

Dispute Resolution in International Economic Law

Anuj Dubey¹, Bodhini Harshad Shelke²

^{1,2}Student, Symbiosis Law School, Nagpur

ABSTRACT

Dispute resolution mechanisms is an important part of international economic law and agreement and treaties, but they differ considerably. This research paper reviews and focus on different types of dispute resolution mechanisms with in different countries and the methods of dispute resolution mechanism used by the countries to maintain better peace and trade activities which lead to world economic Stability and how these dispute resolution systems helped these countries to be more strengthen in their trade and economic practices. The research paper will also discuss the history and the present situation of dispute settlement mechanisms and their effectiveness in solving the economic issues through various convention and treaties signed by the countries to maintain good trade practices

The research project will also be focused on the international organizations and international forums like World Trade Organization and on various International Conventions etc., which had played an vital role in the dispute settlement, the author in this research paper will also make a comparative and analytical approach to conclude the problems faced by the different countries in the dispute resolution and their practices.

Keywords: WTO (world trade organization), mediation, arbitration, conflict, dispute, convention, and treaties

INTRODUCTION

Dispute resolution in one of the key factors of the international law, the dispute resolution system has developed in these years and has broader its scope. In simple terms a dispute resolution mechanism are defines as the methods from which a dispute which can be resolved between any parties those are in dispute. These mechanisms include many types of judicial and extrajudicial ways of dispute resolution.

When an international dispute is raised it can cause serious damage to the economies of those countries who are in the dispute and may lead to war or heavy sanctions. To avoid such condition and to protect economies the dispute resolution mechanism plays an important role. Future in this research paper the author will discuss the types of dispute resolution, their importance and history

CONFLICTS

Conflicts in international law can be defined as clash between two or more countries together, A controversy, disagreement, quarrel, or warfare between or among two or more nations or countries, often requiring involvement or monitoring by other members of the global community can be termed as

conflicts¹. International economic law includes numerous subjects, such as international trade law, international monetary law, the law of international business transactions, competition/antitrust law, intellectual property law, and development, among others. International economic conflicts can occur within a state, between nation states, or within international organizations and economic integration arrangements. The way conflicts arise and play out illuminates the needs of the dispute resolution system and organizations in every part of the world. These conflicts arise in many forms and the study of how a conflict arises is as important as the study of its resolution. The conflicts studies help organizations and nations to take precautions and to take or improve the measure of dispute resolution. If these conflicts are resolved on time, it might create spillover effect and can lead to spread of hate and can affect peace making and security of a nation, some studies also show that the current developed dispute resolution systems are not as efficient as they could be the reasons for this is rising internal state disputes, creation of multiple treaties and burden on dispute organizations.

The studies of conflicts and its resolution in context of law is very important as it gives an idea how rule of law combines with the dispute resolution mechanism to give end results in international economic disputes or any other type of disputes. Conflicts or disputes play a major role in contributing in development of law, organization and dispute resolution methods are designed in such ways that they can be restructured as in this dynamic world there are different types of disputes and each dispute has a different capacity to be handled. In international economic law dispute can arise out of economic measure such as trade and land settlement etc..

In the international economic conference, which was conducted in year 2001 focused to resolve the problem of dispute resolution, in this international conference two sessions of conference were held in Houston in this conference three articles were presented related to business and trade disputes. The IELG (international economic law group) of the American society of international law (ASIL) was created and designed in such a way to give scholars and examiners a power of opportunity to study international economic law and its resolution of disputes. The focus of this group aimed to focus on studying why conflicts arise and how can they be resolved.

WHAT IS AN INTERNATIONAL DISPUTE

In order to understand the proceeding of international dispute structure, then one must try to understand what are disputes, the term disputes has wide range of interpretation in layman terms a dispute is a conflict of interest between two or more persons, the key factor of a dispute is the parties involved in a dispute should have a difference in their opinion on a particular thing, in international law terms a dispute can arise on question of law or question of facts which can lead a dispute to a political or a legal dispute.

If a state resolves a dispute on a basis of law it may be termed as a legal dispute otherwise it led to political dispute. In the case of *NICARAGUA V. HONDURAS* where the case was revolving through a concern of border and interborder dispute the court stated that it can deal with only legal aspects and cannot concern itself on a political aspect.

¹ International conflict,
<https://www.eionet.europa.eu/gemet/en/concept/13304#:~:text=Definition,members%20of%20the%20global%20community.>
(last visited Mar 19, 2024)

According to international court of justice² and international dispute is a disagreement of question of law or question of fact or a conflict or a legal clash in interest or views and those states which are effects can only appear before international court of justice, under article 35 of the statute defines the conditions under which the states may approach the international court of justice

WHAT IS INTERNATIONAL ECONOMIC LAW?

International economic law is a branch of international law that bounds the conduct of sovereign states and international organizations in international economic relations and the conduct of private parties involved in across-border economic and business transactions. International economic law is an versatile field encompassing both public and private international law. International economic law includes the fields of international trade law, international financial law, traditional private international law fields, regional economic integration (European Union, ASEAN, and other regional trade organizations), international development law, international commercial arbitration, international intellectual property law, and international business regulation.

HISTORY OF GATT TO WTO

the general agreement on traffic and trade (GATT) was created in year 1944 in Bretton woods conference after World War II, which established two important institutions that are international monetary fund and the world bank which are the major pillars of international economic law.

On November 30 1947 GATT was created because of negotiation round with enough members as a part of the agreement, the main function of GATT to managed peaceful multilateral trade negotiations and act as a head for trade purpose

In Uruguay round held from 1987 to 1994 culminated in the Marrakesh agreement which established WTO world trade organization.

ROLE OF WTO

World trade organization is an organization which deals with the disputes between international organizations and countries in the areas of trade, tariff etc. it was established in year 1995 as the heir or successor of GATT which was (general agreement on tariff and trades 1934), in total there were 23 nations as member to this agreement. WTO as an organization has 164³ members

One of the main roles of WTO is to resolve dispute between two or more countries for this under WTO a dispute settlement understanding (DSU) was created, countries who are part of WTO must follow the procedure given under WTO for dispute resolution

Article 4 of the WTO allows member nations to seek advice from each other on actions impacting any agreement. Such consultation must be entered within 30 days after the request, and if the disagreement is not resolved within 60 days, the parties may request a panel. This panel for dispute resolution is given under article 6 and article 8, which defines that a panel request must be in writing and a brief summary of the problem and measures which have been taken before approaching the panel, the panel will be composed of three members, which are going to be appointed by WTO secretariat

² Jurisdiction: International Court of Justice Jurisdiction | INTERNATIONAL COURT OF JUSTICE, <https://www.icj-cij.org/443/jurisdiction> (last visited Mar 31, 2024)

³ WTO members and observers WTO | Members and Observers, https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Mar 19, 2024)

Under article 12 and 15 the provision for panel proceeding are enriched which states the after process which starts after a written complains and oral arguments ,the panel appointed after hearing the parties should submit their report within 6months and should distributed to all the member within 9 months ,after which the party affected by the decision can also go form an appeal Appellate Body is a standing body of seven people that hears appeals from reports issued by panels in disputes brought by WTO members. The Appellate Body can uphold, modify, or reverse the legal findings and conclusions of a panel

The appellate body is made up of seven members who are appointed for four-year terms and have qualifications in international trade law and the subject matter covered by general agreements.

The dispute settlement understanding (DSU), allows a party to appeal in respect of subject matter to issue of law covered in the panel reports as per article 17(6). the appellate body has a distinct feature that it decides and heard by the only chosen three persons and the pleading in writing are discussed by the appellate body consisting of seven members

STRENGTH AND WEAKNESS OF THE DISPUTE SETTLEMENT UNDERSTANDING

Every system has two side and has both advantages and disadvantages, comparing to the previous system of dispute resolution under GATT was not so efficient and effective when it is compared with the new system of dispute settlement understanding under the world trade organization. however, the DSU system also takes a long time in settlement of disputes which also effect the economic conditions of the parties those are involved in the dispute.

Also, there is no clause of compensation of any harm suffered by the nations on any disputes, neither of winning or losing parties receives any kind of compensation or damage's which they have suffered during or before the trial or for any legal expenses

However, there are some areas where the development of DSU under WTO has been made remarks, when compared to the process of GATT 1947 the current DSU system is more effective and has also developed quasi-judicial character which helps to deal with the disputes

WHAT TECHNIQUES ARE AVAILABLE OTHER THAN WTO FOR SETTLING THE INTERNATIONAL DISPUTES

An economic dispute between two countries can be solved through dispute settlement understanding and its appellate mechanisms through parties approaching WTO, there are also some techniques by which countries in conflicts can resolve their dispute without approaching WTO, these techniques are also known as traditional techniques of settlement

1. COERCION

The literal meaning of word coercion is by use of force, this type of settlement cause threat to society as of whole, these types of settlement establish the power of a country for favoring in the dispute resolution this power can be shown in form of negotiation techniques or as part of bargaining power

2. VOTING

The members of the societies those who are part of some communities may decide on certain disputes, such as UN general assembly normally these communities do not have legislative power however it can be found in few of the cases where dispute between two parties has been resolve through voting one of

the such case in 1947 general assembly resolution on the partition of Palestine⁴ and in territories of Togoland and Camerrons

These traditional methods are now not usually accepted, future more peaceful settlement techniques have been developed for dispute resolution under international law those are listed under article 33 of U.N charter these techniques involve negotiation, arbitration, meditation, inquiry etc.

These traditional techniques are briefly discussed as follows

1. Negotiaton

In the process of negotiation all the effected parties usually communicate which each other on similar term to bargain and try to figure out a similar outcome for issue which refers to settling of issues Negotiation techniques are usually used for many international economical disputes, this technique is not used where there is an involvement of a third party or a dispute is binded by adjudication.

2. Meditiation and good office

Meditation is a technique where parties to dispute agrees to the intervention of a third party which acts like a mediator. In the cases of good office, the role of third parties is limited, these third parties act as middle bridge between the parties and help them to negotiation between each other, where as in mediation the mediator plays an important role and haves an important role in resolving the disputes

3. Arbitration

In the process of arbitration parties agrees on basis on their contractual terms where their dispute is submitted to arbitrators who makes the binding decision for the disputes. The party by an agreement agrees to the issues to be arbitrated and its procedure and selection of arbitrators

The method of conflict resolution through the help of, advisory bodyl, and recommendation of a third party who is called as an arbitrator is known as process of arbitration. "A procedure for the settlement of disputes between states by a binding award on the basis of law and as a result of a voluntarily accepted undertaking," is how the International Law Commission describes it. International arbitration is referred as a mix type or a hybrid type pf dispute resolution system because of it is propensity to combine common law and civil law procedures. In the case of Qatar v. Bahrain judgment, the International Court of Justice declared that, for the purposes of international law, "the settlement of disputes between states by judges of their own choice" is what is often meant to be meant by arbitration.

4. Conciliation

In the process of conciliation a committee is formed, before this party the dispute or the disagreement is presented and the committee creates report and gather information about the dispute in detail, in the process of conciliation a peaceful effort is made to settle a dispute by singing some contracts.one point is to be noted that the commission recommendation and orders are not legally bounded to any party to the dispute.

This process is way different from mediation and abirritation where in other methods a third party is appointed to settle the dispute, but unlike in conciliation a mediator or arbitrator is not responsible for learning of the details of the case of dispute of parties

These conciliation-focused commissions or committees may be temporary hoc or permanent in character. The Hague Conventions for the PSD (Pacific Settlement of Disputes) in 1899 and 1907 developed the

⁴ General Assembly - Question of Palestine United Nations, <https://www.un.org/unispal/data-collection/general-assembly/#:~:text=The%20question%20of%20Palestine%20was,under%20a%20special%20international%20regime.> (last visited Mar 31, 2024)

concept of the Conciliation Commission. Through the Conciliation Commission, several treaties were signed following the end of World War I.

Under article 14 and 10 of the security council in accordance with article 34, a commission can be appointed for settling dispute between parties. There are many treaties which have been created through conciliation commission some of the important commissions are pacific settlement of dispute and Pact of Bogota in year 1948, also the convention for ozone layer protection

5. Settlement through the United Nations or other international organizations

In this type of dispute resolution, the parties approach the appropriate forum with their disputes. These disputes then are tried by the organization by following their established rules and regulations. The decision by these organizations may be advisory and non-binding in nature. This process may include the methods such as mediation, negotiation conciliation etc.

THE ROLE OF U.N IN DISPUTE SETTLEMENT UNDER CHAPTER VI AND VII OF THE CHARTER WHICH IS TITLED AS ‘PACIFIC SETTLEMENT OF DISPUTES “AND COMPULSIVE SETTLEMENT OF DISPUTES

International law has traditionally been seen as a means by which the international community works to build and maintain world peace and security. The preservation of world peace and security has been the fundamental goal of the League of Nations' founding in 1919 and the United Nations' founding in 1945. Several multilateral accords that seek to settle conflicts amicably have been signed. The Hague Convention of 1899 for the Peaceful Settlement of Disputes is one of the most significant. According to Article 2 paragraph 3 of the UN Charter, every member state should handle any international disputes amicably while preserving world peace, security, and guaranteeing that justice is not jeopardized. There are several options for the peaceful resolution of conflicts listed in Article 33, Paragraph 1 of the Charter. Among their limited options are court resolution, mediation, conciliation, arbitration, negotiation, investigation, and recourse to regional bodies. Extra-judicial and judicial ways of settlement are the two main categories into which the different peaceful techniques of settlement can be generally classified.

PACIFIC SETTLEMENT OF DISPUTES (CHAPTER VI OF UNITED NATION CHARTER)⁵

- The chapter VI of the United Nations Charter mentions and deals with the practice of dispute resolution by the Security Council and the procedure of peaceful settlement which are framed under article 33 till 38 and article 99 and 11 in the documents of the Security Council
- Under article 33 of the Charter discuss about the obligation of parties to the disputes, this article states that any dispute likely to affect the international peace and security should be taken first through peaceful settlement which are negotiation, mediation etc.
- Article 34 of the Charter gives power to the United Nations Security Council to investigate in any dispute which is likely to endanger the international peace and security
- Article 35 of the Charter gives power to both member and non-member to bring their dispute in any situation which is likely to affect the peace and security at international level

⁵ Pacific settlement of disputes (chapter VI of UN Charter) Security Council United Nations, <https://www.un.org/securitycouncil/content/pacific-settlement-disputes-chapter-vi-un-charter#:~:text=Article%2033%20of%20the%20Charter,means%20to%20settle%20their%20dispute.> (last visited Apr 1, 2024)

COMPULSIVE MEANS OF DISPUTE RESOLUTION UNDER CHAPTER VII⁶ OF THE UN CHARTER

Compulsives means on the other hand are opposite of the pacific means, as discussed above pacific means include peaceful settlement of disputes, the compulsive means of dispute resolution are forceful methods which help in resolving disputes when there is a threat to international security and peace.

These methods include retortion, reprisals, intervention, diplomatic pressures, economic sanctions etc.

RELEVANCE OF LAW IN DISPUTE RESOLUTION

As discussed above the author has cover the scope of what is a dispute, how and by what ways it can be solved, one question arise which questions the relevancy of law binding on any disputed countries As discussed above that every dispute should be focused to be resolved peacefully without efficient international security and peace and directing each state to maintain peace and harmony in their trade practice which is also one of the most important feature of world trade organization, Secondary the legal system formulates many forms and organizations which are binded by their rules and regulation which works on principles to settle and avoid any dispute rising out of any state .finally the international agreement's relating to bilateral trades and other agreements which binds nations from misusing there power and give specific methods for resolving their disputes

THE SETTLEMENT OF INTERNATIONAL ECONOMIC DISPUTE THROUGH INVESTOR-STATE DISPUTE SETTLEMENT

The process of DSU by WTO was one of the most effective methods of the dispute resolution and was also refer as jewel crown of WTO, the concept of investor-state arbitration has now in recent time has become a useful method of dispute resolution for settling investment related disputes under international economic law. The method of DSU under WTO was introduced to strength multilateral trade system whereas, investment treaties provide investor an early excess to an international tribunal for the dispute resolution. due to growth of international economic law, there is rise in economic conflicts between states and individuals at internal and at international level. According to some relevant studies there is a high pressure on WTO settlement process.

On the other hand, investor -state arbitration to some scholars is unfair to same corporate and economic interests and neglects non-economic concern

At procedural level international economic (investment) law contain two major clauses in their treaties 1. allowing investor- state arbitration and secondly allowing state-state abirritation in any economic dispute

India's Perspective At Investor-State-Dispute Settlement (ISDS)

ISDS is a method through which an investor can sue any country for any malpractice against their foreign investment. ISDS is an important instrument of dispute settlement under public international law. The Indian perspective is very much clear in support in the dispute resolution method because India has supported the concept of appellate review under article 29 of the Indian model of bilateral treaty.

Also, this ISDS system is beneficial to India in context of legal certainty, increasing credibility and will also lower down the burden of India court and tribunals on dispute resolution

⁶ Chapter VII: Action with respect to threats to the peace, breaches of the peace, and acts of aggression (articles 39-51) United Nations, <https://www.un.org/en/about-us/un-charter/chapter-7> (last visited Apr 1, 2024)

THE CURRENT PROBLEM FACED BY COUNTRIES IN DISPUTE RESOLUTION MECHANISM

Concurrently, the Doha Round⁷, the most recent round of trade talks among WTO members, has been going on for over twenty years and has not gone well. Furthermore, several governments are undermining the multilateral order by slowing the WTO Appellate Body's work and using the national security exception to support their trade restrictions. The continuing discussion over the legitimacy of international economic law serves as a reminder that the system needs to be rethought. Such a discourse may be revolutionary as well as evolutionary. Evolutionary methods presuppose that international economic governance is going through a period of development pains; yet, many issues related to legitimacy can be handled in due course. Evolutionary approaches to adapting international economic law to changing conditions rely on the conventional instruments of treaty interpretation and negotiation. As an example, Periodically, IIAs are renegotiated; states are reinforcing their authority to regulate and adjusting their treaties to provide some exclusions. Reconciling economic interests with noneconomic concerns in certain fields has been made possible by the WTO's acceptance of exemptions and modifications. Proposals for reform include creating an ombudsman to mediate disputes between potential disputants, appointing a roster of full-time professional adjudicators to improve panel work quality, and adding monetary compensation to the list of remedies the WTO may pursue if a Member State violates the rules.

CONCLUSION

In this modern era where trade, economic relations and peace-making treaties are very important for international stability of a nation, the dispute resolutions mechanism plays very important role to settle the disputes between nations these dispute resolutions mechanisms act as a safe guard for nations and helps them to get justice. There are many types of dispute resolution but these are majorly classified as traditional and moder systems. In the process of dispute resolution organizations such as WTO (world trade organization), international court of justice, general assembly of United Nations plays very important role in governing the disputes and settling them. The framework of rule and regulations allows these organization to treat the disputed parties and serve them justice, as discussed above each system has some disadvantages and these disadvantages lead to delay of dispute resolution and its effectiveness. Moreover, there are more developed and faster ways to resolve a dispute instead of reaching to organizations these techniques are mediation, negotiation arbitration and conciliation. In this dynamic world these techniques help to get a faster result and give chance to every party to get heard and express. Also, while examining the conflicts resolutions techniques the author came to the point that the current resolutions techniques can provide useful methods for future systems and how can a country can avoid and resolve conflicts internally. The World Trade Organization's member states' trade interactions are intended to operate more smoothly and effectively, which is why the dispute settlement mechanism was established. Even if most of the trade sanctions are for non-compliance, it is still unclear under what jurisdiction the organization acts. The problem appears when internal laws are expressed through the legislative process in a way that is consistent with both the agreement and the GATT. The settlement procedure should include mandatory alternative dispute resolution, which parties can exhaust before bringing their case to the Dispute Settlement Unit. Its caseload is quite substantial, with many matters that need to be settled quickly. This can be avoided, nonetheless, throughout the non-binding settlement process.

⁷ World Trade Organization WTO, https://www.wto.org/english/tratop_e/dda_e/dda_e.htm (last visited Apr 1, 2024)