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Pacific Settlement of International Disputes

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International organization is a multi-state system. The constituent units of international organization are sovereign independent states that have diverse socio-economic, cultural, ethnic and regional background. Very often the state come to the point of conflict with other members of the family of nations on various issues that cause disputes which often became so grave that if not settled in time may lead to war causing threat for the maintenance of the world peace. In the life history of nation states war is a necessary evil. It moves like cycle in the life history of member states. It is pertinently remarked 'war begets poverty, poverty begets peace, peace begets wealth, wealth begets pride and pride begets war. War is a necessary evil in the life history of nation states and it is the most concern of the international machinery which is designed to save the successive from the scourage of war.

Perhaps the oldest and the ubiquitous of the approaches to the peace formulated by thinkers injected into the body of international organizations is that of the pacific settlement of international organizations is that of the pacific settlement of international disputes. The growth of the idea of the settlement of international disputes dates back to the early civilization of Greece whereby the city states agreed that if there lie any dispute, whether about boundary or anything else, the matter should be judicially decided. But if any city of the allies quarreled with other they shall appeal to some cities which both deem to believe impartial, [1] Thus the existing treaty dating back to about 3000 BC carved in a stone recorded the successful arbitration of a boundary dispute between the Egyptian kings. The Greek developed mechanism for the settlement of disputes to a degree not surpassed until our own time. In modern time, the powers that assembled at Paris in 1856 expressed their wish that the states between which any serious misunderstanding may arise, should, before resorting to arms, have recourse as far as circumstance might allow to the good offices of a friendly power in the contemporary international order. This approach stems directly from the conclusion of conventions for the pacific settlement of international disputes at the two Hague conferences.[2]

In essence, the approach to the peaceful settlement of international disputes rests upon the assumption that war is a technique for the settlements of disputes which arise among nations. It is not a crime of national leader or a disease of international society but simply a traditional method of resolving the conflicts that inevitably arise in international as in all other societies. However it has always been an in-appropriate method and unworthy of the character of man.[3] In the similar vein cicero says since there are two methods of settling international disputes the one by argument the other by force and since the former is characteristics of men, the latter of beasts, we should have recourse to the second only when it is not permitted to use the first.[4]In modern time the war has become so costly, so destructive, so imprecise in its impact and unprecedented in result that its continued use for the settlement of disputes is unsupportive.[5]

Once we admit that the war is a technique for the settlement of international disputes, In terms of this analysis the problem is to find, develop, institutionalize and persuade states to the resource of other methods for the solution of their differences. Here the task of international organization is to make available to the states substitutes for the techniques of violence and to encourage and not to insist upon their utilization by the parties to the dispute.

The mechanism for the pacific settlement of international disputes provides solutions to the problem of war. It rests on the assumption that war is caused by the national temper. In the heat of anger the states loose their anger and go to war. The international organization imposes delay, instituting a cooling off period so that temper may subside and temperate conditions prevail for the settlement of disputes. This has been a favorite technique for the champions of the settlement of international disputes. The League of Nations provided in article 12 mechanisms for the pacific settlement of international disputes through arbitration, and judicial settlement where as the political disputes were settled through the council of the league. The disputing states were required not to resort to war within three months of the submission of their disputes to arbitration and judicial settlement within which the legal machinery were required to settle the disputes.[6]Again vide article 15 the political disputes were settled through the council of the league. The council was required to settle the disputes within six months of the submission of the dispute. It was also provided that during the cooling off period the disputing parties were not slowed to go to war. Violating it if they used to go to war that could be declared void and suitable actions might be taken against the aggressor state. Thus the drafters of the elaborate provisions for the peaceful settlement of international disputes hoped to impose on the parties a delay of some months before any war took place believing that during that period some pacific solutions would be found.[7] The time gained by moratorium on violence is supposed to be used in the active pursuit of solutions which will make ultimate resort to force unnecessary. Pacific settlement theory has also relied heavily upon the supposition that delay will prove good in itself aside from what is done with is done with-in-time, will have a healing effect and the important thing is to have an interval upon almost any pretext.

A second assumption underlying pacific settlement doctrine is that war is often caused by ignorance and misunderstanding of the facts involved in international crisis. Here the role of the international machinery is to bring out the fact to dispel fear that breeds in darkness, to eliminate the suspicion, false hood planted by malevolence and cultivated by chauvism and thus to prevent government from leading deceptively or innocently their people into war over grievances

which seem greater than they really are.[8] In keeping with this belief the advocates of peaceful settlement of disputes, from the first Hague conference to the present, have set great store by the institution of the impartial commission of inquiry.

The third assumption underlying the war is that it result s from international quarrels because the pride of government and people became too heavily involved in these situations to permit them to seek a more reasonable and less drastic solution. Once a dispute begins allegations bitter denunciations, indigent denials and defiant challenges become order of the day and it became difficult to back to admit errors to compromise claims.

In this case the pacific settlement steps in with face saving graces. It offers to inject into dispute a disterrested party with whom negotiations may be conducted by states which have became too estranged to negotiate with each other. Here pacific settlement is heavily committed to the proposition that the states need help in getting themselves out of psychological dead-end-streets.

The fourth hypothesis underlying war is that the states resort to war for lack of imagination. Here again the concept of third party becomes relevant. This third party tries to bring the dinsinterested partied to a honoubale solutions. To quinsy wright in modern civilization war springs from emotions devoid of ideas and desires devoid of appraisal. It may be the peculiar responsibility of the intermediaries to supply the ideas and appraisals that are essential for the preservation of peace.

And finally the traditional doctrine of the pacific settlement of international disputes rests upon the fact that war is the product of the irresponsibility of the selfish and cynical national leaders. Autocratic rulers were prone to go war all too readily since they stood to reap the gains of war without paying the price. Mussolini used to say that war is to a nation as maternity is to a women. These leaders ardently believe in the policy of aggrandizement and are having ardent faith in the deification of state. To them State is March of God on earth, kings, dictators, diplomats militarist, financiers and arms manufactures have shared the opportunity of the accusation that they are the rascals who lead unwitting people to the slaughter for the private ends. These accusers range from Marx to Wilson to the nye committee.

The most obvious solution to the problem of war conceived in this sense is that let the people decide the questions of war and peace i.e. establish democratic system in every state and the potential victims of war will weigh the matter itself before undertaking such a bad business.[9] Pacific settlement doctrine proposed an international contribution to the solution i.e. let international agency shine the spotlight of publicity upon disputes, exposing the machination and deception of war-minded leader and enabling forces of the countries concerned and the world at large to see the need and grasp the opportunity for insisting upon decent and rational solutions.[10]

In the 20th century the means available for the pacific settlement of international disputes are varied which have been dealt under article 33 [11] of the charter of the United Nation that reads the parties to any dispute the continuance of which is likely to endanger the maintenance of international peace shall first of all, seek a solution by negotiation enquiry, mediation ,conciliation, arbitration ,judicial settlement, resort to regional agenesis or arrangement of international dispute as it has been taken within the United Nations continues to rest on the principle of conciliation rather than on enforcement.The philosophy behind the conflict resolution as embedded in the charter has been expressed in the report of 1957 submitted by the secretary general of the United Nations which reads the greatest need today is to blunt the edges of the conflict among the nations, not to sharpen them. If properly used the U.N can serve as a diplomacy of reconciliation better then other instruments available to the member states.[13]

The subject of peaceful settlement of international disputes can be approached from several perspectives. Usually there are four structures of third party settlement of international disputes.[14]

These are diplomatic structures, the regulatory structure, the cognitive structures and the legal structures. These structures are complementary and demonstrate the use of the principal methods of peaceful settlement which have been used by various states in settling their disputes.

Under the diplomatic structure approach the parties to a dispute are persuaded to accept largely by their own accord settlement through the intervention of the third party. This processes essentially pragmatic emphasizing upon the negotiating frame work and helping them develop conciliating attitude leading to a reasonable compromising of differences. The regulatory structure on the other hand provides an external element by projecting into diplomatic recognition. The regulatory process of the peaceful settlement of international disputes tends to link the functions of the third party with the maintenance of the overall politically balance seeking to protect the values and goal pursed by the international community and to integrate the interest of the contending parties with those of the community.[15]

The regulatory structure tries to understand the influence which a proper understanding of the factors and components of the conflict behavior would have on the mutual perception of the parties involved in the disputes. The cognitive structure discerns different levels of the interacting process so as to make conflict more traceable and predictable. It provides relevant frame-work for analysis and evaluation which turned attention to the situation and cognitive factors facilitating or hindering as the case may be an agreement that would reduce the opposition and enhance the mutuality of the interest of the parties.[16]

And finally the legal structure lays emphasis on the role of principles, rules and process that respond to the sense of rights of many government demanding changes. It is concerned with the institutional and legal side of the dispute settlement through third party assistance. It seek to build upon the authority of law and the process of interpretation and application of legal obligations .It also attaches importance to the steady growth of institutional frame work and their adaptability to the changing circumstances.

The first and by far the most important method of adjusting international differences is diplomatic negations. Negotiation has been defined as a process in which explicit proposals are set forward ostensibly for the purpose of reaching agreement on an exchange or on the realization of a common interest when conflicting interests are present.[17]

It is the most common method under which the representatives of the disputing states sit together face to face and discussing their problems try to arrive a reasonable and honorable solution. The negotiations may be carried out through oral a written communications and also some international conference may be called for this purpose where some agreement might be reached. In the 20th century it has

been a common form before negotiation began or during their course, to use press conferences, broadcasts, interviews with journalists or Public or parliamentary speeches to drop links or convey changes in their government position on outstanding disputes. One of the worst consequences of public relations diplomacy is to confuse governments as to whether other government with which they are in dispute are genuinely seeking an agreement or whether they are putting forward proposals merely for home and foreign consumptions.[18] Diplomacy is a form of communication and it must be presupposed that the parties are, infact in communication with each other. The absence of diplomatic communication or diplomatic relations does not rule out negotiations. It is also maintained that it should be the duty of the parties to settle disputes by direct negotiations among themselves without involving others. Infact, the league council and the UN and a number of special treaties for peaceful settlement have entrusted upon the disputing states the responsibility for the settlement of disputes.

However, as method for the settlement of international disputes negotiation suffers from some weaknesses Governments use of misuse it in pursuing their objectives. Secondly the success of negotiation depends on the ability of the concerned governments to recognize each for it-self a common interest in achieving an adjustment of their difference[19] moreover, the uncertainty of diplomacy has persuaded states that they have to provide alternative means of promoting peaceful settlement. The instances in which direct negotiations fail are likely to be most serious involving real threats to peace and security and the devices of negotiation tend to breakdown in crisis situations.

Good Office: When the parties fail to resolve their differences through negations their relations virtually breakdown. They are not in a position to see eye to eye and in such a situation a third party, which has friendly relations with both the parties advances its proposal to help them in resolving their differences. This proposal advanced by the third party to mediate in resolving their differences is popularly known as good office.

Mediation: When proposal for mediation advanced by a third party having friendly relations with both the disputing states is accepted by them good office turn into mediation. In mediation there is an occasion for a third party to render his friendly services in resolution of the conflict through compromise. Mediation is used to refer to a wide variety of third party interventions but it is possible to differentiate it sharply from other forms of third party interventions but it is possible to differentiate it sharply from other forms of third party assistance rendered to disputing states.Mediation differs from good office in as much as in good office the third party simply acts as a go between where as a mediator may make suggestions of his own. However, the mediator has no right to impose his views on the disputing parties.

The first Hague convention of 1899 elevated the process of mediation to a formal accepted method of procedure by specifying that the part of the mediator consist in reconciliating the possible claims and appeasing the feeling of resentment which may have arisen in between the states at variance. It was further provided that such measures have exclusively the character of advice and never have a binding force.

Mediation is not only different from good office but it is also different from arbitration in so far as the arbitrator is considered to act on the basis of the letters of law, if not, like the basis of the rule of law of nations, moreover, the arbitrator without ignoring the existing legal rights and obligations of the parties, may occasionally bend the rules in the interest of finding a settlement. The mediator, on the other hand, can offer to be more flexible in his attitude towards the relevant rules of international law.

For mediations there are two preconditions the first one is that there must be qualified mediator willing to take up the work. It is quite possible that the mediator becomes a focus of hostility for both sides and he has to work under great risk. The second condition is that the proposed mediator should be acceptable to both the parties. Unless these two conditions are fulfilled the mediation can't start. There is no scope for forced mediation.

The mediator acts as a go between the two parties. It persuaded both the parties to give up their ego, be flexible in their outlook and come to the point of agreed solution. For this sake the mediator can advance a series of proposals.

Though mediation is sensible and convenient it suffers from several setbacks as a means of settlement of international disputes. It seems to be an exception rather than a rule for the disputing states to agree to a third party mediation. Another inherent draw back in the mediation process is that the mediator may be reluctant to associate himself with policies or attitudes which may lower his standing in the diplomatic world. There are relatively few examples of successful act of mediation in the past world war period. In the contemporary second international system the mediation has scent power to resolve the sort of disputes that occur. It is due to the external pressure of military defeat of one of the parties or a revision of hopes and expectation of the parties that mediation meets with some success and it rarely succeeds at its own.[20]

Enquiry commission : Closely related and more effective than mediation and good office is enquiry commission as a method for the amicable settlement of international disputes. The first Hague conference of 1899 recommended the use of commission of enquiry. The method rests on the principle that many disputes could be settled if the fact of the case could be established. The commission of enquiry investigates the fact so the disputes but largely confines itself to the statement of the facts and clarification of the issue. Although it may also present conclusion and recommendations but these are in no sense binding upon the disputants. This procedure was followed successfully when the Russian fleet fired upon some English fishing vessels off the dogger bank during the Russia-Japanese war.

Conciliation: When a dispute is so serious and grave that it is beyond the ambit of the aforesaid machinery to conform it and it is posing a serious threat to the maintenance of international peace and security ye another method is available to the disputing states for the settlement of such a dispute and the method so available is none but conciliation. Conciliation is nothing but mediation writ large because whereas mediation is conducted by a commission. Other wise in the methodology, objective and, work procedure both of them is same. So far as settlement of international disputes through conciliation is concerned the Bryan treaty were the first step in the direction whereby the treaty negotiated by the U.S. secretary of State Bryan in 1913-14 provided that all disputes of any nature between the United States and any other country that are not solved by diplomacy or arbitration should be submitted to permanent conciliation commission established in advance by

parties to each country. During that time the disputing states were required to restrain war or hostilities. These treaties were bilateral and their provisions applied only to the relations between the two signatories.

Arbitration: If the disputes causing threat to the maintenance of international peace and security is not settled through the traditional methods like negotiation, good office, mediaton. and conciliation then there are other methods available to the disputants for the settlement of their grievances.

Arbitration means the determination of a difference between states through a legal decision of one or more umpires or a tribunal chosen by the parties. When governments firmly agree to submit their disputes to arbitration they thereby provide the method through which arbitrators will be selected, the questions submitted to them and the proceedings conducted, law to be applied and the place of meeting expenses.[20] After conducting proceedings comparable to a court the arbitrators hand down an award by which each party is obliged to abide.

As method of settling international disputes in a pacific manner arbitration strikingly differs from conciliation in a number of ways which are:-

(i) Arbitration is a judicial process whereas conciliation is an attempt at accommodation.
(ii) The disputing states are free to choose arbitration as a mode of settlement of their disputes. But once they opt it they are bound to abide by the award given by the court of arbitration.
(iii) Thirdly conciliation recommends arbitration decides.
(iv) Conciliation is friendly counsel arbitration is a binding decree.
(v) Conciliation can take into account national honour where as arbitration must take into account the letter of law.

States have taken recourse to arbitration as a method of settling international disputes. It was used in medieval times and even by the Greek city states. Arbitration found wide use in the later of the 19th century as a tool of settling disputes. In modern times jay treaty of 1794 is regarded as the beginning of the extensive use of arbitration. The Hague convention of 1899 established the permanent court of arbitration to facilitate the use of arbital process. The permanent court of arbitration was utilized successfully in 15 cases before 1914. The venezulua debt recovery of 1904, the North Atlantifisheries Britian, and the Albama claims are some of the brilliant examples of the successful cases of arbitration.

Besides permanent court of Arbitration there were other Arbitration bodies prevailing prior to the league of nation.Alaska boundary arbitration between U.S.A and Great Britian,the American mixed claim tribunal under the convention of 1910 were some leading examples of such arbitral agencies.

In spite of its greater acceptance as a method of settlement of international disputes there are some serious short comings of arbitration as method of the settlement of international disputes. It has been used in a great many disputes where the issues were political secondly an arbitration can act only if parties have been able to find an yard stick they will both accept as a valid basis for settlement. He is not empowered to seek reconciliation. Thirdly international arbitration has been unable to build up through precedent or dictum, a firm body of law governing the settlement of disputes.[21] Fourthly it is said that each arbitration is considered an entirely new and separate matter and tribunals sole and complete mandate is contained in the compromise by which it is created. It means that arbitration could not conclusively declare international law and thereby establish a more uniform and settled pattern of international conduct.

Judicial Settlement: Judicial settlement or adjudication is yet another important method used by the disputing states for the amicable settlement of international dispute. The two methods are in one sense arbitration in which a permanent court is arbitral tribunal legal section of the secretariat of the League of Nations in a statement explained that arbitration is distinguished from judicial settlement in three respects:

(i) Nominations of the arbitrator by the parties concerned.
(ii) The selection by these parties of the principles on which the tribunal should base its award and
(iii) Its character of voluntary jurisdiction judicial settlement ensures larger measure of jurisdictional and procedural consistencies.

Aforesaid description of the methods for the peaceful settlement of international disputes reveals that the states have with them a number of pacific methods for setting their differences. These methods are embedded both in the League and the United Nations.

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