Turkish Online Journal of Qualitative Inquiry (TOJQI)

Volume 12, Issue 8, July 2021: 1159-1181

Peaceful Ways to Resolve International Disputes in Accordance with International Law Procedures

M.M. Hussein Hameed Rajab / Baghdad Education Directorate - First Karkh.
akrammhand@gmail.com

M.M. Hala Tariq Muhammad / Baghdad Education Directorate - First Karkh.
halaalubady@gmail.com

M.M.Inam Sattoori Salman/ Baghdad Education Directorate – First Karkh

annaamsattoori@gmail.com

Abstract

Peaceful methods as a system for resolving disputes are not a product of the current era. On the contrary, it is the first and oldest means invented by man to resolve disputes. Individuals, groups, and then states resorted to it to liquidate dispute centers in order to reach stability and calm and achieve the rule of law instead of the rule of force. Until the middle of the nineteenth century, peaceful methods were used to solve the problem

The conflicts that exist between groups of individuals that are forced to live with each other, as well as the case for those who want their disputes to be resolved with the continuation of good relations between them. Members of the same family, neighbors, partners in one project, states, all these sects resort to arbitration to resolve their disputes. Arbitration here preserves the existing ties between the parties of each of the advanced sects. Perhaps the arbitration of Cain and Abel was the first arbitration on earth. In primitive societies, before the emergence of the state, conflict resolution was left

For the owner of the interest that is protected by the law and his clan, where they can impose the abused interest by force, and this is the system of self-defense of rights, and this system was flawed, so the arbitration system appeared. This system, whose star did not fade, but increased in prosperity and brightness day after day, until it became a global system and a manifestation of our modern age, which is characterized by intertwining and diversity of relations and interests. Due to its great importance in resolving disputes, all disputes of all kinds can be submitted to arbitration in order to resolve them

Keywords: peaceful methods, solution, international disputes, procedures, international law

Introduction :

The development in the international community, the acceleration of the dynamics of life, the intensification of conflicts, the development of military equipment and its strength resulting from scientific progress, especially in the military field, is what made the members of the international community reconsider the means of resolving their disputes, so peaceful means of settling international disputes appeared with the conviction of the human community that These international means are their first resort to resolve their disputes, that is, before they use force or think about it. A group of peaceful means has emerged that we can divide into diplomatic means through international law, and it includes negotiations, good offices, mediation, investigation and conciliation committees, and political means, whichIt was embodied in the role of international organizations in resolving conflicts, beginning with the efforts of the League of Nations and moving to the United Nations, in addition to the efforts of a group of international organizations of a regional nature. As for the other type of means of peaceful settlement of international disputes, it is the means of judicial settlement, which is embodied in international arbitration and judiciary, where arbitration is considered one of the oldest means of conflict resolution, that is why societies resorted to it since the early stages of the formation of human legal thought, and as a means of litigation before the emergence of the state and the judiciary, and with The emergence of the idea of the state prevailedThe development in the direction of concentrating the public authorities in society in their own hands, starting with the authority of governance, passing through the authority of the judiciary, and ending with the authority of the law, then the state's tendency to arbitration and its expansion in the twentieth century came to record a different trend for state judiciary and the rule of law, to be a special judiciary set up by the parties to the conflict themselves So that his law constitutes features of practical practice in the field of daily dealings between different segments.The current research will be divided into two chapters. The first chapter deals with peaceful means for settling international disputes. This chapter consists of three sections: the first topic (means of settling disputes through political and diplomatic means), the second topic (international legal or judicial means), and the third topic (the role of international and regional organizations). In resolving disputes), and the second chapter deals with international arbitration in resolving international disputes. This chapter consists of three sections: the first topic (the role of arbitration in settling international disputes and legal and judicial means.) and the second topic (the impact of international negotiations on the development of international peace and security) and the second topic. The third (the impact of international negotiations on the development of international peace and security.), then the researcher concludes his research with a set of conclusions and recommendations.

Research problem

The importance of settling disputes by peaceful means clearly lies in the fact that it is an effective mechanism to avoid the occurrence of armed conflicts, including maintaining international peace and security, and respecting the sovereignty of states within the framework of public international law. The tyranny of interference in the internal affairs of states by using armed force has become a prevalent phenomenon in international relations at the present time, posing a threat to world peace and a violation of international legitimacy.

From this we pose the following dilemma: What are the mechanisms for settling international disputes by peaceful means? What are the most important international conventions that dealt with this? To answer this problem, we followed the historical method and the descriptive analytical method, and we dealt with the subject in two sections.

Research importance

The international community seeks to resolve disputes through political, diplomatic or judicial mechanisms to avoid the development of these disputes into armed conflicts in order to maintain peace in the world, because the principle of resolving disputes by peaceful means is an inevitable result of the principle of prohibiting the use or threat of force in international relations which it stipulated. Article 02, Paragraph 04 of the United Nations Charter.

Research aims

The research aims to:

1. Identifying peaceful ways to resolve international disputes in accordance with international law procedures.

2. Getting acquainted with international arbitration in resolving international disputes.

search limits

Objective limits: peaceful ways to resolve international disputes in accordance with international law procedures.

Spatial boundaries: Iraq - Baghdad.

Time limits: The research was conducted in the 2021 academic year.

Chapter One: Peaceful means of settling international disputes

The first topic: means of settling disputes through political and diplomatic means

The principle of the peaceful settlement of disputes is one of the basic principles on which the modern international organization was built, specifically since the two peace conferences in 1899 and 1907. With the spread of the phenomenon of international organization during the period following the aforementioned two conferences, the issues of maintaining peace, security and a peaceful settlement gained

Disputes are of particular importance, as they have become among the primary purposes of any international organization, and those interested in matters of international regulation have been convinced that the existence of any strong and effective system for the function of the peaceful settlement of disputes is one of the important objective elements on which international organizations generally rely in the field of carrying out the tasks entrusted to them. [1].

Just as the League of Arab States is one of the regional international organizations that affirmed in its charter the non-use of force to settle disputes between two or more of the League's states, and this approach was also decided in the Treaty of Mutual Defense and Economic Cooperation ratified by the League Council in April 1950, and entered into Implementation in 1952, in its first article, with keenness on maintaining security and stability and resolving disputes between members by peaceful means[2] The peaceful settlement of disputes and the non-use, threat or use of force has become a stable matter in the jurisprudence of public international law, and one of the well-established basic principles that govern international relations.

The undertaking of international organizations in settling disputes that may occur between member states is logical and necessary. Rather, this is an essential function for the work of these organizations.

The Charter of the United Nations affirmed in Article 33 of the necessity of resolving any dispute the continuation of which may expose theTo maintain international peace and security at risk, to seek its solution, first of all, by means of negotiation, investigation, mediation, conciliation, arbitration and judicial settlement...

But here we will focus on the political (diplomatic) means for settling international disputes, which are divided into four means: negotiations, good offices and mediation, conciliation, investigation, and as follows:

1. Negotiations

[1]Dr.. Al-Shafi'i Muhammad Bashir, Public International Law in Peace and War, 1st Edition, Port Said Printing House, Alexandria, 1971, p. 231

[2]Robert D. Kantor, Contemporary International Politics, translated by Ahmad Zahir, 1st Edition, Jordan Books Office for Printing, Amman, 1989., p. 76

Direct diplomatic negotiations are one of the oldest and most common means of settling international disputes. Studies indicate that states have felt, since ancient times, that there is a legal obligation to negotiate before resorting to the use of force, even if that commitment does not go beyond the formal framework.

This concept played a role in the efforts made by jurists during the Middle Ages to determine the nature of just war and the necessity of negotiation before everyone agreed to the use of force [3].

Negotiation in subsequent centuries was considered one of the necessary preconditions for recognizing the just use of force. Even if it is clear that the negotiations are nothing more than a mere pretense, that pretense remains necessary, as without it the use of force would be condemned and condemned.

The role of negotiations has increased in the current era, especially since the Second World War. The group has known a new era characterized by the abundance of blocs in various fields and the complexity of international relations, their intertwining and development in the economic, political, military, cultural, social and other fields. This helped the negotiations flourish

As the central tool of diplomacy to the extent that the current stage was described as the stage of negotiations. It has become an integral part of international cooperation in various fields. Based on this, all the principles that regulate relations between states are reflected in the application of the method of international dialogue [4].

Modern international negotiations have also witnessed a tremendous development after they became the core of the activity of international organizations and conferences. The international organizations have diversified and multiplied a lot in the current era and have become institutionally provided with flexible political procedures aimed primarily at helping countries to resolve their disputes through diplomatic negotiations. The role of international negotiations that take place within the framework of international conferences dedicated to settling specific disputes has also grown (for example, the Madrid Peace Conference in the Middle East, which was held on October 30, 1991 under the auspices of the United States of America and Russia and with the participation of the concerned countries) [5].

[3]Gerard A. Nirnij, Foundations of Negotiation, translated by Hazem Abdel Rahman, 1st Edition, Academic Library Press, Cairo, 1988, p. 133

[4]Dr.. Saad Haqqi Tawfiq, Principles of International Relations, 1st Edition, Wael Publishing House, Amman, 2000., p. 346

[5]Sami Muhammad Freeh, Conflict Resolution, 1st Edition, University Publishing House Press, Cairo, 2007., p. 76

The development of negotiations has helped the flourishing of political science and the science of international relations and the use of modern means owned by these sciences to try to develop a methodology for negotiations aimed at extracting, but to say that negotiations are a means of diplomacy and cooperation between persons of international law and the management of their international relations does not mean that it departs from the international legal system. It has been stipulated in the most important international documents as a means of settling international disputes by peaceful means, rules of practice applicable to any negotiation. This is in accordance with Article 33 of the Charter of the United Nations and the Declaration of Principles of International Law relating to International Relations and Cooperation among States in accordance with the Charter of the United Nations issued by the General Assembly 1970 () and the Manila Declaration on the Peaceful Settlement of Disputes

International for the year 1982). Article VII clarifies the persons who can negotiate on behalf of their countries and on their behalf by virtue of their functions without the need to present credentials (they are heads of government and foreign ministers in relation to all acts related to the conclusion of treaties, and this is considered codification of international customary rules. In addition to them are the heads of diplomatic missions with regard to approving the text of a treaty to be concluded Between their countries and the country accredited to them and the representatives accredited by the countries to an international conference or to an international organization or one of its branches related to the approval of the text of a treaty in this conference, that organization or branch.The negotiations, then, are handled by official representatives of international law persons who carry out diplomatic activity. Or the politicians who represent him, such as heads of government and ministers

Foreign Affairs, special missions, diplomatic representations, experts and other authorized persons, according to the nature of the subject of negotiation and its importance to the state [6].

Negotiations for the settlement of international disputes take place through contacts, discussions, exchange of views of the concerned parties and organized consultations at the bilateral or multilateral level in order to reach a solution to the conflict acceptable to the parties.

2. Good offices and mediation

[6]Dr.. Syed Alewa, Negotiation Skills: Communication, Bargaining and Diplomacy Behaviors, Arab Organization for Administrative Sciences, Amman, 1978., p. 134

These two procedures have in common that they represent efforts by a third party to assist the parties to a dispute in its settlement. The third party could be a single individual, such as the Secretary-General of the United Nations or the Secretary-General of a regional international organization such as the League of Arab States, or a prominent figure, such as a former head of a third country, for example, and it could also be one or more countries or an international organization. The good offices and mediation can be done at the suggestion of the third party itself some

His good offices or mediation, as it may be at the request of one of the parties to the dispute or both, and in both cases, doing them is subject to the consent of the parties to the dispute. The two procedures also have in common that they are two means of helping the parties to the dispute to resolve their dispute on their own. Any third party intervention does not aim to issue a decision to settle the existing dispute, but rather to encourage them to decide on it. Their importance appears more when the relations between the two parties to the conflict are bad or broken, or if the conflict turns into an armed conflict, so that it is difficult for the two parties to the conflict in such circumstances to enter into direct negotiations to settle it. Good offices and mediation were able to soften the atmosphere

Reducing tension or stopping armed confrontation in preparation for their entry into direct negotiations that may be preceded by indirect negotiations through the intervention of a third party [7]. They also share in not obligating others to intervene to present his effortsThe good or his mediation and the non-compulsory results with which they are crowned. Their effectiveness depends on who is in charge of it and how he performs his task. The success of either of them depends on the third party's relationship with the two parties to the conflict, its influence and trust in it, as a result of their belief in their justice and impartiality, and their failure to achieve their own interests or to exploit this to interfere in the internal affairs of this or that party [8].

In view of these common factors, mediation is distinguished from good offices in terms of the authority that the third party enjoys in both cases. The function of the body that carries out the good offices is limited to trying to urge the conflicting parties to negotiate. In other words, the mission of the good offices is limited to overcoming obstacles and trying to bring the points of view of the conflicting parties together and facilitating their entry into direct negotiations in which the good offices do not participate, nor does he propose solutions to them to settle the dispute. While the mediator is actually involved in the negotiations

[7]Hassan Muhammad Wajih, Introduction to the Science of Social and Political Negotiation, 1st Edition, The National Council for Culture, Arts and Letters, Kuwait, 1994, p. 87

[8]Dr.. Saleh Yahya Al Shaeri, Peaceful Settlement of International Conflicts, 1st Edition, Madbouly Library, Cairo, 2006., p. 42

He expresses his opinion on the demands submitted and submits the proposals that he believes are worthy of being accepted by both parties and that constitute a basis for resolving the existing dispute. The mediator continues his mission until an agreement is reached. He can stop his work if he thinks his proposals are unacceptable or if they are actually rejected by either of the parties to the dispute or one of them. But the two procedures overlap in practice in each other. The transition from good offices to mediation is usually done little by little without drawing attention. The two terms are also sometimes used interchangeably[9]

It should be noted that the 1907 Hague Convention relating to the Peaceful Settlement of International Disputes attempted to regulate good offices and mediation by stipulating that the parties to a conflict must resort - as far as circumstances permit - to the good offices and mediation offered by one or several friendly countries, and that a third party's offer of its good offices or his mediation shall not be considered an unfriendly act, and the proposals made by the States which endeavor or mediate shall remain counsel without any obligatory character [10].

1. Investigation:

The credit for creating and developing this method goes back to the Hague Peace Conferences of 1899 and 1907. The 1899 Convention, based on a Russian initiative, urged the use of conciliation commissions to resolve international disputes. Article 9 of the First Convention of the 1907 Conventions affirmed the desire of the contracting states to resolve their disputes that involve a dispute that diplomacy has been unable to resolve. It is related to the facts and does not affect the honor of the state and its vital interests through an international investigation committee whose task is to examine the facts of the dispute and report on that.

The agreement stipulated maintaining a permanent list of names from which the parties to the dispute choose five people in each dispute, each party appoints two members, and the fifth member is chosen by these four members. The role is limited

The committee collects facts without passing judgment. The agreement included other procedural details related to determining the location of meetings, the languages used, filling the vacant places in any committee, and others.

[9]Dr.. Shawqi Naji Jawad, Abbas Ghali Abu Al-Tamn, Negotiation is a skill and strategy, 1st edition, Al Funun Press, Baghdad, 1991., 143

[10]Dr. Abdul Amir Al-Anbari, On International Negotiations: Their Requirements and Methods, The National Center for Guidance and Administrative Development, Baghdad, 1987., pg. 412

Conciliation also developed in the bilateral treaties concluded by the United States of America with other countries, which numbered 22 agreements concluded between 1913 and 1915.

These agreements provided for the establishment of permanent investigation committees that could submit to them any dispute that diplomacy failed to resolve. These committees are composed of five members. Each party chooses two members, one of whom is not his nationals, and the fifth member, by agreement of the two parties, chooses who is not their nationals. It can perform its work upon request

It is submitted to it by both parties or by itself. It is not possible to declare war before the commission submits its report. The intent, then, was to provide an appropriate time in which war would not be declared and the tension could calm down, allowing the conflict to be resolved, because the agreements stipulated that the investigation committee should submit its report within a year [11].

Article 12(1) of the Covenant of the League provided for investigations in a manner similar to what was stated in the Hague Convention of 1907. As stipulated in the Charter of the United Nations in Article 33 as a means of peaceful resolution of international disputes. The United Nations General Assembly unanimously approved in its 22nd session in 1967 Resolution No. 2329, which urged states to make more use of the available means to gather facts in accordance with Article 33 of the Charter. as such

The General Assembly requested the Secretary General to prepare a list of experts who might be useful in gathering facts.

In general, the task of the investigation committees is limited to narrating the facts without expressing an opinion on the responsibilities in any way. Responsibilities are usually extracted from the objective report to narrate the facts. The parties to the dispute remain free to accept or reject what was stated in the report [12].

2. Reconciliation:

Conciliation is a relatively recent procedure for the peaceful settlement of international disputes, and it is usually undertaken by a committee whose formation is dominated by a neutral element, as the committee is composed of five members, each of whom

[11]Dr.. Issam Al-Attiyah, Public International Law, 5th Edition, Legal Library Press, Baghdad, 2012, p. 253

[12]Taha Kasib Al-Droubi, The Art of Negotiation and Persuasion, 1st Edition, House of Family Publishing, Amman, 2006., p. 44

appoints a member and the remaining three are appointed by agreement of the two parties from nationals of other countries.

The committee may be characterized by the nature of permanence, so that it is established under an international agreement, and any of the two parties may later resort to it. It can also arise after the outbreak of the conflict, and is therefore characterized by temporality so that its existence ends with the end of it

its mission. This method has spread after the First World War in particular, as many bilateral and multilateral agreements stipulate the establishment of permanent committees, empowering some of them even to offer their services to the parties to the conflict without being asked to do so by them. Others stipulate the establishment of temporary committees after the dispute has been published. The conciliation aims primarily at settling disputes related to conflict of interest and conflict of interest compared to the conflict and conflict of rights, which is usually settled on the basis of the application of legal rules [13].Conciliation, then, is a quasi-judicial procedure that mediates investigation and arbitration. On the one hand, it requires the presence of a body tasked by the two disputing parties to discuss all aspects of the conflict and propose a solution to it, unlike the investigation, which, in principle, is only concerned with listing the facts without proposing a solution to the conflict. The differences between the conciliation committees and the investigation committees are that the latter are temporary and end with the expiry of the dispute. The investigation, as for the conciliation committees, is often characterized by the nature of permanence.

On the other hand, conciliation differs from arbitration in that the latter culminates in a mandatory judgment while it ends

The first is proposals that the parties to the conflict are free to accept or reject. Hence, conciliation is more flexible than arbitration and does not affect the freedom and sovereignty of the parties to the dispute [14].

This feature has encouraged the Institute of International Law to propose a model to facilitate the establishment of conciliation commissions and to clarify how they work because it believes that solutions proposed by a neutral body on how to settle the dispute without obligating the parties to do so can persuade governments that are reluctant to use the most binding solutions.

[13]Dr.. Kazem Hashem Nehme, International Relations, 1st Edition, Ayad Company for Artistic Printing, Baghdad, 1988., p. 42

[14]Dr.. Smouhi Extraordinary, Public International Law, 1st Edition, Blaa Press, Damascus, 1969., p. 13

Sometimes mandatory conciliation may be provided for. However, the obligation in this case is related to resorting to it, not its consequences. In other words, either of the parties can submit the dispute to the conciliation commission to submit proposals on how to settle it in a mandatory nature (the United Nations Convention on the Law of the Sea of 1982 provided for mandatory conciliation for some fishing matters).

The second topic: international legal or judicial means

The peaceful settlement of international disputes today is nothing new, but its roots are deeply rooted in the influence of the ideas it contains and lead to an orderly life, since each group tends to seek a solution to its disputes. In this regard, Todd (Professor at Oxford University) believes that there are many indications of diplomatic relations between ancient Egypt and the kingdoms of Assyria, Babylon and other countries, so he refutes the belief of others and what others think that the history of the international judicial system began in Greece. In any case, as we all know, the judicial means for resolving legal disputes is international arbitration and recourse to the international judiciary, i.e. (the International Court of Justice), and the following is a brief presentation of the two methods[15]:

First - International Judiciary: Today there are international courts at the global and regional levels, and the International Court of Justice is the main judicial assistant of the United Nations. In the last half century, it has exercised its jurisdiction between states and the number of fatwas has increased dramatically, at the request of international organizations, and the general rule of the International Court of Justice is, that its jurisdiction is voluntary (optional), and jurisdiction cannot be derived without the consent of the parties in various ways. The International Court of Justice is made up of (15) judges of high moral character.

Those who have the required qualifications in their country. The International Court of Justice has two jurisdictions, the first is advisory and the second is judicial, and the advisory jurisdiction is called judicial jurisdiction or advisory jurisdiction. As for the question of the Arab countries' recourse to the International Court of Justice, the Court ruled on the continental shelf dispute between Libya and Tunisia. It also ruled in the maritime border dispute between Qatar and Bahrain. There are also judicial courts other than the International Court of Justice, which are regional courts, the most important of which are the European Court of Justice, the European Court of Human Rights, the American Court of Human Rights, and the Judicial Committee of Arab Petroleum Exporting Countries. The Organization of the Islamic Conference has established an Islamic Court. At the 1998 Rome Diplomatic Conference, the International Criminal Court was established to try international criminals.

[15]Karen A. Mengst, Evan M. Oregon, Principles of International Relations, translated by Hossam El-Din Khaddour, 1st edition, Dar Al-Farqad for printing, 2013., pg. 423

Second - International Arbitration: Although the ancients already knew the idea of resolving some disputes through arbitration, the heavenly laws also encourage resorting to this method, for example, the Qur'an mentions many verses in this regard, including the Almighty saying (So send an arbiter from his family and an arbiter from her family). International arbitration is an ancient judicial method used in international relations to resolve disputes, and the arbitration court can hear all disputes, regardless of their nature, and international law can determine policy or

Political, legal, military, and other disputes. International arbitration: It is a means of resolving disputes between two or more international legal entities, based on the judgments issued by the arbitrator or a group of arbitrators selected by the disputing countries or regions[16].

As for international arbitration, there is a permanent international arbitration court, and in fact it is not a court composed of arbitrators, on the contrary, the members of this court are chosen from a list of countries formed by countries when needed, and the two parties agree to choose the arbitrator. It is ready to resolve the disputes presented to them at the headquarters in the city of The Hague. In the event of the failure of the parties, the tribunal shall be constituted according to the special regime provided for in the agreement, that is, each party shall appoint one arbitrator.

The two arbitrators choose an arbitrator and decide between them. The general basic rules of defense before judicial and international arbitration, whether in judicial arbitration or in international arbitration, are followed because of the differences between the two, and one of the most recent examples of resorting to arbitration in Arab cases is the arbitration between Egypt and the Zionist entities that took place near Taba and ended in favor Egypt, and the sovereignty of the Yemeni Hanish Islands between Yemen and Eritrea. Many jurists believe that the treaty concluded by the United States of America in 1794 decided to form a committee to resolve differences between the two countries[17].

It is the first modern legal organization to resolve international disputes through arbitration. The basic principle of judicial settlement, whether it is arbitration or recourse to international justice, is the will of the state and the acceptance of states is the basis and basic condition of any judicial settlement, and this principle has been upheld by the Permanent International Court of Justice.

[16]Nazih Ali Mansour, The Right of Veto and Its Role in Achieving International Peace and Security, 1st Edition, Dar al-Kutub al-Ilmiyya, Beirut, 2009, p. 123

[17]Mohamed Abdel Rahman Zayed, International Negotiations between Science and Practice, 1st Edition, Dar Al-Shorouk International Library, Cairo, 2003., pg. 432

The third topic: The role of international and regional organizations in conflict resolution

With the emergence of the international community and the feeling that the world as a whole has become a human society, it was necessary to work to organize it for the benefit of the human race as a whole without prejudice to the legal conception of the state and the principle of sovereignty.

It gave international organizations a role in working to settle international disputes by peaceful means, especially those that violate international peace, security and justice. Hence, the International Organization Law came to provide its distinguished contribution in the field of settling international disputes.

First: Peaceful means under the League of Nations

Article (15) of the Covenant of the League of Nations referred to the traditional means of settling international disputes, such as investigation, mediation and conciliation. It is noted that the League of Nations relied on two main elements [18]:

The element of time, as wasting time calms rebellious thoughts and prepares the ground for the possibility of reaching a settlement. 2- International public opinion

Hence, the League of Nations included the conflict in the League's agenda for a while, and the League Council was keen to keep the sessions secret, whereby the parties to the conflict express their opinions freely, and the Council works to contain the crisis by diplomatic means[19].

Indeed, the League of Nations succeeded in settling many disputes, including:

The Swedish-Finnish conflict of 1923 over the Åland Islands

The Bulgarian-Greek conflict of 1926

Finally, the League of Nations collapsed in light of the great powers' pursuit of expansions and the use of force to achieve them

Second: Under the United Nations Charter:

The United Nations is considered the pinnacle of development in the field of international regulation, so it was natural for the Charter of the United Nations to set

[18]Mohamed Abdel Rahman Zayed, International Negotiations between Science and Practice, 1st Edition, Dar Al-Shorouk International Library, Cairo, 2003., pg. 432

[19]Ibrahim Darraji, United Nations Reform, Contradictions of Experience, Strategic Axes Journal, No. 3, The Strategic Center for Arab and International Studies, Beirut, 2006., p. 142

out at a very clear beginning by prohibiting the use or threat of force and emphasizing the necessity of settling international disputes by peaceful means so as not to endanger international peace and security [20].

Paragraph 3 of Article No. 2 came (members of the organization settle their international disputes by peaceful means), and the Charter dedicates the entirety of Chapter VI to the settlement of international disputes by peaceful means and methods. The texts of the Charter also included a section on the role of the Security Council and the General Assembly in resolving international disputes.

In fact, the United Nations has made a lot of efforts in the field of working to settle disputes by peaceful means and methods[21]

Third: The role of regional organizations:

The Charter of the United Nations singled out a special chapter for regional organizations, which is Chapter Eight, and pointed out in Article 52 that nothing in this Charter prevents or precludes the establishment of a regional organization or agencies to treat matters related to the maintenance of international peace and security for which regional action is valid. There is also paragraph 3 of Article 22 The Security Council should encourage the proliferation of peaceful resolution of local disputes through regional organizations

Looking at the laws of regional organizations, we find a keen interest in settling disputes to peaceful means. We find Article 5 of the Charter of the League of Arab States, which states: "It is not permissible to resort to force to settle disputes between two or more countries of the League. If a dispute arises that is not related to the sovereignty or independence of the state, it is necessary to resort to to the University Council to resolve the dispute)

The African Union Charter also encouraged this, as it indicated that among its objectives is the settlement of disputes through mediation, negotiation, conciliation and arbitration.

Fourth: Resorting to International Governmental Organizations:

It is possible to resort to intergovernmental organizations for the purpose of settling international disputes by diplomatic means, and this is evident from the mediation of

[20]Dr.. Muthanna Ali Al-Mahdawi, The Evolution of the Art of Negotiation after the Cold War, lectures given to graduate students at the master's stage, College of Political Science, University of Baghdad, Baghdad, 2007., pg. 421

[2121]karras chester ; The Therogotalion game، N،Y،Tnomasy، crowe publishes، 1970.p34

the World Bank regarding the waters of the Indus River. The intervention of the Bank is considered mediation by an international organization in which the two countries are members [22]

The intergovernmental organizations (global, regional) have within the limits of their functions specified in their charters to offer their good offices to the member states, offering to urge them to enter into negotiations, or they can set up verification devices for the purpose of clarifying the facts and facts that give rise to the conflict.

The approval of the member states for this intervention is not required on the basis that they agreed to it in advance when they joined the organization.

♣ The diplomatic means for settling disputes, with the exception of negotiations and consultations, lead to interference in the sovereignty of the states parties to the conflict. The intensity of this interference varies from the lowest intensity in good offices, to a more severe degree in investigation, and to a higher degree in mediation and conciliation.

♣ The diplomatic means for a peaceful settlement may aim to prevent armed conflicts and then enter into preventive diplomacy and may contribute to settling international disputes.

♣ Recourse to peaceful means does not automatically lead to a settlement based on international law, as the settlement is ultimately consensual[23].

Chapter Two: International Arbitration in Resolving International Disputes

The first topic: the role of arbitration in settling international disputes

Arbitration has an important role in settling disputes between states, even partially through special courts or through

Through international arbitrators or private international arbitration companies that handle disputes between two or more countries

Or between a country and a foreign company, and such disputes usually arise between oil countries and companies

Specialized in the oil field contracting with it, private arbitration companies are resorted to to separate them

[22] Fikret Namiq Al-Ani, Negotiating Theory and International Conflict Resolution, Journal of International Studies, No. 11, International Center, University of Baghdad, 2001, pg. 431

[23] Thamer Kamel Al-Khazraji, Negotiation: Management and Politics, Political and International Journal, No. 2, Al-Mustansiriya University, Baghdad, 2006., p. 134

The costs shall be paid to her equally between the two parties, or the payment of the judgment against him shall be made by whomever was a decision

Arbitration is invalid, and the costs can be deducted by a percentage in the event that the dispute was caused

on monetary value. The arbitral tribunal has several competencies determined by the referral agreement or the agreement to resort to arbitration, unless this judicial body was permanently present before the dispute arose, such as the International Permanent Court of Arbitration, then the statute of the court here shall be applicable, taking into account the foregoing, and in the case of a prior agreement Between the parties on the jurisdiction of the Commission, it sets jurisdictions for itself about the form and conduct of the case in a manner that does not conflict with the general rules of arbitration established by the Hague Arbitration Convention [24].

And the article of the Second Hague Convention stipulates that the subject of arbitration is the settlement of disputes between states by judges chosen by the parties to the dispute on the basis of respect for the law, so that the evidence for this requirement is confident and documented, it will be inferred by some historical facts in which international arbitration was resorted to for the purpose of settlement. That [25] .

1. The Hanish Island issue, and this conflict between Yemen and Arthuria revolved around an island located between the two countries in the Red Sea, where military force was used by the two countries in order to control this island. On 05/21/1996 AD, an agreement was concluded between the two countries in Paris regarding the presentation of the dispute to An international arbitral tribunal to decide and settle the dispute. In fact, a court in particular was formed, consisting of five arbitrators. Each of the parties to the dispute chose two arbitrators, and the fifth arbitrator was chosen by agreement between the two parties to the dispute, and after the court had examined the case and examined the case.

Documents submitted by the litigants, holding several sessions, hearing oral pleadings, reviewing the pleadings and written memoranda. The arbitral tribunal issued its ruling

[24]Bashir Al-Alaq, Negotiation Department, 1st Edition, Dar Al Yazoudi Scientific for Publishing and Distribution, Amman, 2010, p. 134

[25]Dr.. Farouk El-Sayed Othman, Negotiation and Crisis Management, 1st Edition, Dar Al-Amin for Printing, Cairo, 2004, pg. 60

in October 1998 AD, which decided the ownership of Yemen in the disputed islands. Arthuria committed to implementing the ruling and handed over the island to Yemen[26].

2. The Sino-Philippine dispute over the South China Sea, which is a strategic location linking the Middle East with the Indian continent in Northeast Asia, and a third of the world's sea shipments pass through it, with a value of trade exchanges amounting to $7 trillion, making this sea an important waterway. Also, this region is rich in oil, with reserves of approximately 7 billion barrels and 900 trillion cubic meters of natural gas. These statistics are according to what oil exploration companies have found (1). These wealth and strategic location have made the China Sea a conflict zone that has caused naval confrontations between China and the Philippines at the beginning of 2012, and then the Philippines filed a case before the Permanent Court of Arbitration in January 2013 about the

China controlled this sea, which is rich in hydrocarbons and fish wealth, in addition to being a vital sea corridor for global trade, and China responded to this by having a historical control dating back to several centuries over these waters and the resources, coral reefs and islands found in them that reach hundreds of kilometers. By boycotting court sessions as the court is not authorized to consider the dispute, and in October 2015, the United States of America intervened in the field dispute, as a guided missile destroyer sailed in the South China Sea, 12 nautical miles away, to confirm the freedom of international navigation in the conflict area and to issue a warning to China[27].

After the court considered the dispute on the basis of the United Nations Convention on the Law of the Sea signed by China and the Philippines, the court issued its ruling on July 12, 2016 AD, invalidating China's claims about its historical rights, because there was no evidence of such control. The court also said in its ruling that China had established Violating the sovereignty of the Philippines through its actions in the conflict zone, in addition to causing environmental damage to coral reefs as a result of building artificial islands, but China rejected this ruling and considered it not binding on it. Malaysia, Vietnam and Brunei all welcomed the ruling, and announced: These countries intend to resort to the court to obtain similar rulings, since these countries are shores of the South China Sea and have

[26]Dennis Ross, The Art of Government, translated by Hani Tabri, 1st Edition, Dar Al-Kitab Al-Arabi, Beirut, 2008, p. 65

[27]Dr.. Nazem Abdul Wahed Al-Jassour, Encyclopedia of Political Science, 1st Edition, Majdalawi House for Publishing and Distribution, Amman, 2004., p. 131

Disputes with China over this region [28].

The second topic: legal and judicial means

International disputes are considered the dilemma of the times, which necessitates the need to search for appropriate rules to solve them to avoid their dire consequences for peoples and humanity as a whole. The resolution of international disputes in the contemporary time depends mainly on the application of the rules of international law emanating from international legislation, customs and international treaties, within a specific legal framework, such as before the International Court of Justice or an international arbitration court, but resorting to these means depends on the will of states Hence, it is necessary for these devices to gain the confidence of states, whether large or small, and this confidence must be in the tools used rather than in the legal framework. This isThe tools are represented in the rules established in public international law, and therefore they must be in line with the development of the international community, not to remain hostage to traditional concepts that make the newly independent states alienate these bodies, and this does not undoubtedly serve international peace and security as long as the conflict is far from any framework for treatment. It is not subject to any legal rule of public international law, while states are obliged to abide by these specific rules in the event of disputes arising between them. However, disagreement arises among the disputing states over determining the legal framework that qualifies for the adjudication ofThe dispute, although it always claims to abide by the rules of public international law. Which raises the issue of the legal framework for this commitment and the procedures prior to it and the means to ensure this through the specialized international bodies, mainly represented by the International Court of Arbitration, the International Court of Justice or a previous body of the United Nations [29].

Distinction between international arbitration and international judiciary:

The judicial means for settling international disputes are: "The rules that lead to binding solutions that are reached through a specialized body independent of the conflicting parties, or they are the means and mechanisms to which the parties to the conflict present their existing differences in order to conduct investigations and issue binding rulings in accordance with public international law. .

Accordingly, judicial settlement is the means through which a judicial authority composed of impartial persons with knowledge of the law is able to settle disputes

[28]Madeleine Olberlet, Memorandum to the Elected President, Translated by Omar Al-Ayoubi, 1st Edition, Arab House of Science, Beirut, 2008., p. 132

[29]Dr.. Jaber Al-Rawi, International Disputes, 1st Edition, Al-Salam Press, Baghdad, p. 32.

raised to it. Judicial means of peaceful settlement are divided into two parts: arbitration and international justice.

International arbitration is defined as: "It is the means to resolve a dispute between two or more persons of international law, by means of an award issued by an arbitrator or a group of arbitrators chosen by the disputing countries."

The international judiciary is defined as "the means to resolve a dispute between two or more persons of international law, by means of a legal ruling issued by a permanent body that includes independent judges who have been selected in advance.

Therefore, based on these two definitions, we note that international arbitration and the international judiciary have similarities and differences [30].

First: the similarities

International arbitration and the judiciary are not very different, as they meet on many points, which are as follows:

• Both are peaceful and legal means for settling international disputes, or in other words, each of them is based on the rules of law in settling international disputes.

• Both of them require the agreement of the parties to the conflict in presenting the dispute between them to settlement, as resorting to the two means in order to settle the disputes that arise requires the consent of the parties and their agreement on that, and therefore the will of the parties is the basis for resorting to both, although its circle expands more When resorting to international arbitration

• Each of them issues a judgment or decision that is binding on the parties to the conflict, and for this they must respect it and work to implement it[31].

Second: the differences

For a good and accurate clarification of the differences between international arbitration and judiciary, we will address them through the following points:

1. In terms of permanence and anaphylaxis

[30] Pierre Marie Dubuis, Public International Law, translated by Muhammad Arab Sasila, Salim Haddad, 1st edition, University Foundation for Studies, Publishing and Distribution, Beirut 2008, p. 76

[31] Pierre Marie Dubuis, Public International Law, translated by Muhammad Arab Sasila, Salim Haddad, 1st Edition, University Foundation for Studies, Publishing and Distribution, Beirut 2008, p. 312

The arbitral tribunal is a temporary court that is established by the outbreak of the dispute and ends with its termination. The parties to the dispute chose them to do the settlement, because the work of the arbitrators ends with the end of the dispute for which they were found, and therefore if another dispute arises between the same parties, they must choose a new body under another agreement to settle the new dispute

Whereas the Judicial Court is a permanent court consisting of a body prior to the existence of the dispute and it continues even after its end, and was established in order to settle an unlimited number of international disputes for an unlimited period

Judges in the Judicial Court are elected periodically without their election being related to a specific dispute, and therefore they can settle many disputes that are submitted to the international judiciary without their work being dependent on settling a particular dispute.

2. In terms of shape

The disputing parties have complete freedom to choose the arbitral tribunal that they deem suitable for settling the existing dispute, and therefore in the formation of the arbitral court is subject to the absolute will of the parties and this is the opposite of the international judiciary because the will of the disputing parties does not enter into the formation of the judicial court, the judges here are predetermined the occurrence of the dispute.

Georges Scelle, as a rapporteur of the International Law Commission on the subject of arbitral proceedings, explained: “The scope of freedom enjoyed by the parties to the dispute is so wide that it cannot be compared with the international judiciary because they enjoy, when choosing arbitrators, the full right to take into account factors that cannot be accepted in the case of the judicial procedure, such as the political personality of the arbitrator Which can affect the authority of the ruling, his known judicial inclinations or his opinions and his jurisprudential influence.

But a small exception appears as the will of the parties is lacking, through the agreement of the disputing parties to settle the dispute by a chamber of the court, in addition to the presence of the special judge or the national judge in the formation of the court or chamber, and this is what Article 31 of the Statute of the Court of Justice states. International.

Conclusions:

1. The principle of resolving international disputes by peaceful means is one of the internationally accepted principles of international law so far

2. The occurrence of internal conflicts in some countries, led the United States of America in particular to create several pretexts to interfere in the internal affairs of these countries

3. The great problem facing international arbitration is the issue of implementing the arbitral award, especially since the private interest in most cases prevails over the public interest.

4. Arbitration in international transactions is no longer just a consensual judiciary, but has become closer to a binding and permanent judiciary

5. The United Nations, in its relentless endeavor to encourage trade exchange between peoples, sets in mind a two-dimensional goal, the first of which is to work to remove legal barriers that prevent the flow of trade, and the second is to devise rules that would facilitate commercial dealings between individuals affiliated with different countries.

Recommendations:

1. The international community must activate the mediation mechanism to resolve international disputes, and it can also - with the presence of the general intention and will - conclude an international treaty related to mandatory arbitration in the event of serious disputes that may threaten international peace and security.

2. It is incumbent on Arab rulers to reform the League of Arab States, activate the Arab Agreement for Common Defense, and strive to settle disputes between member states

References

1. Dr.. Al-Shafi'i Muhammad Bashir, Public International Law in Peace and War, 1st Edition, Port Said Printing House, Alexandria, 1971, p. 231
2. Robert D. Kantor, Contemporary International Politics, translated by Ahmad Zahir, 1st Edition, Jordan Books Office for Printing, Amman, 1989., p. 76
3. Gerard A. Nirnij, Foundations of Negotiation, translated by Hazem Abdel Rahman, 1st Edition, Academic Library Press, Cairo, 1988, p. 133
4. Dr.. Saad Haqqi Tawfiq, Principles of International Relations, 1st Edition, Wael Publishing House, Amman, 2000., p. 346
5. Sami Muhammad Freeh, Conflict Resolution, 1st Edition, University Publishing House Press, Cairo, 2007., p. 76
6. Dr.. Syed Alewa, Negotiation Skills: Communication, Bargaining and Diplomacy Behaviors, Arab Organization for Administrative Sciences, Amman, 1978., p. 134
7. Hassan Muhammad Wajih, Introduction to the Science of Social and Political Negotiation, 1st Edition, The National Council for Culture, Arts and Letters, Kuwait, 1994, p. 87
8. Dr.. Saleh Yahya Al Shaeri, Peaceful Settlement of International Conflicts, 1st Edition, Madbouly Library, Cairo, 2006., p. 42

9. Dr.. Shawqi Naji Jawad, Abbas Ghali Abu Al-Tamn, Negotiation is a skill and strategy, 1st edition, Al Funun Press, Baghdad, 1991., 143
10. Dr. Abdul Amir Al-Anbari, On International Negotiations: Their Requirements and Methods, The National Center for Guidance and Administrative Development, Baghdad, 1987., pg. 412
11. Dr.. Issam Al-Attiyah, Public International Law, 5th Edition, Legal Library Press, Baghdad, 2012, p. 253
12. Taha Kasib Al-Droubi, The Art of Negotiation and Persuasion, 1st Edition, House of Family Publishing, Amman, 2006., p. 44
13. Dr.. Kazem Hashem Nehme, International Relations, 1st Edition, Ayad Company for Artistic Printing, Baghdad, 1988., p. 42
14. Dr.. Smouhi Extraordinary, Public International Law, 1st Edition, Blaa Press, Damascus, 1969., p. 13
15. Karen A. Mengst, Evan M. Oregon, Principles of International Relations, translated by Hossam El-Din Khaddour, 1st edition, Dar Al-Farqad for printing, 2013., pg. 423
16. Nazih Ali Mansour, The Right of Veto and Its Role in Achieving International Peace and Security, 1st Edition, Dar al-Kutub al-Ilmiyya, Beirut, 2009, p. 123
17. Mohamed Abdel Rahman Zayed, International Negotiations between Science and Practice, 1st Edition, Dar Al-Shorouk International Library, Cairo, 2003., pg. 432
18. Mohamed Abdel Rahman Zayed, International Negotiations between Science and Practice, 1st Edition, Dar Al-Shorouk International Library, Cairo, 2003., pg. 432
19. Ibrahim Darraji, United Nations Reform, Contradictions of Experience, Strategic Axes Journal, No. 3, The Strategic Center for Arab and International Studies, Beirut, 2006., p. 142
20. Dr.. Muthanna Ali Al-Mahdawi, The Evolution of the Art of Negotiation after the Cold War, lectures given to graduate students at the master's stage, College of Political Science, University of Baghdad, Baghdad, 2007., pg. 421
21. karras chester ; The Therogotalion game‹ N‹Y‹Tnomasy‹ crowe publishes‹ 1970.p34
22. Fikret Namiq Al-Ani, Negotiating Theory and International Conflict Resolution, Journal of International Studies, No. 11, International Center, University of Baghdad, 2001, pg. 431
23. Thamer Kamel Al-Khazraji, Negotiation: Management and Politics, Political and International Journal, No. 2, Al-Mustansiriya University, Baghdad, 2006., p. 134
24. Bashir Al-Alaq, Negotiation Department, 1st Edition, Dar Al Yazoudi Scientific for Publishing and Distribution, Amman, 2010, p. 134
25. Dr.. Farouk El-Sayed Othman, Negotiation and Crisis Management, 1st Edition, Dar Al-Amin for Printing, Cairo, 2004, pg. 60
26. Dennis Ross, The Art of Government, translated by Hani Tabri, 1st Edition, Dar Al-Kitab Al-Arabi, Beirut, 2008, p. 65
27. Dr.. Nazem Abdul Wahed Al-Jassour, Encyclopedia of Political Science, 1st Edition, Majdalawi House for Publishing and Distribution, Amman, 2004., p. 131
28. Madeleine Olberlet, Memorandum to the Elected President, Translated by Omar Al-Ayoubi, 1st Edition, Arab House of Science, Beirut, 2008., p. 132
29. Dr.. Jaber Al-Rawi, International Disputes, 1st Edition, Al-Salam Press, Baghdad, p. 32.
30. Pierre Marie Dubuis, Public International Law, translated by Muhammad Arab Sasila, Salim Haddad, 1st edition, University Foundation for Studies, Publishing and Distribution, Beirut 2008, p. 76

31. Pierre Marie Dubuis, Public International Law, translated by Muhammad Arab Sasila, Salim Haddad, 1st Edition, University Foundation for Studies, Publishing and Distribution, Beirut 2008, p. 312
32. Bashir Al-Alaq, Naegotiation Department, 1st Edition, Dar Al Yazoudi Scientific for Publishing and Distribution, Amman, 2010, p. 231
33. Gerard A. Nirnij, Foundations of Negotiation, translated by Hazem Abdel Rahman, 1st Edition, Academic Library Press, Cairo, 1988, p. 75
34. Robert D. Cantor, Contemporary International Politics, translated by Ahmad Zahir, 1st Edition, Jordan Books Office for Printing, Amman, 1989., p. 98
35. Dr.. Sayed Eleiwa, Negotiation Skills: Communication, Bargaining and Diplomacy Behaviors, Arab Organization for Administrative Sciences, Amman, 1978., pg. 57
36. Dr.. Shawqi Naji Jawad, Abbas Ghali Abu Al-Tamn, Negotiation is a skill and strategy, 1st Edition, Arts Press, Baghdad, 1991., pg. 53
37. Dr.. Saad Haqqi Tawfiq, Principles of International Relations, 1st Edition, Wael Publishing House, Amman, 2000., p. 231
38. Taha Kasib Al-Droubi, The Art of Negotiation and Persuasion, 1st Edition, Dar Al-Osra Publishing, Amman, 2006., p. 98
39. Sami Muhammad Freeh, Conflict Resolution, 1st Edition, University Publishing House Press, Cairo, 2007., p. 67