

# **Enforcement & Dispute Resolution Outline**

Cecilia M. Bailliet

# UN Charter Art. 2 (3)

- All members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.
- Case: Legality of the Use of Force Case (Yug. v Belgium etc.) ICJ

# UN Charter Art. 33 (1)

- The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

# Disputes

- Facts
- Law
- Policy

# Duty to Notify & Consult

- Duty to notify of impending harm
- Duty to consult to address other state's concerns (Lake Lanoux Case, France must consult Spain on waterworks project that would alter flow of water)
- Precondition of consultation: UN Convention Law of the Sea Art. 283, BITs, WTO arbitration

# Negotiation

- Direct dialogue between parties (public or private)
- Obligation to make genuine and reasonable efforts to reach a solution in good faith
- Parties retain control without 3rd party
- Parties may make settlement legally binding by drafting terms in a treaty
- Alternative: adopt non-binding terms in exchange of notes
- Used to manage disputes, can be used along with other dispute resolution mechanisms (court, SC, GA)

# Mediation

- Third party helps facilitate communications between states and may make proposals. (Algeria as mediator for US & Iran in Hostage Crisis- Algiers Accords)
- Makes informal proposals based on information provided by parties
- Mediator is active participant- offers ideas and interprets party proposals

# Good Offices

- Neutral will be sent to persuade parties to negotiate- serves as channel of communication, UN Secretary General, UN General Assembly, OAS Ambassadors, AU, EU Peace Envoys representatives, actual or former gov't officials, etc.



# UN Security Council

- UN Charter, Chapter VI
- States required to refer disputes likely to endanger international peace & security to the Council
- Third states may refer matter
- Council may recommend manner of settlement or terms of compromise
- Political body, interest is keeping the peace not judging legal issues of a dispute
- See Lockerbie Case, ICJ does not grant interim measures because SC had taken measures
- But See Congo v. Uganda, Bosnia & Herz. V. Serbia & Montenegro ICJ, ICJ acts even though SC and GA active

# UN General Assembly

- UN Charter, Art. 14
- General Assembly recommends measures for peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly welfare among nations.
- Recommendations are not legally binding
- GA cannot make authoritative determinations of fact and cannot impose settlement
- GA may prompt negotiations
- GA is best for political disputes, because resolution is often based on political blocs rather than impartial judgment

# Conciliation

- Parties submit pleadings to conciliator
- Conciliator may issue a non-binding decision, parties choose whether or not to adopt
- UN Convention on Law of the Sea Art. 284 (1)
- UN General Assembly Model Rules for Conciliation of Disputes between States
- Jan Mayen Case, Norway v. Iceland

# Commission of Inquiry

Third party investigation and fact-finding  
Provides Impartial report on Facts (not  
binding settlement)

Parties then proceed to negotiate based  
on these facts

(World Bank Inspection Panel)

# Arbitration

- Formal process- written compromis sets forth terms of arbitration
- Ad hoc arbitration
- Compromissory clause within contract/treaty calls for arbitration, WTO, ICSID, NAFTA, International Chamber of Commerce International Court of Arbitration in Paris, Arbitration Institute of the Stockholm Chamber of Commerce, London Court of International Arbitration, American Arbitration Association in New York, Inter-American Commercial Arbitration Commission, Chinese International Economic and Trade Arbitration Commission
- Iran-US Claims Tribunal, UN Compensation Commission
- Eritrea-Ethiopia Boundary and Claims Tribunals

# Arbitration

- Parties can choose arbitrators (may be technical experts)
- May be used in disputes between states and MNCs
- Arbitral Tribunal issues binding award on the basis of international law
- Parties may choose whether or not award is published
- Rainbow Warrior Case, France v. New Zealand
- Enforcement- courts must recognize validity of arbitration award

# Arbitration Rules

- UN Conference on International Trade Law (UNCITRAL)
- Permanent Court of Arbitration
- Notice, establishment of tribunal, number of arbitrators, challenge or replacement of arbitrators, place of arbitration, submission of pleadings, evidence, applicable law, payment of costs of arbitration, issuance of award (may or may not be public)

# UN International Court of Justice

- Art. 36 (1) Court has jurisdiction over all matters specifically provided for in the Charter of the UN and all cases which the parties refer to it, and all matters specifically provided for in treaties or conventions in force.
- Jurisdiction is not compulsory
- Ad hoc consent, parties agree by treaty to refer the matter to the Court, or unilateral application by one state, consent by the other (can be post hoc, ante hoc, treaties contain jurisdictional clauses granting Court jurisdiction over subject matter)



# UN International Court of Justice

- Contentious Cases between two states (not open to individual participation)
- Circumscribed Jurisdiction: States cannot be sued before ICJ without their consent (may be ad hoc consent, or inclusion of consent in BIT or multilateral treaty)
- Optional Clause in ICJ Statute Art. 36 (2), Consent ante hoc, State may make unilateral declaration accepting compulsory ipso facto ICJ jurisdiction in all legal disputes (only 65 states), (Many contain reservations on specific matters, e.g. continental shelf, land or maritime boundaries, or disputes with members of common community, or *ratione temporis*, domestic jurisdiction) (See ICJ Nicaragua Case 1984 jurisdiction)
- Reservations requiring specific consent: Case: Legality of the Use of Force Yugo v. US ICJ, (US reservation to Genocide Convention impeded ICJ Jurisdiction)
- Decisions are binding on parties

# ICJ

- Principle of Reciprocity
- Parties may refer to each other's declarations, reservations
- ICJ Norwegian Loans Case ICJ 1957
- ICJ has few cases, has experienced absent defendants (Iran and US), and non-compliance with judgments.

# UN ICJ

- ICJ Statute Arts. 62 & 63
- Third State has right to intervene if dispute concerns a treaty to which it is a party and a State may request permission to intervene if it has an interest of a legal nature (does not depend on consent of State parties to the conflict). Purpose is to inform Court of legal rights which may be prejudiced, not seek a judicial determination

# UN International Court of Justice

- Advisory Jurisdiction Chap. IV Statute, Art. 96 UN Charter
- Invoked by UN Organs and Agencies (Secretary General, General Assembly, etc.)
- States may participate in proceedings (not contingent on consent of State)
- In theory, designed to give guidance to international organizations on the exercise of their functions, but in practice it actually resolves questions of legal duties of states (Namibia Case, the Wall case)
- ICJ says consideration of same issues by SC or GA will not deter it from deciding upon legal issues falling within the terms of the Statute and UN Charter (the Wall Case, Western Sahara Case)
- Decisions are non-binding (but authoritative)

# Other Courts

- European Court of Justice- EC treaties
- European Court of Human Rights
- Inter-American Court of Human Rights
- International Criminal Court
- International Tribunal for the Law of the Sea (LOSC Arts. 2709-299)

# Compliance

- State has given consent by joining treaty
- Long term benefits as per particular issue or effective international system
- Obtain good reputation and legitimacy within international society
- Fear of counter-actions in the event of non.compliance

# Compliance Pull

- High legitimacy of rules that are determinate, fair
- Soft law creation is viewed as less legitimate

# Measuring Compliance

- Reporting
- Independent verification
- Capacity building (technical aid, training)



# Attaining Compliance

- Diplomatic Sanctions
- Economic Sanctions- Multilateral or Unilateral
- Military Force
- Civil and Criminal actions