UNIVERSITÀ DI SIENA 1240

FUNDAMENTALS OF INTERNATIONAL LAW

Master's Degree Course in International Sciences (LM-52)

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DISPI

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Topic Six

International Means of Dispute Settlement

Pacific Settlement of International Disputes

- Second half of the XX century as a turning point

  - "[A]*ll Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered*" – UN Charter, Article 2.3

  - "*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*" – UN Charter, Article 33

International Legal Disputes

- "*A disagreement on a point of law or fact, a conflict of legal views or of interests between two persons*" – PCIJ, *Mavrommatis case*, 1924, p. 11

- "*It is not adequate to show that the interests of the two parties to such a case are in conflict. It must be shown that the claim of one party is positively opposed by the other*" – ICJ, *South West Africa cases*, 1962

- Two constitutive elements:
  1. Claim by a state of a breach by another state
  2. Opposition or resistance to the claim by the accused state

Diplomatic Means of Dispute Settlement

- Non-legally binding
- Facilitate the agreement between the parties
- Negotiation (overarching means)
- Good offices (third-party intervention)
- Mediation (more robust third-party intervention)
- Conciliation

Adjudicative Means of Dispute Settlement: Arbitration

- Typical adjudicative means in international law
- Consent of both parties through arbitration clause or *ad hoc* agreement
- Legal bindingness of final decisions (awards)
- Permanent Court of Arbitration

Adjudicative Means of Dispute Settlement: Adjudication

- Pre-established permanent adjudicative bodies (≠ arbitration)
- Consent of the parties still necessary, but possibility of unilateral accession in some cases
- International Court of Justice (ICJ)
- International Tribunal for the Law of the Sea (UNCLOS)

The International Court of Justice: Basic Features

- 15 judges for 9-year term
- Inter-state disputes
- *Contentious* function: legally binding judgments
- *Advisory* function: non-legally binding (but authoritative) opinions

The International Court of Justice: Accession

- Jurisdictional clause (i.e., Article IX UN Convention on genocide of 1948)
- Special agreement between the parties (i.e., between Denmark and Germany in the *North Continental Shelf case* of 1969)
- Optional clause of mandatory jurisdiction (art. 36.2 ICJ Statute): 73 declarations as of 2022

Breach of Collective Obligations Before the ICJ

- *Erga omnes* and *erga omnes partes* obligations
- Non-directly injured states may appeal to the ICJ (and other international adjudicative bodies as well?)
- *Senegal v. Belgium* (2012): *erga omnes partes* character of the obligations included in The UN Convention against torture
- *Gambia v. Myanmar* (initiated in 2020): *erga omnes partes* character of the obligations included in The UN Convention against genocide

Sectorial and Regional Tribunals

- Growing phenomenon
- Human rights law, trade and investment law, criminal law, etc.
- *Regional*: EU Court of Justice, European Court of Human Rights, etc.
- *Sectorial*: International Criminal Court, International Tribunal for the Law of the Sea, etc.

The Relationship Between Adjudicative and Non-Adjudicative Means of Dispute Settlement

- Integrated relationship
- Full compatibility and mutual complementarity
- "*The Court is no longer seen solely as «the last resort» in the resolution of disputes. States rather may have recourse to the Court in parallel with other methods of dispute resolution, appreciating that such recourse may complement the work of the UNSC and the UNGA as well as bilateral negotiations*" – S. Schwebel, *Address to the UNGA*, 1998