting the recommendations in this regard, parties must submit the dispute to the International Court of Justice, in accordance with the provisions of the statute of this court. When the case is presented to the Security Council it is their responsibility to check the eligibility of the dispute and decide whether it jeopardizes the maintenance of international peace and security and should take appropriate measures to solve it.

In such case, the Council has a semi-judicial role, by providing an objective solution to the dispute. In addition, if both of the parties agree to the conditions then the Security Council suggests the possible solution to end the conflict. The management of the conflict process, in light of the living reality remains connected in major countries. By the predominance virtue, the active or effective administration impose the small state rule that lacks in experience and results in inefficient management. Indeed, it is a relative matter to apply for dispute settlement based on situations or personal decision. Despite of the former cases of dispute settlement, it is still very slow process with many obstacles placed before them due to the dishonesty of the parties to the conflicts and lack of desire to reach to the solution of the dispute. Therefore, it is observed in this study that the United Nations adopt a general international agreement. This agreement obliges that the parties to the international conflict must resolve the dispute within the time span of six months. If the dispute does not resolve within defined time period, the parties to the conflict must have agreed to resort to arbitration or any court. Hence, the doors of procrastination that hinder the peaceful settlement of the conflict should be closed in a timely manner to avoid the aggravation of international conflicts or crises.

The study after taking Qatar and Saudi Arabia's case into consideration suggests that there should be a mechanism for resolving disputes and differences between the GCC states and this is obviously the truth of all local and worldwide coalitions that doesn't forestall the rise of various reservations or perspectives considering the repercussions experienced by the country. These allegations hinder the joint work, and as long as this body exists, converting it to the reality by developing and expanding it with the compatibility of the current status of the Cooperation Council would be an efficient solution. This outbreak of the crisis between sister countries of Gulf had led other countries to intervene in the dispute either to support one country over other or to solve the dispute by mediating. This support has a successful effect in near future. The ambition is that the Dispute Settlement Authority must be strengthened so that it can issue its decisions in a final way, where Supreme Council does not need to interfere to propose a solution in a way that entails resolving the dispute and to remove the embarrassment from the Supreme Council. Individuals with judicial experience and commission members must grant with independency and independent budget. The current case suggested that it is necessary to have an adequate plan that should be imposed immediately when even the slightest issues arises for example, an agreed mechanism for resolving such differences includes the interference of Council countries.

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