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PEACEFUL SETTLEMENT OF DISPUTES

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Abstract

The purpose is to provide a general survey of the practice among States of the peaceful settlement of international disputes. There are variety of instruments for peaceful settlement, including negotiation, commissions of inquiry, Mediation, Conciliation and Good Offices. Care is taken to indicate the quantitative significance of the inter-State arbitration in relation to the use of standing international tribunals, such as the International Court of Justice.

Key word: *International law, peaceful settlement. Negotiation, mediation, inquiry, United Nation, Arbitration.*

1. Introduction

Historically, International Law has been regarded by the international community as a means to ensure the establishment and preservation of world peace and security. The maintenance of international peace and security has always been the major purpose of the International Law. It was the basic objective behind the creation of the League of Nations in 1919 and the United Nations in 1945. Since the direct cause of war and violence is always a dispute between States, it is therefore in the interest of peace and security that disputes should be settled. Methods and procedures for the peaceful (pacific) settlement of disputes have been made available in the International Law. States have concluded a great number of multilateral treaties aiming at the peaceful settlement of their disputes and differences. The most important treaties are the 1899 Hague Convention for the Pacific Settlement of International Disputes which was revised by the Second Hague Peace Conference in 1907, and the 1928 General Act for the Pacific Settlement of Disputes which was concluded under the auspices of the League of Nations. Furthermore, there are regional agreements, such as the 1948 American Treaty on Pacific Settlement, the 1957 European Convention for the Peaceful Settlement of Disputes, and the 1964 Protocol of the Commission of Mediation and Arbitration of the Organization of African Unity. In addition to such general treaties on dispute settlement, there are many bilateral and multilateral agreements which include specific clauses related to dispute settlement. The Charter of the United Nations devotes Chapter VI to the methods and procedures for the pacific settlement of disputes. Paragraph 1 of Article 33 of the Charter states the methods for the pacific settlement of disputes as the following: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements. This paragraph obliges States parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, to seek a solution by any of the listed methods or other peaceful means of their own choice. The methods of peaceful settlement of disputes fall into three categories: diplomatic, adjudicative, and institutional methods. Diplomatic methods involve attempts to settle disputes either by the parties themselves or with the help of other entities. Adjudicative methods involve the settlement of disputes by tribunals, either judicial or arbitral. Institutional methods involve the resort to either the United Nations or regional organizations for settlement of disputes (Collier,J. 1999).

2. Diplomatic Methods of Dispute Settlement

Diplomatic methods of dispute settlement are negotiation, enquiry, mediation, conciliation, and good offices.

2.1. Negotiation

Negotiation is a method by which people settle differences. It is a process by which compromise or agreement is reached while avoiding argument and dispute.

In any disagreement, individuals understandably aim to achieve the best possible outcome for their position (or perhaps an organization they represent). However, the principles of fairness, seeking mutual benefit and maintaining a relationship are the keys to a successful outcome.

Specific forms of negotiation are used in many situations: international affairs, the legal system, government, industrial disputes or domestic relationships as examples. However, general negotiation skills can be learned and applied in a wide range of activities. Negotiation skills can be of great benefit in resolving any differences that arise between you and others.

Negotiation is a flexible means of peaceful settlement of disputes in several respects. It can be applied to all kinds of disputes, whether political, legal or technical. Because, unlike the other means listed in Article 33 of the

Charter, it involves only the States parties to the dispute, those States can monitor all the phases of the process from its initiation to its conclusion and conduct it in the way they deem most appropriate. Another characteristic of negotiation highlighted by the Manila Declaration is effectiveness. Suffice it to say in this connection that in the reality of international life, negotiation, as one of the means of peaceful settlement of disputes, is most often resorted to by States for solving contentious issues and that, while it is not always successful, it does solve the majority of disputes (Gross, S,. 1988) . Negotiation is a dialogue between two or more people or parties intended to reach a beneficial outcome. This beneficial outcome can be for all of the parties involved, or just for one or some of them. It is aimed to resolve points of difference, to gain advantage for an individual or collective, or to craft outcomes to satisfy various interests (Buettner, R,. 2006) . It is often conducted by putting forward a position and making small concessions to achieve an agreement. The degree to which the negotiating parties trust each other to implement the negotiated solution is a major factor in determining whether negotiations are successful. Negotiation is not a zero-sum game; if there is no cooperation, the negotiation will fail. Everyone negotiates every day, often without even considering it a negotiation. Negotiation occurs in business, sales, non-profit organizations, government branches, legal proceedings, among nations, and in personal situations such as marriage, divorce, parenting, etc. The study of the subject is called negotiation theory. Professional negotiators are often specialized, such as union negotiators, leverage buyout negotiators, peace negotiator, or hostage negotiators. They may also work under other titles, such as diplomats, legislators, or brokers (Fisher, R,. 1984).

2.1.1. Enquiry

One of the common obstacles preventing the successful settlement of a dispute by negotiation is the difficulty of ascertaining the facts which have given rise to the differences between the disputants. Most international disputes involve an inability or unwillingness of the parties to agree on points of facts. Herein lays the significance of the procedure of inquiry as a means of pacific settlement of disputes. Many bilateral agreements have been concluded under which fact-finding commissions have been set up for the task of reporting to the parties concerned on the disputed facts. In addition, the procedure of inquiry has found expression in treaties for the pacific settlement of disputes. The two Hague Conventions of 1899 and 1907 established commissions of inquiry as formal institutions for the pacific settlement of international disputes. They provided a permanent panel of names from which the parties could select the commissioners. The task of a commission of inquiry was to facilitate the solution of disputes by elucidating the facts by means of an impartial and conscientious investigation. The report of a commission was to be limited to fact-finding and was not expected to include any proposal for the settlement of the dispute in question. With the establishment of the League of Nations, the means of inquiry took on a new significance. Inquiry and conciliation were viewed as integral parts of a single process for bringing about a pacific settlement to a dispute. It is in the light of this background that the Charter of the United Nations specifically lists “enquiry” as one of the methods of pacific settlement of international disputes. Enquiry as a separate method of dispute settlement has fallen out of favor. It has been used as part of other methods of dispute settlement. Its purpose is to produce an impartial finding of disputed facts and thus to prepare the way for settlement of dispute by other peaceful methods. The parties are not obliged to accept the findings of the enquiry; however, they always do accept them. The utilization of enquiry has been evident in the practice of international organizations, such as the United Nations and its specialized agencies. Enquiry has been used as part of other methods of dispute settlement in the context of general fact-finding (Goodrich,L . 1955).

2.1.1.1. Mediation:

Use of an independent, impartial, and respected third party (called the conciliator or mediator) in settlement of a dispute, instead of opting for arbitration or litigation. Unlike an arbitrator, a mediator has no legal power to force acceptance of his or her decision but relies on persuasion to reach an agreement. Also called conciliation. Mediation"' is a dynamic, structured, interactive process where a neutral third party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques. All participants in mediation are encouraged to actively participate in the process. Mediation is a "party-centered" process in that it is focused primarily upon the needs, rights, and interests of the parties. The mediator uses a wide variety of techniques to guide the process in a constructive direction and to help the parties find their optimal solution. A mediator is facilitative in that s/he manages the interaction between parties and facilitates open communication. Mediation is also evaluative in that the mediator analyzes issues and relevant norms while refraining from providing prescriptive advice to the parties. Mediation, as used in law, is a form of (alternative dispute resolution) (ADR), a way of resolving disputes between two or more with concrete effects. Typically, a third party, the mediator assists the parties to a settlement. Disputants may mediate disputes in a variety of domains, such as commercial, legal, diplomatic, workplace, community and family matters. The term "mediation" broadly refers to any instance in which a third party helps others reach agreement. More specifically, mediation has a structure, timetable and dynamics that "ordinary" negotiation lacks. The process is private and confidential, possibly enforced by law. Participation is typically voluntary. The mediator acts as a neutral third party and facilitates rather than directs the process. Mediation is becoming a more peaceful and internationally accepted solution in order to end conflict. Mediation can be used to resolve disputes of any magnitude. Mediators use various techniques to open, or improve,

between disputants, aiming to help the parties reach an agreement. Much depends on the mediator's skill and training. As the practice gained popularity, training programs, certifications and licensing followed, producing trained, professional mediators committed to the discipline.

The benefits of mediation include:

1- Cost: While a mediator may charge a fee comparable to that of an attorney, the mediation process generally takes much less time than moving a case through standard legal channels. While a case in the hands of a lawyer or a court may take months or years to resolve, mediation usually achieves a resolution in a matter of hours. Taking less time means expending less money on hourly fees and costs.

2-Confidentiality: While court hearings are public, mediation remains strictly confidential. No one but the parties to the dispute and the mediator or mediators know what happened. Confidentiality in mediation has such importance that in most cases the legal system cannot force a mediator to testify in court as to the content or progress of mediation. Many mediators destroy their notes taken during a mediation once that mediation has finished. The only exceptions to such strict confidentiality usually involve child abuse or actual or threatened criminal acts.

3- Control: Mediation increases the control the parties have over the resolution. In a court case, the parties obtain a resolution, but control resides with the judge or jury. Often, a judge or jury cannot legally provide solutions that emerge in mediation. Thus, mediation is more likely to produce a result that is mutually agreeable for the parties.

4- Compliance: Because the result is attained by the parties working together and is mutually agreeable, compliance with the mediated agreement is usually high. This further reduces costs, because the parties do not have to employ an attorney to force compliance with the agreement. The mediated agreement is, however, fully enforceable in a court of law.

5-Mutuality: Parties to mediation are typically ready to work mutually toward a resolution. In most circumstances the mere fact that parties are willing to mediate means that they are ready to "move" their position. The parties thus are more amenable to understanding the other party's side and work on underlying issues to the dispute. This has the added benefit of often preserving the relationship the parties had before the dispute.

6-Support: Mediators are trained in working with difficult situations. The mediator acts as a neutral facilitator and guides the parties through the process. The mediator helps the parties think "outside of the box" for possible solutions to the dispute, broadening the range of possible solutions

2.1.1.1.1. Conciliation:

Is a process of settling a dispute by referring it to a specially constituted organ whose task is to elucidate the facts and suggest proposals for a settlement to the parties concerned. However, the proposals of conciliation, like the proposals of mediators, have no binding force on the parties who are free to accept or reject them. As in the case of mediation, conciliators may meet with the parties either jointly or separately. The procedures of conciliation are generally instituted by the parties who agree to refer their dispute to an already established organ, commission or a single conciliator, which is set up on a permanent basis or ad hoc basis; third parties cannot take the initiative on their own. The conciliators are appointed by the parties to a dispute. They can be appointed on the basis of their official functions or as individuals in their personal capacity. Conciliation is described by some as a combination of enquiry and mediation. The conciliator investigates the facts of the dispute and suggests the terms of the settlement. But conciliation differs from enquiry in that the main objective of the latter is the elucidation of the facts in order to enable the parties through their own accord to settle their dispute; whereas the main objective of conciliation is to propose a solution to a dispute and to win the acceptance of the parties to such solution. Also, conciliation differs from mediation in that it is more formal and less flexible than mediation; if a mediator's proposal is not accepted, he can present new proposals, whereas a conciliator usually present a single report. When the parties to a dispute reach the point of not being able to solve it by negotiation, or the point where they have broken off diplomatic relations, but they are convinced that a settlement is important to them, the utilization of the technique of good offices may be helpful. Good offices may be utilized only with the agreement or the consent of both disputants. A third party attempts to bring the disputants together in order to make it possible for them to find an appropriate settlement to their differences through their negotiations. In this regard, the function of the third party is to act as a go-between, transmitting messages and suggestions in an effort to create or restore a suitable atmosphere for the parties to agree to negotiate or resume negotiation. When the negotiations start, the functions of the good offices come to an end. The procedure of good offices, in contrast to mediation, has a limited function which is simply bringing the disputants together. In mediation, the mediator takes an active part in the negotiations between the disputants and may even suggest terms of settlement to the disputants (Malcolom, S,. 2008) .

2.1.1.1.1.1. Method of good offices:

Consists of various kinds of action aiming to encourage negotiations between the parties to a dispute. Also, in contrast to the case of mediation or conciliation, the proffered of good offices does not meet with the disputants jointly but separately with each of them. Seldom, if ever, the proffered attends joint meetings between the parties to a dispute. Normally, the role of the proffered of good offices terminates when the parties agree to negotiate, or to resume negotiation. However, the proffered may be invited by the parties to be present during the negotiations. As in case of mediation, an offer of good offices may be rejected by either or both parties to a dispute. The use of

mediation, conciliation, and good offices has a long history. These methods have been the subject of many bilateral and multilateral treaties. However, with the establishment of the League of Nations, permanent organs were set up to perform the functions of these methods of pacific settlement of disputes. In this context, the Charter of the United Nations lists in Article 33(1) mediation and conciliation, but not good offices, as methods of pacific settlement available to the parties to any dispute. Notably, in the practice of the United Nations, the terms "mediation", "conciliation", and "good offices" have been used with considerable looseness, flexibility and little regard to the distinctions which exist between them. Mediation and conciliation have both advantages and disadvantages as compared to other methods of dispute settlement. They are more flexible than arbitration or judicial settlement. They leave more room for the wishes of the disputants and the initiatives of the third party. The disputants remain in control of the outcome. Their proceedings can be conducted in secret. However, there are disadvantages to mediation and conciliation. Their proceedings cannot be started and be effective without the consent, cooperation, and goodwill of the disputants. The proposed settlement is no more than a recommendation with any binding force upon the disputants(Malcolom,S,."a" 2008).

3. Adjudicative Methods of Dispute Settlement

The major disadvantage of the diplomatic methods of dispute settlement is that the parties to them are under no legal obligation to accept the proposals of settlement suggested to them. Thus, the adjudicative methods of dispute settlement are preferable because they provide the issuance of binding decisions, rather than mere recommendations as in cases of diplomatic methods. It is this binding force of the decisions rendered at the end of the adjudicative methods that distinguishes these methods from other methods of dispute settlement. Adjudicative methods of dispute settlement consist of two types of procedures, "arbitration" and "judicial settlement". Arbitration and judicial settlement are two methods involve the determination of differences between States through legal decisions of tribunals. Whereas in case of judicial settlement the decision is made by an established court, permanent (such as the International Court of Justice) or ad hoc, in case of arbitration it is made by a single arbitrator or arbitral tribunal. The major characteristic of these two methods is that a judicial decision or an award is binding on the parties and must be carried out in good faith. It is not until the establishment of the League of Nations that the terms "arbitration" and "judicial settlement" became distinguished. Under the Covenant of the League "judicial settlement" meant settlement by the Permanent Court of Justice (PCIJ), whereas "arbitration" meant settlement by other tribunals. This same distinction is carried over by the Charter of the United Nations, but with the International Court of Justice (ICJ) substituting for the Permanent Court of International Justice (PCIJ).

3.1. Arbitration

Arbitration is a process used by agreement of the parties to resolve disputes. In arbitration, disputes are resolved, with binding effect, by a person or persons acting in a judicial manner in private, rather than by a national court of law that would have jurisdiction but for the agreement of the parties to exclude it. The decision of the arbitral tribunal is usually called an award (Halsbury's Laws of England 2008).

The submission of a dispute to an unbiased third person designated by the parties to the controversy, who agree in advance to comply with the award a decision to be issued after a hearing at which both parties have an opportunity to be heard.

Arbitration is a well-established and widely used means to end disputes. It is one of several kinds of Alternative Dispute Resolution, which provide parties to a controversy with a choice other than litigation. Unlike litigation, arbitration takes place out of court: the two sides select an impartial third party, known as an arbitrator; agree in advance to comply with the arbitrator's award; and then participate in a hearing at which both sides can present evidence and testimony. The arbitrator's decision is usually final, and courts rarely reexamine it.

Traditionally, labor and commerce were the two largest areas of arbitration. However, since the mid-1970s, the technique has seen great expansion. Some states have mandated arbitration for certain disputes such as auto insurance claims, and court decisions have broadened into areas such as Securities, antitrust, and even employment discrimination. International business issues are also frequently resolved using arbitration.

Arbitration was defined in the 1899 Hague Convention for the Pacific Settlement of Disputes as "the settlement of differences between states by judges of their choice and on the basis of respect for law (The 1899 Hague Convention) this same definition was repeated in the 1907 Hague Convention(The 1907 Hague Convention). The procedures of arbitration grew to some extent out of the processes of diplomatic settlement and represented an advance towards a developed international legal order. Arbitration is considered the most effective and equitable means of dispute settlement. It combines elements of both diplomatic and judicial procedures. However, it is much more flexible than judicial settlement. It gives the parties to a dispute the choices to appoint the arbitrators, to designate the seat of the tribunal, and to specify the procedures to be followed and the law to be applied by the tribunal. Moreover, the arbitration proceedings can be kept confidential.

Arbitration cannot be initiated without the agreement of the parties to a dispute. An agreement of arbitration may be concluded for settling a particular dispute, or a series of disputes that have arisen between the parties. It may be in the form of a general treaty of arbitration. The usual pattern in arbitration agreement as regards the appointment of arbitrators is that each of the two parties has to appoint one arbitrator or more, and the appointed

arbitrators have to appoint the arbitrator, who is known as an "umpire". Usually, the arbitral tribunal consists of three arbitrators, who can decide by majority vote. The parties may agree to refer their dispute to a single arbitrator, who may be a foreign head of a State or government, or a distinguished individual.

3.1.1. Judicial settlement

Judicial settlement is a settlement of dispute between States by an international tribunal in accordance with the rules of International Law. The international character of the tribunal is in both its organization and its jurisdiction. International tribunals include permanent tribunals, such as the International Court of Justice (ICJ), the International Tribunal for the law of the Sea (ITLOS), the European Court of Justice, the European Court of Human Rights and the Inter-American Court of Human rights, and include ad hoc tribunals, such as the United Nations Tribunal in Libya. The ICJ is the most important international tribunal, because of its both prestige and jurisdiction. It is the principal judicial organ of the United Nations. All members of the United Nations are ipso facto parties to the Statute of the Court. The judges of the ICJ are appointed by the United Nations, not by the parties to a dispute. The ICJ has to apply the rules and principles of International Law, which are enumerated in Article 38 of the Statute of the Court; the parties have no choice in specifying the rules to be applied by the Court. The jurisdiction of the Court includes all disputes between States concerning the interpretation of a treaty, any question of International Law, and the existence of any fact constituting breach of international obligations, and the nature or extent of the reparation to be made for the breach of an international obligation. The Charter of the United Nations refers to "arbitration" and "judicial settlement" in Article 33(1) as two methods among other methods of pacific settlement that States are encouraged to utilize in seeking a solution to their international disputes. It is also provides in Article 36(3) a guidance to the Security Council requiring it "to take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice". Despite this provision, the Charter does not impose on members of the United Nations the obligation to submit any dispute, even legal one, to the Court. Moreover, the Charter provides that nothing in it "shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future" (The U.N Charter art. 95) .

4. Institutional Methods of Dispute Settlement

Institutional methods of dispute settlement involve the resort to international organizations for settlement of international disputes. These methods have come into existence with the creation of the international organizations. The most eminent organizations, which provide mechanisms for settling dispute between their member States, are the United Nations and the regional organizations, such as the European Union, the Organization of American States, the Arab league and the African Union.

4.1. Peaceful Settlement of Dispute by the United Nations

The Settlement of international disputes is one of the most important roles of the United Nations. The Charter of the United Nations stipulates that it is the task of the United Nations "to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace. To this end, the Charter provides a system for the pacific settlement or adjustment of international disputes or situations under which the wide competence of the United Nations in this matter is established, and the corresponding obligations of the members of the United Nations are imposed. This system is delineated mainly in Chapter VI of the Charter. Chapter VI of the Charter contains the United Nations mechanism for the pacific settlement of disputes. Article 33 obliges the parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, to settle such a dispute by any of the enumerated peaceful means therein, or by any peaceful means of their choice. When the parties fail to observe their obligations or their efforts are not successful, the United Nations will intervene to consider the dispute and give its recommendations on the matters. The Security Council is given the primary responsibility in this regard (UN charter art. 24(1)). It is entitled to intervene either on its own initiative, upon invitation of any member of the United Nations, upon invitation by the General Assembly, or upon a complaint of a party to a dispute (UN charter arts. 11(3)). The Security Council may follow three courses of action. First, it may call upon the parties to a dispute to settle their dispute by any of the peaceful means listed in Article 33(1) (UN charter art. 33 (2)). Second, it may recommend to the parties appropriate procedures or method of settlement (UN charter art. 36(1)). Third, it may recommend terms of settlement, as it may consider appropriate (UN charterart. 37(2).). Although under the Charter the Security Council is given the primary role for maintaining international peace and security, the General assembly is not excluded from doing so. Under Articles 11, 12 and 14, the General Assembly may discuss and make recommendations for procedures or methods of adjustment, or for terms of settlement, with regard to any dispute or situation brought before it. The disputes or situations may be brought before the General Assembly by the Security Council, any member of the United Nations, or any State party to such dispute (UN charter art. 35.).

4.1.1. Peaceful Settlement of Dispute by Regional Organizations:

Article 33(1) of the Charter of the United Nations requires the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, to seek, first of all, a solution by any of the peaceful methods enumerated therein. Among these enumerated methods is the "resort to regional arrangements or agencies". Article 52 of the Charter recognizes the right of the members of the United Nations to establish regional arrangements or agencies "for dealing with such matters related to the maintenance of international peace and security". Paragraph 2 of this Article requires the member States that are members of regional arrangements or agencies to "make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council. It seems that the obligation imposed upon the member States by Article 52(2) is consistent with their obligation under Article 33(1). However, paragraph 1 of Article 52 imposes two explicit limitations with regard to the utilization of regional arrangements and agencies. First, it requires that the matters dealt with must be "appropriate for regional action". Second, it requires that the "arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations". Moreover, a third explicit limitation is imposed by Article 54 which requires that the Security Council should "at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security". No similar explicit limitations are imposed with regard to the utilization of other procedures for pacific settlement. Article 52 is not only confined to legitimizing regional arrangements or agencies and imposing an obligation upon the member States, but goes beyond such legitimization and obligation by pacing a duty on the Security Council itself. Paragraph 3 of this Article requires the Security Council to "encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council". This provision is in harmony with the general approach of the Charter related to the pacific settlement of disputes which requires the parties themselves to seek a solution to their dispute by any peaceful means of their own choice, and that the Council should give every opportunity to the parties to do so. If the parties have referred their local dispute to the Security Council before making any effort to achieve a settlement through the regional arrangements or agencies, then the Council is under a duty to remind them of their obligation, or to refer such dispute at its own initiative to such arrangements or agencies (Malcolom, S,. "b" 2008)).

Conclusions

The main question is of course: how should one choose the suitable means of settlement? Before trying to answer that question, it is perhaps worthwhile to underline certain observations. International law imposes an obligation to settle disputes by peaceful means, but unless the parties have agreed otherwise, there is no obligation to resort to a specific mechanism. States can choose between diplomatic and judicial means. The first ones include a whole gamut of procedures, with the differences among them not always clear-cut. What characterizes all the diplomatic means is the lack of binding effect of the report which may be prepared at the end of the process, and the possibility to take into consideration all the relevant circumstances .Diplomatic means are by their nature friendlier and less adversarial than adjudication. Although the submission to arbitration or a court of law is optional, once the tribunal has made its decision that decision is binding and has to be implemented. Arbitration is more flexible and can better be adapted to the wishes of the States parties to the dispute, in particular with regard to the choice of the arbitrators and the rules to be applied. Proceedings at the International Court are certainly more rigid, international law has to be applied, and the procedure foreseen by the Statute and the Rules of Procedure has to be followed, but with the possibility to opt for adjudication by a chamber, the parties can exercise some influence on the designation of the judges that are to deal with the case. History shows that most cases of dispute resolution involved negotiations, mediation or arbitration, but nowadays the list of cases on the agenda of the Hague Court is also quite impressive. Clearly, the peaceful settlement of international disputes is an important ideal that many international diplomats, lawyers and commentators aim for. In particular, international lawyers hope that IL can and should be used as an important means for resolving disputes, and not political, economic and/or military power. The use of the latter in particular is often viewed as a failure of international law, which indicates that this in some ways this Topic is the opposite of the last Topic. However, while in a perfect world the use of law would be the means of resolving disputes, we know that in reality it is political and economic factors that so often take precedence. Nonetheless, law, and in particular, international law, can play a significant role in some disputes. Thus, while we need to be realistic in acknowledging the limited role law plays in many disputes, at the same time we should never underestimate and we should be an advocate in favor of the powerful potential of law. Of the means of settlement listed in Art. 33 the first four are no judicial or 'diplomatic' methods: negotiation, inquiry, mediation, and conciliation. That is, they are methods and procedures that involve the parties to the dispute, either alone (negotiation) or with some third party participation (inquiry, mediation, conciliation). However, none of the methods resemble judicial settlement, in that these methods are not based on the application by an arbitrator, court or tribunal of existing law to facts found by the arbitrator or court. The outcome of these diplomatic methods is not binding on the disputant states.

References

Buettner, R. (2006).” A Classification Structure for Automated Negotiations” pp 523-530
Collier,J. (1999) “The Settlement of Disputes in International Law” Cambridge.
Gross, S. (1988) “ International negotiation: a multidisciplinary perspective”. Negotiation journal. pp. 230-231.
Fisher, R. (1984). ‘ negotiating agreement without giving in ‘. New York, N.Y.: Penguin Books.
Goodrich. (1955)” The United Nations and the Maintenance of International Peace and Security” pp. 173.
Malcolm, S. (2008)”international law “Cambridge, book pp275-278.
Halsbury's Laws of England (2008) "Arbitration” book pp2.
The 1899 Hague Convention for the Pacific Settlement of Disputes art. 15.
The 1907 Hague Convention for the Pacific Settlement of Disputes art. 37.
UN Charter art. 95..UN charter art. 24(1).
UN charter arts. 11(3), 33(2), 34, 35, 36(3) and 99.
UN charter art. 33(2).
UN charter art. 36(1).
UN charter art. 37(2).
UN charter art. 35.
Malcolom, S,. “a” (2008) pp. 928-950.
Malcolom, S,. “b” (2008)