



INTERNATIONAL SETTLEMENT OF DISPUTES

Introduction into International Law



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INTRODUCTION

- Two kinds of tools existed for settlement of disputes between states
 - **A) War**
 - doctrine of just war and the contemporary prohibition of the threat or use of force under the UN Charter (as a *ius cogens* norm)
 - **B) Arbitration**
 - E.g. Henry II /of England → a dispute between Castile and Navarre in 1177 CE
 - 1899 Convention for the Pacific Settlement of International Disputes → Permanent Court of Arbitration

PERMANENT COURT OF ARBITRATION

- Formed by:
 - **International Bureau** - a permanent secretariat
 - **Administrative Council** - an administrative body overseeing the administration by the International Bureau; consisted of foreign diplomats accredited in the Netherlands and the Dutch Minister of Foreign affairs
 - **Roster (list) of Arbitrators** appointed by State parties
 - “Members of the Court”
 - Ad hoc
- Access to the PCA is not limited only to sovereign states → open also to private individuals (bilateral investment treaties)

PERMANENT COURT OF INTERNATIONAL JUSTICE

- Used to be a permanent court
- Body of the League of Nations, the UN predecessor after WWI

INTERNATIONAL COURT OF JUSTICE

- One of the bodies of the United Nations, namely the UN's court
- Two kinds of cases
 - **Advisory proceedings**
 - Advisor upon international law
 - Not decide a dispute between particular subjects of international law
 - **Contentious Cases**
 - Dispute resolved between two States
 - Three ways that a case can be brought before the ICJ
 - a) By a 'compromis'
 - b) By virtue of a jurisdictional clause
 - c) Through the so-called optional clause declaration

INTERNATIONAL COURT OF JUSTICE

- Certain conditions of the ICJ's jurisdiction
 - **A) Standing or access of the parties to the Court**
 - Only UN member States and those who gain access under special conditions laid down by the UN Security Council
 - **B) Existence of a legal dispute between the parties to be decided by the Court**
 - Legal in nature
 - Interpretation of the Judgments Nos. 7 and 8 (Factory at Chorzow), Judgment No 11 ,1927, P.C.I.J., Series A, No. 13, pp 10 - 11.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

- 1982 United Nations Convention on the Law of the Sea (UNCLOS) → dispute settlement mechanism is defined in UNCLOS Art. 279, 287
- UNCLOS provides that three fora can hear disputes, namely (i) ITLOS, (ii) ICJ and (iii) ad hoc ANNEX VII arbitration → The fact that there exist three fora dealing with same issues can result **in doctrine fragmentation in international law**

SELF-CONTAINED REGIMES OF DISPUTE SETTLEMENT: WTO

- **Marrakesh Agreement of 1994** → World Trade Organization (WTO) is an international intergovernmental organization created for the facilitation of free trade
- Dispute Settlement System of the WTO stems from this unique procedures and functionality form the history of cooperation of states based upon General Agreement on Tariffs and Trade (GATT '47) → until 1994
- Framework of the **Marrakesh system of covered agreements** → umbrella name for the complete set of international treaties, headed by the Marrakesh Agreement itself
- Dispute mechanism under the WTO Dispute Settlement System → **three phases** (Dispute Settlement Understanding)
 - a) Pre-litigation: consultation, mediation, good services
 - b) Litigation: panel proceedings
 - c) Appeal proceedings: Appellate Body proceedings

SELF-CONTAINED REGIMES OF DISPUTE SETTLEMENT: THE EU

- Sui generis entity → Case 26/62, NV Algemene Transporten Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen [1963] ECR I
- **The Court of Justice**
 - Preliminary ruling proceedings (under Article 267 TFEU)
 - Infringement procedure (under Article 258 TFEU)
 - Action for annulment: (under Article 263 TFEU)
 - Action to failure to act (under Article 265 TFEU)
 - Application for or damage to citizens and to undertakings caused by EU institutions or servants in the performance of their duties (under Article 268 TFEU)
- **The General Court**
 - Actions for annulment (such as in regard to decisions of EU authorities, for instance EUIPO)
 - Actions for failure to act
 - Actions for damages
 - Actions based upon arbitration clauses (out of contracts between the EU and other parties either under public or private law)
 - Actions concerning the civil service (servants or officials of the union v. the EU)

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