Role Of UNCLOS In Dispute Resolution

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ABSTRACT

Every part of the world focuses on progress making maximum utilization of resources available from nature and from other productions. The topics of dispute settlement would never have been in existence when there existed equal allocation of resources by nature and harmonious distribution of wealth among nations. Some States are blessed with more natural resources, while the others are barren or landlocked. Its natural, that States tend to make efforts to obtain the resources that are available to other countries, but not to them. When the dealings went harmonious, and to say, there doesn't exist any greed or coercion, still there is no need for any mechanism to settle disputes.

But, unfortunately, not every Nation will have same consensus with that of other. The point that may be advantageous to the 'receiving State' would be disadvantageous to the 'giving State'. Many at times, equal proposition or equal distribution cannot be followed. In such cases, the augmentation of disputes is unavoidable.

The progress of international law has given way to the creation of a diverse array of mechanisms for the settlement of legal conflicts. One of them is the 'United Nations Convention on Law of the Sea', which offers a means to settle the conflicts between states that is both choice-based and obligatory.[1] The provisions available are wide-ranged as it deals with pacific settlement mechanisms at the beginning and if it fails, provide for compulsory mechanisms.

The author of this article takes a look at the numerous processes for the resolution of disputes that are outlined in the UNCLOS. The author also examines the unique processes that are possible inside these mechanisms, which are

contributing factors to the benefits of these mechanisms. The purpose of this article is to investigate the efforts that dispute settlement mechanisms have made toward adding more to the successful application of the law of sea and making it simpler for the State parties involved on both sides to arrive at a conclusion.

Keywords**:** Pacific settlement mechanisms, UNCLOS, Negotiation, Mediation, Conciliation, ICJ, ITLOS, International Sea Bed Authority, Arbitrary Tribunal

INTRODUCTION

The widespread belief among nation-states that compliance with international law contributes to international harmony and stability as well as global peace and safety gives rise to the field of international law's prominence. This was the fundamental impulse that led to the formation of the “United Nations” in 1945 and the “League of Nations” in 1919.[2] It is commonly acknowledged that the only thing that could possibly account for war and other conflicts between States is the existence of certain unresolved differences. Therefore, a resolution to the problems need to be found as quickly as is humanly feasible in order to stop nations from going to war and to preserve peace and security among states. The body of international law has recognised a variety of procedures as having the potential to make a contribution to the amicable settlement of international conflicts.

Chapter VI of the UN Charter[3] outlines the processes and methods that may be used to resolve disagreements in a friendly and cooperative manner.[4] There are three categories of peaceful conflict resolution tactics: diplomatic, adjudicative, and institutional. Problem-solving efforts by the parties themselves or with the aid of external organizations are a part of diplomatic procedures. Tribunals, whether judicial or arbitral, use adjudicative procedures to resolve disputes. Institutional techniques encompass settling disputes through the United Nations or regional organizations.[5]

There were a number of additional conventions, treaties, and agreements along these lines; but, none of them addressed maritime-related issues in a manner that was precise. In the majority of instances, the disputes were submitted to either arbitration or the ICJ, both of which had jurisdiction in a manner quite similar to that of previous instances. As a result of this, the ‘Conventions on the Law of

the Sea' made the conscious decision to place an emphasis on the methods of dispute settlement and incorporated facilities for the formation of a specialized body to hear and resolve issues pertaining to sea law. Despite this, the prior power that had been conferred to the Tribunal and the ICJ was in no way lessened over the course of this procedure.

There had been no dispute resolution with reference to the law of the sea until 1958. One country would participate in one convention but not in others. This is due to the fact that when a state signs a convention, it is more likely to respect the rules and restrictions laid out in the document. As because the countries are not parties to all conventions, a comprehensive law could not be established.

In the event of states approaching the ICJ or the Arbitration Tribunal, the issue of 'consent' is crucial. The entire system tends to become an unsatisfactory system if there is no adequate final technique for solving or executing the provisions. When the process for convening the third UNCLOS began, it was under pressure to put the entire UN system on the table.

Though there are other elements in UNCLOS III that could be regarded as innovative, Dispute Settlement stands out since it not only provides effective dispute resolution processes but also allows States to choose from a variety of ways to resolve their conflicts.[6]

There are two distinct approaches to conflict settlement that are included in the LOS Convention. The "non-binding methods of negotiation, mediation, and conciliation" are outlined in Section 1 of Part XV of the Constitution[7], whereas in Part XV Section 2 details "the binding procedures of the ICJ, the ITLOS under Annex VI, the Arbitral Tribunal established under Annex VII, and the establishment of a special Arbitral Tribunal made up of a panel of experts," Section 3 of Part XV establishes "the creation of a special Arbitral Tribunal made up of a Experts Panel" to hear cases that do not be covered under the ITLOS.[8]

Negotiation

The only parties involved in the process are the disputants, making negotiation the simplest strategy for settling a dispute amicably. Negotiations may be bilateral or multilateral, depending on the number of persons interested in the matter. All other methods of resolving disputes, such as "good offices,

conciliation,[9] mediation[10], arbitration, or court settlement", however, include non-parties to the dispute, such as other governments or persons.

In negotiations, the governments or disputants are in continual communication with one another. One party or the other must propose and argue against proposals and counterproposals until one side produces a proposal that the other side accepts in order to reach a resolution. The process will stall if no such proposals are presented. If such offers are not made, the system would stagnate, and the parties' respective strength and diplomatic prowess would decide the case's merits. The regular diplomatic agents of the states, as well as their oral and written accreditations, serve as the primary means of conducting this.

Negotiation is a versatile strategy in the sense that it may be used to solve any situation, including a conflict when the legal or political components are prominent and the parties have opposing viewpoints. Further than the claim and the will of the parties, the negotiating technique has no other components. Even if both sides are negotiating in good faith, the negotiation is doomed to fail if neither party is willing to compromise is prepared to sacrifice its respective interests to a point where a compromise solution emerges.

Effectiveness in negotiations is emphasized in the Manila Declaration as well. To sum up, in the realm of international perspective, negotiation, as one of the techniques of peaceful conflict resolution, is most frequently utilized by States to settle the disputes, where majority of disputes are being settled though not all.[11]

Mediation

The participation of an impartial third party or person in discussions between the parties involved in a dispute is required for the process of mediation, which is a method for amicably settling international conflicts. The 1899 Hague Convention on the "peaceful settlement of disputes" says that it is the responsibility of a mediator to "reconcile the contending claims and diminish the emotions of disparity which may have formed between the parties of variance."[12]

Mediation begins when the disputing parties and the mediator — a state, organisation, or individual – reach an agreement. The parties may ask the mediator to act, or the mediator may offer to do so. Following that, the mediator

either agrees to participate in joint conversations with the disputing parties or meets with them separately to discuss the issue.

Conciliation

Conciliation requires a group of people to listen to both sides' points of view, to investigate the facts underlying the conflict, and maybe, following discussions with the parties, to provide formal but non-binding proposals for the parties to consider as a solution to the dispute. As a result, conciliation procedures are more official.

Conciliation provides the disputants with crucial information and knowledge about the opposing party's argument. It allows lawyers and politicians concerned in a national dispute to send the case to a small group of independent and qualified individuals for an objective assessment of the issues and recommendations for their resolution.

There are 4 dispute resolution procedures listed in UNCLOS Article 287[13]:

1) **International Tribunal for the Law of the Sea[14] - Annex VI (ITLOS)**

The UNCLOS created two international organisations: the 'International Tribunal for the Law of the Sea' (ITLOS)[15] and the 'International Seabed Authority' (Authority). In order to effectively manage the resources of the Area, the states that have ratified UNCLOS are responsible for coordinating and overseeing any activities that take place on the seabed, ocean floor, or subsoil that are located outside of their state's authority (the Area). By obtaining temporary protections from a court or tribunal and using a practical perspective, ITLOS, UNCLOS-specific dispute resolution mechanism, enables quick settlement of urgent concerns. The ITLOS, as such, has jurisdiction to hear:

i) Contentious cases
ii) Urgent procedures
   a) Provisional measures when constitution arbitral tribunal is undetermined
   b) Prompt release
iii) Sea bed disputes chamber
iv) Advisory jurisdiction[16]

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i) Contentious Cases: Where the nations submit their disputes to ITLOS as per the provisions under Article 287 of the convention.
ii) Urgent procedures: Due to the availability of urgent procedures for rapid temporary relief, the ITLOS is thought to be the more popular method of resolving maritime legal disputes. These expedited procedures, which are offered by ITLOS, are temporary solutions pending the selection of an arbitral tribunal and rapid release.

a) Provisional Measures (Article 290)[17]

"To protect the State's rights or the marine environment while a final decision is pending, a court or tribunal may prescribe any interim measures it deems appropriate under the circumstances. This section or Section XI, Section 5 of Part XII governs this matter."[18]

This interim measure is comparable to an action for injunction in a domestic court. The parties will seek a temporary restraining order against their opponents while the matter is resolved. The forum won't take the case's merits into account in this type of injunction procedure, but rather the potential for hardship or loss if the injunction is not granted. Because it will take time for the proceedings to begin and for a decision to be reached, the status quo cannot be preserved at all times, given the significant financial damage that could result if the injunction is not granted.

The concept of a "temporary measure" is not one that is exclusive to UNCLOS, as is indicated in the laws governing the ICJ. Any interim measures that need to be taken in order to preserve the respective rights of either party shall be able to be designated by the Court in the event that it thinks that the circumstances so require it in the event that it thinks that the circumstances so require it. The Court shall have the ability to do so in the event that it believes that the circumstances so need it. The parties requesting interim measures just need to demonstrate the urgency of their position to the forum in order to win temporary remedies in their favour. Article 290(5) is considered as most important. Pending constitution of arbitral tribunal – within 2 weeks from date of request. ITLOS to decide

i) If prima facie jurisdiction exist from arbitral tribunal
ii) If urgency[19]

The order given as Provisional measure will end with final decision of the case or revocation or modification. Totally there had been 9 cases decided.

The basic goal of the ITLOS in providing provisional remedies is to protect the rights in dispute while also preventing substantial harm to the maritime environment. For example, if a crew is stranded on a ship for several months, interim measures will assist them in returning home. That is why, as indicated under Article 90, interim measures are preferred in Tribunal works.

b) Prompt Release[20](Article 292)

The main function is to look into whether the Bond is reasonable. The ship has been apprehended and will be released upon payment of a bond to the Coastal State (financial guarantee) – It gives an Assurance that the Flag State will take part in the proceedings. The ship will be freed once the money is paid. Arrested Ship will cost the owners additional money. They must engage in procedures in order to reclaim the bond.

In UNCLOS, this concept is considered innovative, as the flag nations will commence the proceedings when a ship is apprehended. If the ship is arrested and held in the yard until the final judgement, the owners will suffer even more losses. So, in order to reduce the damage, the provision of 'rapid release' has been incorporated in UNCLOS, wherein the flag State produces a fair bond to the coastal state, and the ship is released upon payment of the bond. This bond payment will serve as a financial guarantee and assurance that the flag state will not avoid the proceedings and will participate in the recovery of the bond.

The tribunal tends to assess whether the bond demanded by the coastal state in recompense for their damages is reasonable, as well as whether the sum is proportional to the harm or loss caused by the ship that was arrested by the State, when reviewing the application for rapid release. It's also crucial to determine whether the ship that was apprehended is worth the amount of money demanded as a bond.

Nothing else in a treaty is quite like the terms of Article 292 in this case. They serve the dual purposes of providing surety (in the kind of bond or any other type of security to pay for any fines that domestic courts may impose) to cover any

fines that may be levied by domestic courts and preventing foreign vessels and their crews from being detained for a potentially prolonged period of time while the alleged fisheries or pollution offense is being dealt with by the domestic courts of the aggrieved State. Prompt release procedures are essentially a type of diplomatic protection when a State represents a ship that bears its nationality. However, prompt release is significantly different from conventional diplomatic protection in one important way. Contrary to the typical stance in international law, there is no requirement that domestic remedies be exhausted before the case is taken up by the flag State.[21] The ITLOS has already made decisions in 8 situations involving the immediate release of boats and crew.

The International Sea Bed Authority and The Sea Bed Disputes Chambers

The International Seabed Authority is responsible for the organisation, governance, and management of any and all mining-related operations that take place on the international seabed that take place outside of sovereign boundaries (ISA). The International Seabed Authority is responsible for a variety of important tasks, including those listed below:

• regulation of mining in the deep bottom. protection against the damaging consequences of mining, exploration, and exploitation on the maritime environment.[22]

• The authority also encourages maritime scientific research and conducts scientific and technical training programs, seminars, conferences, and workshops.[23]

The "Sea Bed Disputes Chamber,"[24] a division of the ‘International Tribunal for the Law of the Sea’[25], is regarded as a crucial and distinctive component of the UNCLOS's dispute resolution process. Despite being a component, the chamber has its own rules and authority to exert control. The main thing to keep in mind is that the aforementioned Chamber is the only entity with total control over disputes resulting from conduct related to the Sea Bed Disputes Area.

There are certain limits on what the Chamber[26] may do in cases emerging from ISEA judgements. As stated in the Convention's Article 189, it "has no authority with regard to the Authority's discretionary powers," which are defined in Part XI. Specifically, the Chamber may not "pronounce itself" or "substitute [its] judgement for that of the Authority" in

determining whether any of the Authority's policies or practises are in compliance with the Convention. Aside from that, the Chamber "shall not find any Authority rule, regulation, or practise to be unlawful."[27]

The Chamber is authorised to hear only that of the claims that the Authority's application of “any rules, regulations, or procedures in individual cases would conflict with the contractual obligations or obligations under the Convention”; "claims of excess jurisdiction or misuse of power"; and "claims for damages for failure to comply with contractual obligations or obliging".

These major constraints on the Chamber's jurisdiction were included in the Convention to provide the International Seabed Authority the independence, power, and discretion it needs to carry out its groundbreaking obligations on behalf of "mankind as a whole." These considerable constraints on the Chamber's authority were inserted in the Convention to ensure justice and accountability in its powers and prerogatives.

The Chamber has major supervisory authority over the Authority's operations where they affect the rights and interests of nations and other international organisations. They also provide the Chamber authority over the obligations and rights of contract parties, as well as their rights to compensation and other remedies when their rights are violated.

The Chamber is empowered to deliver advisory views on legal matters that are arising within the Authority's ambit of operations if the Authority's Assembly or Council makes the request for such opinions. This Chamber-only jurisdiction may have a significant impact on how the Authority performs its duties, both in terms of the power that the "Assembly" or "Council" of the Authority may exercise with regard to one another and with regard to cis-a-cis States and other entities that engage in relations with the Authority in connection with activities in the "International seabed Area.".[28] In addition, this jurisdiction may have an effect, the Authority's contacts with states and other organisations that engage into them in conjunction with their operations in international level.[29]

Special Chambers[30]

In accordance with para 3 and 4 of article 15 of the Statute, “The Chamber of Summary Procedure”[31] can resolve a case in

summary procedure if the parties request it." The Chamber also has the authority to impose temporary remedies in the event that the Tribunal is not in session or if a quorum of its members is not present.

In accordance with the provisions of paragraph 1 of article 15 of the Statute, the 'Chamber for Fisheries Disputes' was established with the intention of resolving disputes involving the protection and administration of marine life resources that the parties to a dispute agree to refer to it. Its mandate is to do so. The Chamber is comprised of nine different individuals.

It is possible for the parties to reach an agreement in order to submit issues that impact the protection and preservation of the maritime environment[32] before the 'Chamber of Maritime Environment Disputes', which was formed in line with article 15, paragraph 1 of the Statute. The Chamber is comprised of nine different individuals. In order to undertake business inside the chamber, there must be a quorum of seven members present.

The 'Chamber for Marine Delimitation Disputes' may be appointed by the parties to handle disputes regarding marine delimitation. This chamber was formed in line with article 15, paragraph 1 of the Statute. There are nine members in total inside the Chamber.[33]

In accordance with article 15, paragraph 2 of the Statute, the Tribunal will set up a chamber upon the request of the parties to hear a particular issue. According to article 30 of the Rules, the Tribunal, with the parties' cooperation, chooses the members of such a chamber.

The Tribunal has established special chambers in order to deal with the Cases concerning the "Marine Protection in South-Eastern Pacific Ocean"[34], "Maritime Delimitation in Atlantic Ocean"[35] and "Indian Ocean"[36] at the request of parties.[37]

2) International Court of Justice (ICJ)

As per the UN Charter, the ICJ was founded as the premier tribunal of the organisation.[38] The UN Charter of which it is a key component, has the Court's laws linked to it. The ICJ does not automatically have authority over issues involving all UN Member States, despite being the highest body of the organisation. It can only address problems if all parties

recognise that it has power to do so. There are certain states that have been more than eager to yield to the court without reservation, others have been reluctant or at least cautious to recognise the authority of the Court. Given how different states felt about the court, the people who made the accords on the law of the sea didn't think it was a good idea to make the court the only place where disputes could be settled. They gave up the right to go to court to states parties who want to go to court. The ICJ has the power to make binding decisions in disputes between these states.

3) Annex VII (Arbitration)

Contracting governments agree that arbitration is the most efficient and just way to settle legal disputes, especially those involving the interpretation or application of international accords, when diplomacy has failed.[39]

If the parties do not have a preference, arbitration is always the default procedure. States will submit a list of arbitrators for consideration. A maximum of four people can be suggested. There could have been more instances that went to tribunal but didn't because arbitrations by default issue binding awards. So, even if no parties are appointed, an arbitral award will be made. If neither party wants to designate an arbitrator, the President of ITLOS can do so. As a result, just refusing to participate in the arbitration will not prevent it from taking place, as the system is designed to provide a comprehensive and mandatory option for resolving the disputes.

An advantage of arbitral tribunals is that the parties to the dispute can, to some extent but not entirely, choose the arbitrators who will decide their case. This is considered to be the most significant alternative that is available for people who are somewhat reluctant to choose the ICJ or ITLOS to decide how their dispute will be resolved.

Arbitration will be regarded as the default choice for resolving international disputes under Article 282 if no preference is specified among the four dispute resolution methods at the time of convention signing.

According to Article 287, arbitration shall be the final resort if the parties to a dispute declared various procedures when signing the convention and are unable to come to an

agreement on the procedure to be utilised to resolve their issues.

Eg: In South China Sea arbitration[40], China didn't participate, In Arctic Sunrise Arbitration[41] and 3 Ukrainian Naval Vessels arbitration, Russia did not appear.

4) Special Arbitral Tribunal under Annex VIII

In many cases, disagreements stem from disagreements about the facts and how they are interpreted. Disagreements may be settled in accordance with the guidelines laid forth in the 1982 convention. Arbitral courts established under Annex VIII of the Convention may hear issues concerned with navigation, marine science, environmental protection, and fisheries (including pollution and dumping). There are two types of special arbitration courts: those governed by the United Nations and those governed by international Institutions. The FAO, UNEP, IOC, and IMO each maintain four lists that deal with one of these areas where the Parties to the Convention may submit experts in the appropriate subject area in (who may be technical rather than legal experts). With consent from the parties, the president is elected by the parties and must be a citizen of a third nation unless the parties agree otherwise. Each contesting party has the option of nominating two arbitrators, one of whom must be a national, for each case. As a general rule, the same principles that apply to the Annex VII Tribunal should also apply to other types of arbitral tribunals.

Special arbitral tribunals can also operate as fact-finding commissions, investigating and establishing the facts in cases involving the four specialised categories. This must be done with the consent of both parties. In such circumstances, the factual findings are conclusive between the parties, who are then free to settle the disagreement through another method, such as negotiation or arbitration. [42]

Conclusion

Prior to the ratification of UNCLOS in 1982, mandatory dispute resolution in maritime treaties was not unheard of, but UNCLOS represented a significant advancement due to the comprehensiveness of its dispute resolution mechanisms and the broad spectrum of potential issues subject to it. Although ITLOS could be considered just another institution, it has many advantages, including a global application, the ability to hear inter-state disputes in addition to ICJ, the wide range of forums available to the member States of UNCLOS, the use of

specialized arbitrators in tribunals formed under Annex VIII of UNCLOS, and accessibility for both natural and legal persons to sea bed disputes. With its global reach, the ability to hear conflicts between the parties in addition to the ICJ, and the wide range of forums available for UNCLOS-signatory states to use, ITLOS offers many advantages over other institutions. These include the ability for specialised arbitrators to be used in tribunals established under UNCLOS' Annex VIII, as well as openness for both natural and legal persons to sea bed dispute resolution. If a country falls into any of the conflict categories, the treaty provides significant advantages for settling conflicts.

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