DISPUTE RESOLUTION MECHANISM GROWTH FROM GATT TO WTO

A DISSERTATION TO BE SUBMITTED IN PARTICULAR COMPLETION OF THE REQUIREMENTS FOR THE AWARD OF A MASTER OF LAW DEGREE

SUBMITTED BY

[DIVYANSHU PRATAP SINGH]
[1200990009]
SCHOOL OF LEGAL STUDIES

UNDER THE GUIDANCE
OF

[GUNJAN SRIVASTAVA]
[PROFESSOR]
SCHOOL OF LEGAL STUDIES

BBD UNIVERSITY

SESSION 2020-21

CERTIFICATE

This is to certify that the dissertation titled, "…*Dispute Resolution Mechanism Growth from GATT to WTO*…." is the work done by…*Divyanshu Pratap Singh*… under my guidance and supervision for the partial fulfillment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

I wish his success in life.

Date -------------- **GUNJAN SRIVASTAVA**
Place- Lucknow (Professor)

DECLARATION

Title of Dissertation **… DISPUTE RESOLUTION MECHANISM GROWTH FROM GATT to WTO**

I understand what plagiarism is and am aware of the University's policy in this regard.

…DIVYANSHU PRATAP SINGH…

I declare that

(a) This dissertation is submitted for assessment in partial fulfillment of the requirement for the award of degree of **Master of Laws.**

(b) I declare that this **DISSERTATION** is my original work. Wherever work from other source has been used i.e., words, data, arguments and ideas have been appropriately acknowledged.

(c) I have not permitted, and will not permit, anybody to copy my work with the purpose of passing it off as his or her own work.

(d) The work conforms to the guidelines for layout, content and style as set out in the Regulations and Guidelines.

Date: ………………

Place- Lucknow

DIVYANSHU PRATAP SINGH
1200990009
LL.M. (2020-21)
(STREAM)

ACKNOWLEDGEMENT

I express my heartfelt gratitude to **Babu Banarasi Das University's** School of Legal Studies for allowing me to complete my dissertation for the Partial Fulfillment of the Master of Law Degree.

I am thankful to my Supervisor **Assistant Prof. Mrs Gunjan Srivastava**, for not only helping me to choose the dissertation topic but also for his valuable suggestions and co-operation till the completion of my dissertation. He provided me every possible opportunity and guidance and being a support in completing my work.

I also thank to all the respondents without whom this study would have never been completed.

I am thankful to everyone from core of my heart.

(Divyanshu Pratap Singh)
LL.M. (Corporate and commercial Law)

Roll No. 1200990009
School of Legal Studies, BBDU

LIST OF ABBREVIATIONS

Art.	Article
AAA	American arbitration association
ADR	Alternative Dispute Resolution
AIR	All India Reporter
Am.Rev.Int'l.Arb	American Review of International Arbitration
CPC	Code of Civil Procedure
ECOSOC United Nations'	Economic and Social Council
GAFTA	Grain and Feed Trade Association
GC	Geneva Convention
ICA	International Commercial Arbitration
ICA	Indian Council of Arbitration
ICADR	International Centre for Alternative Disputes Resolution
ICC	International Chamber of Commerce
ICCA	International Council for Commercial Arbitration

TABLE OF CONTENT

CHAPTER I

INTRODUCTION

The lesson's objectives

Hypotheses

Methodology

Limitations

Research questions

Review of literature

CHAPTER-II

INTERNATIONAL TRADE DISPUTES IN THE PAST

2.2 International Trade's Past

2.3 The GATT System for Resolving International Trade Disputes

2.4 WTO Arbitration of International Trade Disputes

CHAPTER-III

RESOLUTION METHODS FOR INTERNATIONAL TRADE DISPUTES

3.2 Alternative Dispute Resolution (Non-Judicial)

3.3 Judicial Dispute Resolution Methods

CHAPTER - IV

INTERNATIONAL AND REGIONAL DISPUTE RESOLUTION ALTERNATIVES

4.2 The Importance of Alternative Dispute Resolution in International Disputes

4.3 International ADR Scope and Parties

4.4 International Documents and Organizations that Regulate Alternative Dispute Resolution

4.5 At the regional level, ADR

CHAPTER-V

THE WORLD TRADE ORGANIZATION'S (WTO) PART IN RESOLVING INTERNATIONAL TRADE DISPUTES

5.2.1 Early Resolution of Trade Disputes

5.3 The Dispute Settlement System of the World Trade Organization (WTO)

CHAPTER-VI

THE OVERALL EFFECTS OF DISPUTE RESOLUTION MECHANISM ON DEVELOPING AND LESS DEVELOPED COUNTRIES' TRADE, COMMERCE, AND ECONOMIC GROWTH

6.2 WTO Dispute Resolution System Participation and Its Impact on WTO Law and International Economic Relations

6.3 Developing Country Participation in the DSU System

6.4 Effects of the DSU on trade, commerce, and economic growth in developing and least developed nations

CONCLUSION

SUGGESTIONS

BIBLIOGRAPHY

CHAPTER I

INTRODUCTION

At the heart, alternate dispute Resolution mechanism within side the worldwide alternate is to be powerful father or mother of policies primarily based totally device. Growth of Dispute Resolution in worldwide alternate from General Agreement on Tariffs and Trade (GATT) to offer days, dispute Resolution frame displays an growing significance to a device far from energy primarily based totally device. WTO mechanism is hailed as new improvement in worldwide financial relation that is taken into consideration to be extra than energy. Developed international locations are a whole lot higher placed in comparison to growing international locations and due to this purpose many growing international locations even do now no longer think about invoking worldwide forum. This is in particular because of extraordinary price and unsure blessings of participation.

In global regulation the time period dispute manner a particular war of words regarding a query of rights or pursuits wherein the events continue via way of means of the manner of claims, counterclaims, denials and so on.(1) In some other definition, dispute in global regulation is a state of affairs whilst one entity of global regulation needs from some other one precise movement or conduct and this sort of call for is primarily based totally at the policies of global regulation binding for each events and this different entity resists this movement or conduct.(2) The time period dispute is consequently unique from the perception of conflict, this means that a widespread country of hostility among the events. The difference is important, because contrary to the conflicts, disputes aren't totally unwanted and might have positive treasured traits inclusive of an impact of regulation clarification.

The opportunity of a criminal dispute bobbing up is by no means absent in global change transactions. The affordable exporter, notwithstanding the care he has taken within side the guidance of the settlement of sale, has to ponder performing in opposition to a consumer who's in breach of settlement. In such circumstances, he may also weigh the value effectiveness of litigation and determine that it's miles higher to reduce his losses in place of have interaction in pricey and persistent proceedings. There are, however, situations in

---

[1] Jv. Collier, V. Lowe, the Resolution of the Dispute in International Law. Institution and Procedures, New York 2000, p. 1.
[2] L. Ehrlich, Prawo międzynarodowe, Warszawa 1958, p. 356.
[3] Jv. Collier, V. Lowe, The Resolution…, p. 1..

Which such the solution is neither possible nor desirable. It's possible that the contract's subject matter is too valuable to tolerate a loss, that third-party interests are involved, or that the breach is too egregious to go uncontested. As a result, the question of what is the most convenient, expedient, and cost-effective manner to resolve the conflict arises[4]. Parties involved in international trade should, in theory, think about this before signing a contract. Unfortunately, such parties frequently fail to give the dispute resolution procedures due thought.

The term dispute refers to a situation in which one WTO Member State adopts a trade policy or measure, or takes some action, that one or more concerned WTO Members believe constitutes a breach of the WTO Agreements or a failure to meet commitments under such agreements[5]. Those countries take procedures in accordance with the Dispute Resolution Understanding in such a case.

International trade disputes may arise due to (i) Contracts for the sale of goods that may give rise to conflicts over quality, price, and payment, transportation and timing, and delivery circumstances, among other things;(ii) There is a distinction between distributorship and agency contracts: distributors acquire and sell, whereas commercial agents promote and negotiate the sale of commodities on behalf of someone else (the principle), who subsequently sells the goods to clients; (iii) International construction and engineering contracts, such as tunnels, dams, bridges, highways, and university complexes, are frequently carried out over several years and cost a significant amount of money. Contracts with a low value, a short construction time, or that are repeated are exceptions to this norm Construction requires new or additional materials or structures (variations) that were not specified in the contract and agreed price; government agencies impose new requirements that dramatically effect the scope and expense of the works: subcontractor and the owner, etc;(iv) Intellectual property (IP) rights, such as patent licensing, trademarks, technical assistance, technology transfer, and/or know-how transfer, are frequently included in international commercial contracts, including provisions for licensing, royalties, and infringement ;(v) Internet domain names, such as those ending .in. com, .net, or .org, have significant value, hence their attribution and use are contentious which have given rise to many disputes over abuse of list of area names, commonly known as cyber squatting act.

---

[4]Schmitthoff,'Export Trade: The Law And Practice Of International Trade' 11thedn,(Sweet & Maxwell ,2007), p.537

[5] K. Sarhan, *The ABCs of WTO Dispute Resolution*, *Dispute Resolution Journal*, Nov 2005–Jan 2006, p. 72.

In international trade, dispute resolution is a key aspect of risk management. Reduced barriers are opening up new markets and worldwide competition for small and medium-sized businesses (SMEs), as well as new partners, countries, cultures, and trading practices. New dangers arise as a result of international opportunities. Disputes arise as a result of foreign economic interactions. International commercial disputes, in comparison to disputes between entities from the same country, include extra issues such as several jurisdictions, unique legal systems and traditions, differing procedures, and frequently involving more than one language. In the last 20 years, commercial conflict resolution solutions have significantly advanced.

The World Trade Organization's (WTO) recognized dispute resolution mechanism has been heralded as a significant step in international economic relations where legality, rather than power, may reign supreme.

However, at the same time as those trends in worldwide regulation represent a fantastic achievement, the device stays a long way from a impartial technocratic system in its shape and operation. Large advanced nations are lots better-placed to take benefit of the resource-traumatic legalized device and feature accomplished so. The device's policies on remedies, in particular, are based to favor them. Many growing nations do now no longer even remember bringing instances or in any other case collaborating as a 3rd celebration within side the dispute Resolution device. In fact, there's little reason for a lot of them to achieve this attributable to the good sized expenses and unsure advantages of collaborating.

During the closing ten a long time multilateral buying and selling gadget developed and advanced gradually. Among all of the sluggish improvements, the maximum big one befell throughout the Uruguay Round of GATT in 1995, while the World Trade Organization (WTO) started its adventure with a complete set of Agreements protecting all essential troubles of worldwide exchange. The new set of Agreement e.g. Disputes Resolution Understanding (DSU) describes the processes for resolving exchange disputes. Unlike GATT, which had insufficient provisions for Resolution of exchange disputes, DSU describes the dispute Resolution protocol in a completely certain format. One of the maximum excellent and success elements of the WTO is its computerized and obligatory dispute

Resolution system. It is one element for nations to comply with a treaty and pretty every other to put in force compliance with the treaty. Under the worldwide law, states can best be added earlier than an worldwide courtroom docket or tribunal in the event that they have consented to the jurisdiction of that courtroom docket or tribunal. In many cases, this means that breach of a treaty can't be challenged within side the third-party party celebration adjudication or that once a dispute arises it is able to be settled in a judicial style best with the specific consent of each parties.

As in comparison to maximum different worldwide adjudication regimes, WTO dispute Resolution has targeted procedural rules, an appellate process, and back-up arbitration mechanisms to address non-implementation and the calculation of exchange sanctions in reaction to endured non- compliance. Most important, WTO individuals have regularly used the dispute Resolution machine and within side the massive majority of instances with brilliant exception the machine have controlled to solve the dispute.

The developments of alternate disputes display that the evolved international locations are extra energetic within side the dispute Resolution manner of the Organization (WTO) than the growing international locations. It additionally performs huge function in triumphing alternate disputes. Therefore, loss of economic energy may be an reason for the low charge of small-growing international locations within side the dispute Resolution manner. A near examine the Understanding on Rules and Procedures Governing the Resolution of Disputes might also additionally monitor that its inherent incapacity to offer viable treatments in opposition to unfair alternate practices.

This may also discourage the small-developing countries to participate in the dispute Resolution process. To ensure equitable participation of the developing countries in the dispute Resolution process, the WTO should increase legal and technical assistance for the small-developing countries. At the same time the WTO needs to ensure quick resolution of the disputes and replace the provision of "retaliation with other meaningful remedies[6]. However, the agreement, including the DSU, seems to have several deficiencies that may create incentives for a country to deviate from the rules of trade stipulated in the WTO Agreements. Inability of the DSU to provide adequate and fast solution against such deviations seriously undermines the whole multilateral trading system of the WTO. Outcomes from Ministerial Meetings of the WTO show that in spite of enthusiastic commitments made by the members of the WTO, multilateral trade

[6] Das(1998) provides a handy summary of the deficiencies.

Negotiation might still end in deadlock and failure. A powerful WTO dispute Resolution machine is crucial from an institutional angle because it has public properly characteristics. Appropriate Membership participation within side the machine also can generate effective externalities. The WTO dispute Resolution machine acts as a public properly if it improves assets rights—on this context marketplace get right of entry to rights – and accordingly every Member country's possession stake within side the machine.

Improved safety of those rights reduces uncertainty, growing the probability that companies and people in international locations on each the export and import aspects of global transactions make collectively beneficial, relationship-particular investments. Active participation in dispute Resolution pastime via way of means of WTO member international locations also can have wonderful externalities if one country's litigation efforts make a contribution to the elimination of a change barrier that adversely affected the marketplace get admission to rights of different WTO members. The presence of those ability marketplace screw ups require monitoring, vigilance, and likely intervention via way of means of marketplace non-contributors in order now no longer to overlook possibilities for completely exploiting the worldwide advantages of a functioning dispute Resolution system.

While enforcement of present marketplace get right of entry to rights is of vast challenge for all WTO members, it's miles particularly crucial for growing nations that aren't but absolutely incorporated into the device. A failure of the dispute Resolution device to put in force present commitments and marketplace get right of entry to responsibilities may also elicit a dangerous comments effect. If bad growing nations trust they can not put in force their marketplace get right of entry to rights thru dispute Resolution, they will be much less inclined to observe thru with implementation in their personal WTO commitments or adopt new commitments within side the ongoing Doha Round.

International trade disputes are settled in accordance with international treaties and national laws involving international bodies, including –

1. UN'S UNCITRAL14 Model Law
2. International Chamber of Commerce
3. New York Convention on Reorganization and Enforcement of Foreign Arbitral Award
4. Convention for the Pacific Resolution of International Disputes
5. The Permanent Court of Arbitration

6. The American Arbitration Association

7. The North American Free Trade Agreement

8. The African Union Act

9. WTO's Dispute Resolution Understanding

10. Indian Contract Act

11. Civil Procedure Code

Although many worldwide alternate students view the dispute Resolution machine of the WTO as a success, the definition of "success" relies upon at the attitude and enjoy of every Member state. Developed and a few growing international locations along with the United States, the European Union (EU), Brazil and India applied the machine with various ranges of frequency. However, Member states with smaller economies or in differing ranges of improvement both have a tendency to pull away from taking part in disputes or not able to get right of entry to the machine. The motives for this could encompass a loss of resources, a loss of institutional capacity, or a loss of political will. Others have pointed out that normal smaller alternate volumes additionally make a contribution to much less utilization through growing international locations seeing that there can be much less capacity for dispute[9].

Notwithstanding the astonishing participation of a few growing international locations, inclusive of Brazil, India and Mexico one commentator contends that "the sizeable majority of growing international locations professed best what is thought as 'systemic hobby systemic hobby refers back to the truth that growing international locations hardly ever have greater tan an oblique industrial hobby" within side the litigation because of their relatively smaller exchange volumes. This tangential dating to disputes regularly interprets into growing use participation best on the session level or as a 3rd party. These provisions in particular deviate from the overall rules, and that they offer special rights "which offer advanced international locations the opportunity to deal with growing international locations greater favorably than different WTO Members. The language of the DSU alone contains at least eleven such clauses under which developing nations should benefit, such as the right to have special attention directed to their specific concerns. Another clause allows developing countries to demand that at least one panelist from a developing country be present in cases between them and a developed country.

[7] C Mohan Kumar, Dispute Resolution in the WTO: Developing Country Participation and Possible Reform, in Reform And Development Of The WTO Dispute Resolution System 177.

The lesson's objectives

The study's main goal is to examine international trade dispute resolution mechanisms, particularly the WTO's DSU, and to propose ideas for making dispute resolution more objective and efficient on an equal footing.

The other objectives of the study are:

i) To assess the origins of international trade dispute resolution techniques;

ii) To conduct a conceptual examination of various trade dispute resolution procedures;

iii) Examine the legal provisions governing international trade disputes at both the national and regional levels;

iv)To compare and contrast the various provisions relating to International Trade Disputes in various nations', associations', and international organisations' systems;

v) To examine the disparities in access to the Dispute Resolution System between developed and developing countries;

vi) Examine the provisions of Indian law relevant to the resolution of international trade disputes and assess their efficiency;

vii) Based on the study's findings, provide appropriate recommendations for enhancing the conflict resolution procedure.

Hypotheses

The following hypotheses for investigation and research are framed in light of the study's aforementioned aims and after a thorough review of the current literature and material.

(i) The WTO's Dispute Resolution Mechanism does not work on an equitable footing and is biased against developing countries.

(ii) Because of the procedures and practices of the pro-developed countries, developing countries have a tendency to avoid using the WTO's Dispute Resolution Mechanism.

(iii) Because of their inferior bargaining power, developing countries are forced to renounce their rights and immunities under domestic commercial law.

(iv) The current dispute resolution system has failed to maintain contractual commitments and enforce member countries' market obligations.

(v) By commencing measures against erring governments and parties, the WTO Dispute Resolution process has failed to provide effective and timely remedies to aggrieved parties.

Methodology

In this study, the methodology used is strictly doctrinal. The matter is examined in light of numerous sections of UN-administered treaties and the WTO's DSU agreement, as well as statutory provisions and judicial pronouncements. The data was gathered from a variety of sources, including books, treatises, journals, periodicals, United Nations periodicals and publications, magazines, international materials, legislative glossaries, treaties and conventions, and so on. Contributions from the judiciary,

Journals, law reports, workshops, conferences, seminar papers, and news stories are all utilised in this project. The problem was studied using materials from a variety of websites.

Limitations

The current research entails a thorough examination of important international treaties and statutory key provisions, as well as the court decisions that have arisen from time to time. The research was limited to doctrinal research, which included books, journals, international treaties, and pertinent legislative materials. The study does not include any actual research on this topic. Because there is a scarcity of print literature in this new field, the researcher has turned to the Internet for information.

Research Questions

In pursuit of these hypotheses the following research questions have been addressed:

(i) What is the character of International Trade and how are the international trade disputes are resoled?

(ii) What is the justification for reorganizing the various approaches for resolving International Trade Disputes?

(iii) What are the local and international mechanisms for resolving international trade disputes?

(iv) What role does the WTO's DSU play in helping emerging and developing countries resolve international trade disputes?

(v) How should the issue between developed and developing countries be resolved if the WTO's DSU is used?

(vi) Is it true that DSU works objectively and equally for both developed and underdeveloped countries?

Review of Literature

Literature Review has been done of numerous studies papers from applicable Journals, papers supplied all through complaints of numerous global conferences, applicable govt. reports, beyond Research thesis, etc. The evaluate has been done to create proper clinical thinking & concrete information base, expand centered thoughts approximately the issue of Alternative dispute decision machine in popular with unique connection with infrastructure contracts. Thereafter, those thoughts were evolved with attention on enhancing the present machine of dispute decision machine in infrastructure initiatives for Indian Defense Forces.

Dispute is a component and parcel of any industrial transaction. Dispute is any declare which the alternative party celebration refuses to confess or admits however does now no longer pay. Due to several uncertainties attached, infrastructure tasks are doubtlessly extra vulnerable to improvement of disputes than another contract. Broadly there are modes of Dispute Resolution Mechanism:

(a) Judicial process i.e. Litigation through courts.

(b) Alternative Dispute Resolution (ADR) Methods

Litigation

If a commercial issue between the parties cannot be resolved amicably, civil courts may be called upon to intervene. Litigation is the process of resolving disputes via the use of courts.

Litigation can take a long time to resolve an issue, especially when it comes to business conflicts. In the case of conflicts that are unique to Infrastructure Projects, the delay is considerably longer.

Due to the large number of ongoing civil and criminal cases, the judiciary is overburdened. According to a recent report1 published in the Hindustan Times, New Delhi Edition on September 4, 2014, there are 3.13 crore cases outstanding in Indian courts. Of this nearly 2.7 Cr are pending in subordinate courts, 43 lakh are pending in various High Courts and nearly 60,000 in the Supreme Court of India. The problem is exacerbated by a judge shortage at each level, with a total of about 4700 vacancies. As a result, existing strength is unable to support the massive weight. As a result, everyone understands the gravity of the issue, which places an enormous burden on the judiciary.

Contractual disputes involving infrastructure projects necessitate specialised technical and engineering skills to fully comprehend the situation. Judges who merely have legal expertise need a lot of time to understand the complexities of such technological disagreements. As a result, the judges must devote a significant amount of time to comprehending the argument. Even each party's lawyers take a lengthy time to comprehend and prepare their different arguments and pleadings. The nature of disagreements necessitates extended debates, arguments, and explanations. However, due to the large number of cases scheduled for hearing on a given day, the amount of time provided for the disagreement is unworkable. As a result, many hearings are required to get the message over to the judges. There is a lot of dense technical material, drawings, detailing, and computations that must be understood and debated, which is impossible to complete in the time allowed to a case on a specific date.

Alternative Dispute Resolution (ADR) Techniques

As a result, many hearings are required to get the message over to the judges. There is a lot of dense technical material, drawings, detailing, and computations that must be understood and debated, which is impossible to complete in the time allowed to a case on a specific date.

It generallyleads to disruption of commercial relationships.

Negotiation

Negotiation is defined as a "bargaining (give and take) procedure between two or more parties (each with its own interests, needs, and opinions) aiming to discover a common ground and establish an agreement to settle an issue of mutual concern or resolve a conflict" according to the Oxford Dictionary.

Mediation

Mediation is a method of resolving disputes in which a neutral third party, a mediator, assists both parties in reaching a mutually acceptable agreement[8]. As a result, mediation is an agreeable resolution of disagreements between parties through the use of a mediator who serves as a facilitator in bringing the parties together. There is no imposed decision, as there is in litigation or arbitration, and parties are free to withdraw from the process if an amicable resolution is not possible.

[8] 7 Lord Chancellor's Department on Alternative Dispute Resolution. (1998). A Consultation Paper on Alternate Dispute Resolution. London; also see (2012). Ch 6: Alternative Dispute Resolution. In D. Kelly, & G. Slapper, Sourcebook on English Legal System (p. 275). Routledge.

CHAPTER-II

THE PAST OF INTERNATIONAL TRADE DISAGREEMENT

A complete and fruitful evaluation of the shaping elements of International Trade and Resolution of global change disputes can't be apprehend while not having a clean concept of the boom of global change over times. This bankruptcy evaluation beyond and gift machine in global change and Resolution of change disputes. It identifies the couple of setbacks and reversals alongside the manner and sooner or later portrays the distinction among GATT and WTO.

2.2 The past of International Trade

2.2.1 Before to the GATT

Understanding the destiny shaping elements of global wide change with information of the ancient forces that created the worldwide buying and selling gadget we've got today. From the historical Greeks we will see change among and a number of the international locations. From the historical Greeks to the present, authorities officials, intellectuals and economics have contemplated the determinates of change among countries, have analyzed whether or not change blessings or harms the international locations and extra importantly, have attempted to decided what change coverage is the exceptional for any precise country[11].

Since the time of the historic Greek Philosophers, there was a twin view of change a reorganization of the advantages of worldwide change mixed with a situation that sure home industries or employees or lifestyle might be harmed through overseas competition. Depending upon the burden age connected to the general profits from change or the losses of these harmed through imports, analysts have arrived at specific conclusions approximately the desirability of getting loose trade. But economists have preferred loose change to technological progress, despite the fact that a few minority hobbies can be prejudicially affected, the general advantages to society are substantial.

[11] World Trade Organization, International Trade, Joint Venture and Foreign Collaborations, (New Delhi: The Institution of Company Secretaries of India, 2004)

The General Agreement On Tariffs and Trade (GATT) did not begin international trade law on October 30, 1947. (GATT). Adam Smith and David Ricardo4 and their separate laws of Absolute and Comparative Advantage did not start trade economics.

Although trade did not begin until after World War II (1939-1945), the study and practise of international trade has ancient and multidisciplinary roots. The idea that commerce should be unrestricted is still divisive[13].

Embedded in those roots, however buried through a lot present day prison and financial scholarship, is an essential hyperlink among exchange and morality. According to the primary bankruptcy of his extremely good account, Against the Tide explores the dichotomous perspectives in Ancient and Medieval instances of overseas trade. Plutarch of Delphi and Horace encompass the extremes. Trade is expressed through Douglas as God created the ocean to sell interactions and to8 facilitate trade among the diverse humans of the earth with out the exchanges made viable through the ocean guy could be “savage and destitute “nine Horace, rather in odes, proffers “the ocean added touch with strangers who should disrupt home lifestyles through exposing residents to the awful manners and corrupt morals of barbarians.

For historic thinkers, buyers themselves had been a part of the problem, whether or not exchange is nice or hazard to ethical fiber and security. In Plato’s11 department of labor, retail exchange become an career below the consideration of Greek citizens. It become first-rate left to an inferior person- ideally a segregated overseas resident in a Greek City State incompetent at different activities. Plato recounted the want to import a terrific most effective if a city-nation can not deliver itself, and to achieve this most effective if the coolest is necessary.12 Aristotle in 14 Politics14 regarded askance at buyers and dependency on overseas exchange. Even Xenophon15 and Cicero16 additionally defended overseas exchange.

Many of the Seven Deadly Sins—anger, covetousness, envy, greed, lust, pride, and sloth—were associated with commerce by the early Christian Fathers. They remembered the storey in the Gospels about Christ kicking merchants out of the Temple In his interpretation on the Book of Psalms, Saint Augustine (354-430 A.D.) said, Allow Christians to make amends, but not to exchange. Given the dangers of international trade and an ethnocentric sense of superiority, the trade policy if it be called that of many ancient philosophers and theologians was to ban imports

[13] Raj-Bhala-‘International Trade Law’, Interdisciplinary Theory and Practice, 3rd edn, (Lexis Nexis, 2008)

of non-necessities and forbid exports of necessities. Self-sufficiency was preferred, and if it could be attained through autarky, all the better.

This Doctrine maintains that rivalry between regions is beneficial and should be allowed to take its course without interference. Providence purposefully dispersed resources and things unevenly over the globe to encourage trade between different locations. The doctrine is divided into four sections. To begin with, it embraces the stoic cosmopolitan conviction in global brotherhood of man. Second, it explains how the benefits of commerce and exchange of goods help mankind.

Third, it represents the nation's belief that global economic resources are dispersed unequally. Finally, it credits the entire arrangement to a divine intervention by a God who acted with the express purpose of encouraging business and peaceful co-operation among humanity.

Mercantilism

The first fairly systematic frame of concept dedicated to worldwide change is called 'mercantilism' and it emerged in 17th and eighteenth century in Europe. An outpouring of pamphlets on monetary issues, especially in England and particularly a primary a part of this period, mercantilist writers argued that a key goal of change must be to sell a positive stability of change. A "favorable stability of change is one wherein the cost of home items exported exceeds the cost of overseas items imported. Trade with a given u . s . or place become judged worthwhile through the volume imported. Trade with a given a rustic or place become judged worthwhile through the volume to which the cost of export exceed the cost of import , there through ensuing in a stability of change surplus and including valuable metals and treasure to the u . s . stock. Exports of synthetic items had been taken into consideration beneficial, and exports of uncooked substances had been taken into consideration dangerous imports of uncooked substances had been considered as nice and imports of synthetic items had been considered as damaging. This ranking of activities was not just based on employment considerations., where processing and adding value to raw materials was

[15] This principle propounded by Seneca the Younger (4th B.C-65 B.C), Philo of Alexandria (20 B.C-50 A.D) Origen (185-254 A.D), Saint John Chrysostom (349-457 A.D) and Saint Theodore of Cyrrhus (393-457 A.D)etc

Thought, to create more job prospects than merely extraction or primary manufacture of essential products, but also to enhance the economy and national defense through developing industries.

Even if the logic of these theories were accurate, this method would never succeed if every country sought to implement it at the same time. This is because not every country can have a positive trade balance, and not every country can export produced goods while importing raw materials.

Adam Smith's Wealth of Nations

Even if the logic of these theories were accurate, this method would never succeed if every country sought to implement it at the same time. This is because not every country can have a positive trade balance, and not every country can export produced goods while importing raw materials[18] .Smith argued that financial boom depended upon specialization helped sell more productiveness this is generating greater items from the equal resources, that is crucial for reaching better requirements of living .According to Smith the department of hard work became restricted with the aid of using the volume of marketplace in different words, small markets might now no longer be capable of aid a first rate deal of specialization while the dimensions of the marketplace for any given united states of america allowed for greater subtle specialization, created an worldwide department of labour and thereby benefited all nations with the aid of using growing the worlds productiveness and output. Smith argued that the first rate item of mercantilism became to decrease as a good deal as viable, the importation of overseas items for domestic consumption, and to growth as a good deal as viable the exportation of the made from home industry.

These objectives were to be attained through import limits on the one hand, and export subsidies on the other. Smith opposed both measures[19]. Smith claimed that export subsidies were unnecessary and that import prohibitions were costly.

Comparative Advantage

During the first part of the nineteenth century, the United States bolstered its case for free trade. The theory of comparative benefit emerged through this period and strengthened the kind of the

---

[18] Adam Smith, Economics, Philosophy, (Scotland: William Strahan Thomas Cadell, 1776)
[19] Ibid

nature of trade and its benefits. Although James Mill and Robert Torrens had comparable thoughts about the same time, David Ricardo is credited with creating this crucial notion.

The principle of comparative gain indicates that a rustic ought to export items within side the united states of America wherein its relative fee gain, and now no longer absolutely the forged gain, is best in evaluation to different countries. The sensible effect of the doctrine is that a rustic can also additionally export an excellent even supposing a overseas united states of America can also additionally export should produce it greater efficaciously if this is in which its relative gain lies; similarly, a rustic can also additionally import an excellent even supposing it is able to produce that exact greater efficaciously than the united states of America from which it's miles uploading the exact[20].

These economists realized that there may be times when a government wishes to sacrifice economic gains in order to achieve a different political goal. There could be a non-economic goal. There may be non-economic goals that are so desirable that they are worth sacrificing economic gains to achieve.

2.2.2 Establishment of GATT and WTO

Internationalization of International Trade

In an attempt to provide an early raise to change liberalization after the Second World War and to start to accurate the massive overhang of protectionist measures which remained in place from the early Thirties tariff negations have been opened some of the 23 founding GATT contracting events in 1946. This first spherical of negotiations ended in 45,000 tariff concessions effecting $10billion or approximately one 5th of global wide change. The tariff concessions and regulations collectively have become called the General Agreement on Tariff and Trade and entered into pressure in January, 1948.

The WTO's predecessor, the GATT, was founded on a temporary basis after World WarII in the wake of other new multilateral organizations dedicated to international economic cooperation, most notably the "Breton Woods" institutions, now known as the World Bank and the International Monetary Fund.

The World Trade Organization (WTO) is not merely a continuation of the GATT; rather, it entirely replaces it and has a fundamentally distinct personality. It established with a permanent institution with

It own secretariat. Its promises are complete and irreversible. The WTO regulates trade in goods, services, and intellectual property related to commerce. The World Trade Organization's (WTO) Dispute Resolution procedure, which is speedier, more automated, and hence less prone to obstructions. It will also be easier to rely on WTO dispute resolutions[21].

Regional Trading Blocks

Along with the WTO, various regional trading blocs were formed at the regional level by countries to encourage international trade.

(i) Association Of South –East Asian Nations

It was founded on August 8, 1967, in Bangkok, by the five founding members, Indonesia, Malaysia, the Philippines, Singapore, and Thailand, with the goal of 1)

1. Strengthen the foundation for a prosperous and peaceful community of South East Asian nations by accelerating economic growth, social progress, and cultural development in the region via collaborative activities in the spirit of equality and partnership.

2. To promote regional peace and stability by upholding the rule of law and adhering to the principles of the United Nations Charter in dealings with countries in the region.

(ii) European Communities / European Union[22]

The European Coal and Steel Community28, the European Economic Community29, and the European Atomic Energy Community30 are all referred to as "European communities." France, Germany, Belgium, Italy, Luxembourg, and the Netherlands were among the first European nations. The European Union, as it is presently known, brings together 14 countries (EU). Denmark, Ireland, Greece, Portugal, and Spain are all members of the European Union.

[21] Supra note 1

It established a single market and a single currency for the member countries. Its goal is to create new areas of European cooperation in foreign and security policy, as well as in justice and home affairs[23].

The Council of Ministers, the European Commission, the European Parliament, and the European Court of Justice are the four primary institutions. It also has other entities, such as the Economic and Social Committee, the European Ombudsman, and the European Central Bank, in addition to these four main institutions.

(ii) North American Free Trade Agreement (NAFTA)

In January 1994, Canada, america and Mexico released the NAFTA and fashioned the world's biggest unfastened alternate area. Designed to foster extended alternate and funding a number of the partners, the NAFTA incorporates an bold agenda for tariff barriers, in addition to complete provisions at the behavior of enterprise withinside the unfastened alternate area. These encompass disciplines at the rules of funding, services, highbrow property, opposition and the transient access of enterprise persons.

(iii) South Asian Associations for Regional Co-Operation

Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka make up the South Asian Association for Regional Cooperation. The Association's principal purpose is to hasten the pace of economic and social development in member states by working together in agreed-upon areas.

SAARC are:-

a) To increase the well-being and quality of life of the people of South Asia.

b) To accelerate the region's economic, social, and cultural development, and to ensure that all people have the opportunity to live in dignity and reach their full potential.

c) To promote and strengthen the countries of South Asia's collective self-reliance.

d) To contribute to mutual trust, understanding, and appreciation of each other's issues.

e) To improve collaboration with other emerging countries.

---

[23] Supra note 1

f) To strengthen their cooperation in international forums on issues of mutual importance; and

g) Work with international and regional groups that have comparable goals and objectives.

2.3 Resolution of International Trade Disputes Under GATT System

The current global commercial system has its origins in the years following World War II, when Western nations attempted to eradicate the protectionist and discriminatory economic practises that had fueled international hatred and alienation in the years between the wars[24].

The GATT turned into the primary actual try via way of means of the principal international locations of the arena to create a cohesive machine of global wide change regulations. In June of 1944, at the same time as the allied forces tore thru Europe, representatives of the Allied international locations met in Breton Woods, New Hampshire. With the give up of World War II in sight, those international locations identified the want to deal with the economic and monetary issues that had the contributed to the Great Depression and the War[25]. Because the Breton Woods conference participants were finance ministers from their various nations, they focused on financial and banking issues rather than trade issues[26]. The charters of two significant international financial entities were established by the end of the meeting. The International Monetary Fund and the International Bank for Reconstruction and Development are two of the world's most powerful financial institutions.

The Breton Woods contributors additionally diagnosed the need for a third worldwide organization one that could oversee the location of global wide alternate. The protectionist measures that arisen in the course of the 2 a long time among the World War had hampered worldwide alternate and maximum international locations felt that this obstruction of loose alternate become a main aspect contributing to the Depression and the War. Shortly after the Breton Woods Conference, the USA and United Kingdom proposed the introduction of an International Trade Organization the ITO.

The countries involved in this unprecedented global endeavour, on the other hand, were anxious to gain from free trade and did not want to wait for the ITO to get back on its feet. As

[24] Fordham Law Review Vol.65, (New York :Fordham University School of Law)
[25] John. H.Jackson, The World Trading System; Law and Policy of International Economic Relations, 2nd edn, (Cambridge: MIT Press,1997)

an interim measure, They made the decision to develop and sign a multinational trade agreement to control international trade until the ITO could take over. The GATT was created as a temporary arrangement, and the participating countries signed a Protocol of Provisional Application in 1947, bringing the GATT into force.

In the meantime, the ITO changed into going for walks into problem. The proposed constitution for the ITO changed into extraordinarily formidable and set several limits at the moves that collaborating kingdom should absorb worldwide trade. As a result, in 1950, America Congress, hesitant to cede an excessive amount of electricity, refused to ratify the constitution. As the most effective global electricity whose economic system changed into now no longer ravaged with the aid of using World War II, America had first-rate affect and its refusal to ratify the ITO Character efficaciously ensured that the enterprise might in no way come into begin.

The ITO's untimely demise left a gap in international trade regulation. The GATT, which was only meant to be temporary, became the dominant governing body for international commerce by default.[27] Of course, the GATT was only an agreement, lacking the legal authority of a treaty and the certainty of an organization's power and presence. The misalignment between GATT's initial conceptualization and its ultimate purpose was demonstrated in a number of ways, including the false "lease" of its personnel from the non-existent ITO and the lack of any governing constitution or charter.

The GATT's drafters indentured it to be instrumental in fighting the excessive price lists and different protectionist degree that had contributed to the Great Depression and World War II. To this end, Article II of the GATT prohibits the taking part nations ,called 'Contracting Parties' from enforcing any import regulations apart from price lists and additionally limits the price lists that may be imposed. Between the adoption of the GATT and its alternative through the WTO, the Contracting Parties again and again diminished the tariff limits mentioned in Article II. Eventually, the price lists reached such low stage as to offer no actual obstacle to lose trade.

In addition to tariff reductions, the GATT also places limits on the international law and regulations of the Contracting Parties. Specifically, each nation's treatment of imports from another Contracting Party must satisfy two doctrinal principles of nondiscriminatory treatment

set forth by the GATT. The terms "most favored nation treatment" and "national treatment" are used to describe these situations.

Article I of the GATT units forth the maximum –favored-country obligation49. Under this article, one Contracting Party cannot accept preferential remedy over any other country. Instead, the imports from, and exports to, every Contracting Party need to be afforded equitable remedy with recognize to customs strategies and all different import or export-associated regulations. In effect, every country need to provide to each different contracting party celebration the maximum favorable remedy that it grants to any country.

The 2nd sort of non-discrimination is country wide treatment, set forth in Article III of the GATT.50 Under this doctrine, the home legal guidelines of a Contracting Party need to deal with items imported from any other Contracting Party than similar locally produced items as soon as the products have entered the home market. In expectation that Contracting Parties might once in a while disagree approximately the translation and alertness of GATT provisions, the GATT gives a technique for resolutions of exchange disputes. Like the relaxation of the GATT, this technique, set forth in Article XXIII, become supposed to be simply provisional. Therefore, it does now no longer exhaustively element each step of the process, and plenty of the closing dispute decision technique become embodied in customs and practices advanced through the Contracting Parties whilst resolving real disputes.

GATT 1947 did now no longer offer an in depth dispute Resolution system: it consists of most effective articles regarding dispute Resolution. Neither Article XXII of GATT nor Article XXIII of the GATT especially referred to dispute Resolution or info manner to deal with an upcoming war of words among the members. The unsuccessful Resolution of dispute beneathneath Article XXII or XXIII become at some point of the primary 12 months of GATT and dealt with via way of means of operating events. The operating events have been and consisted of representatives of all fascinated Contracting Parties inclusive of the events of the dispute. The operating events followed the reviews via way of means of consensus amongst all participants.

The gadget of operating events becomes changed through panels which include 3 to 5 unbiased specialists from non-concerned GATT contracting events. The Council which consisted of all of the individuals. The council needed to undertake the guidelines or rulings through consensus earlier than it have become legally binding upon the individuals concerned. The GATT panels created an vital jurisprudence and began out to observe a greater rules-primarily based totally and judicial fashion of

reasoning of their reports. This machine labored properly throughout the Nineteen Fifties at the same time as the consisted of like- minded contributors which had labored collectively withinside the ITO/GATT negations and agreed upon the GATT 1947.

The dispute Resolution gadget turned into now no longer used often all through the 1960s, however while the European Economic Community turned into mounted and more and more growing nations have become individuals of the WTO, the want for a dispute Resolution gadget have become essential. One hassle that resulted turned into that the small, homogenous organization of individuals turned into changed via way of means of a new, large corporation including a greater argumentative generation. As a solution, a prison workplace turned into mounted in 1983 to assist the alternate diplomats with the panel reviews. This created greater self assurance some of the individuals, and the panel reviews have been used as a type of precedent. The GATT dispute Resolution gadget steadily modified from a power –primarily based totally gadget of Resolution via diplomatic negotiations right into a gadget with capabilities of a rule-primarily based totally gadget of dispute Resolution via adjudication.[28]

The GATT turned into installed at the start of its the beyond as a mutual-tariff discount settlement beneathneath the International Trade Organization Charter. And additionally the GATT turned into in no way concept to be as an worldwide enterprise via way of means of its members. The authentic intention of the GATT turned into to be located as a felony framework for International Trade Organization. Read, R says approximately GATT dispute Resolution system, "The GATT turned into installed within side the wake of the International Trade Organization" failure and contained a extra constrained array of measures derived from the Havana constitution for the Resolution of disputes among its contracting parties. The precept GATT articles handling disputes Resolution are the Article XXII on session and XXIII on nullification and impairment.

Since its starting of GATT, there has been an issue approximately dispute Resolution machine. One organization argued that, the dispute Resolution machine should be 'international relations or energy oriented' direction. Another organization dictated it to be a 'rule-oriented' machine. The former maintained that, the alternate disputes might be resolved with the aid of using negotiation. According to latter, it may be possible to make goal rulings to solve a alternate disputes. Evidence of this that, boom of GATT resulted to the operating events shifted to the panel procedures.

---

[28] A WTO Secretariat Publication. 'A Hand Book on the WTO dispute Resolution system' pp.12 -14

In the sooner stage, the GATT dispute Resolution device changed into having a numerous weaknesses, due to the fact the GATT got here to the lifestyles with its delivery defects. For instance, there has been an ambiguity approximately GATT decision-making procedures. The applicable articles of GATT dispute Resolution device have been informal. There changed into a plenary assembly of the contracting events over the alternate disputes. In addition, the GATT dispute Resolution device changed into an in green and the precept of consensus changed into ambiguous. As a end result of this, the contracting party party celebration can block the dispute technique easily.

Furthermore, the system had issues with its institutional structures as well as its temporary nature. “Its working methods were fairly ill-defined, and its legal rulings were written in vague language that implied more than it said, and both its procedures and its ruling allowed lots of space for negotiation,” Hudec claims[29].

Furthermore, the countries' representatives were mainly the same people, with the United States and the United Kingdom dominating. The GATT Secretariat lacked any legal expertise. They were diplomats or economists, respectively. As a result of this scenario, the panels' work lacked competent legal analysis..

As a end result of these, the Contracting Parties have been dropping their recognize to the device. However, the device survived, due to the dedication of its individuals to guide the GATT framework. In addition, consistent with guide the GATT framework. In addition, consistent with Hoffman: after1952, the dispute Resolution device has become greater formalized. The panel process become set up and additionally impartial professional appearing within side the manner and now no longer representatives of the member states[30].

The basis of the GATT dispute decision device is Article XXIII57. The device is precipitated while a Contracting Party determines that a gain a curing to it beneathneath the GATT is being “nullified or impaired” with the aid of using the movement of any other Contracting Party”58. The GATT calls for the countries concerned to try and clear up the dispute among themselves earlier than bringing the dispute to the complaining kingdom ought to take is to “make written representations or proposals”

[29] R.Hudee, ‘The New WTO Dispute Resolution Procedure’ Minnesota Journal of Global Trade. (1994),4.
[30] J.Hoffman. ‘Should trade disputes be handled in the world trade organization or in a unilateral way ? American Universit 1999.

To the country that it feels is acting in violation of the GATT. These representations and recommendations must be given "sympathetic consideration" by the other nation.

If events are not able to solve the disputes themselves, Article XXII permits the complaining party party celebration to deliver the grievance earlier than the alternative Contracting Parties, who will look at and make suitable recommendations. In the early years of the GATT, disputes have been taken up at a assembly of all of the Contracting Parties. Because of this proved too inefficient and time- eating for maximum disputes, the Contracting Parties evolved an alternate method, beneathneath which a operating party party celebration could look at the dispute and make a recommendation. The operating party party celebration usually consisted of representatives of some impartial countries.

A third approach, the use of an impartial panel of three to five trade experts, became popular in the mid-1950s. The experts were not to operate as representative government and were to decide the subject fairly and impartially. The panel would provide a report summarizing its findings and recommendations after hearing the arguments of both sides and interested third parties.

The panel file had no prison impact except it turned into followed with the aid of using consensus of the Contracting Parties. Therefore, the dropping celebration may want to successfully block adoption of the file with the aid of using balloting towards it. Sixty seven If the panel dominated in choose of the complaining kingdom and if the file turned into then followed, the Contracting Parties had been legal to do so towards the dropping kingdom if occasions had been critical sufficient to justify such action," the Contracting Parties may want to legal the complaining kingdom to retaliate towards the dropping kingdom with the aid of using denying it any blessings that accrue to it below the GATT.

In its early years, the GATT dispute settlement mechanism performed admirably. Because of the early Contracting Parties' homogeneity and unanimity in support of GATT rules, system compliance was the norm[31]. In the 1950s and 1960s, Parties, this policy cohesion faltered, and the cumbersome.

The system of dispute settlement began to become more vulnerable to divisive political factors. In 1955, one of the first blows to the system's confidence occurred.

[31] Montana I Mora

When the US utilized its political clout and authority to persuade other Contracting Parties to release the US from certain agricultural commodity obligations. As panels purposefully authored ambiguously worded opinions in politically sensitive areas, the possible political impact of panel decisions began to undercut their effectiveness.

The shape of the device itself changed into overly vulnerable to political influence. The consensus requirement for adopting panel choices supposed that one party celebration ought to block the selection via way of means of vote casting in opposition to it. Therefore, the dropping country ought to correctly veto any criminal impact of the recommendation. As a end result of this tepid adoption procedure, most effective one panel selection resulted within side the authorization of retaliation via way of means of the Contracting Parties within side the whole the beyond of the GATT[32]. Even on this case, which resulted from a grievance via way of means of the Netherlands towards the USA political concerns forestalled utility of the legal retaliation, and the preliminary change violation persevered unabated. Another political up brief of the consensus requirement become that countries "once in a while withheld approval of a panel document in retaliation for a few country's unwillingness to permit adoption of a panel document favorable to the primary country.

In reaction to the developing ineffectiveness of the dispute decision gadget international locations relied growing on unilateral threats and exchange sanctions to solve their exchange associated differences. The United States turned into specifically keen to inn to unilateral measures, a propensity that irritated lots of its buying and selling companions and brought about extra anxiety within side the global arena. When the Contracting Parties met within side the mid-1980 s to overtake the global exchange gadget, the developing significance of the GATT dispute decision manner turned into a main problem that they needed to solve.

In spite of this, the GATT has advanced into an skilled corporation in particular with appreciate to its dispute Resolution gadget which have become the maximum crucial mechanism labored pretty well. In order to make an powerful and enforceable GATT rule, first, in1979, the Understanding on Dispute Resolution became installed with constant set of rules. Secondly in 1989 the Dispute Resolution Procedures became installed. It gave the complainants right to a panel and defendants

[32] Jockson, supra note34 at 96

[33]In 1953, the Netherland raised acomplaint about U.S. restraint onimported dairyproducts. The contracting parties authorized the Netherland's to retaliate by limiting U.S. grain imports.

could no longer block panel reports. Lastly, establishing an Appellate body gave to the system a more confidence.

Furthermore, Ministerial Declaration of the Uruguay Round made a significant development upon the dispute Resolution system. According to this, 'In order to make certain set off and powerful decision of disputes to the gain of all contracting parties, negotiations shall purpose to enhance and support the policies and techniques of the dispute Resolution process, at the same time as spotting the contribution that could be made with the aid of using greater powerful and enforceable GATT policies and disciplines shall consist of the improvement of ok preparations for overseeing and tracking of the techniques that could facilitate compliance with followed recommendations[35].

The maximum crucial function for the dispute Resolution has developed into the manner at some stage in the GATT the beyond in practices. Such as, the contracting events responsibility isn't always most effective look into and recommendation, however additionally to present a ruling at the issue. According to Uruguay Recourse to Article XXIII says approximately it. Paragraph 2 of Article XXIII provides, aside from directly investigating any count so mentioned them, for 2 varieties of motion through the Contracting Parties, namely

i) They must provide appropriate recommendations or make a decision in the case.

ii) They may authorize the suspension of concessions or obligations.

The action outlined in I is mandatory and must be taken in all circumstances where a "acceptable" recommendation or ruling can be made. In certain circumstances, the action under (ii) is to be conducted at the discretion of the contracting parties[36]. However, only when the situation is extremely critical can a second measure be taken to limit the applicability of the rules to cases of nullification or impairment.

Finally, the GATT was created as a result of the International Trade Organization's failure. The GATT arrived on the scene with flaws. In addition, the GATT made no provisions for a dispute resolution process. This mechanism, on the other hand, was exceptional in that it performed better than planned.

[35] Ministerial Declaration of Uruguay Round (Punta del Declaration)GATT

In fact, even though it lacked precise procedures for dispute resolution and was not the most courteous trade organization in the world, the GATT dispute resolution mechanism served as a bridge between world trading countries in resolving trade issues.

2.4 Resolution of International Trade Dispute under WTO

The subsequent main step within side the improvement of global alternate changed into the advent of the WTO. The gadget for resolving global alternate disputes underwent main modifications because of the Uruguay Round. The WTO Charter incorporates an Understanding on Rules and Procedures Governing the Resolution of Disputes ('the Understanding'), which information the right dispute decision methods in an awful lot extra element than the GATT. The Understanding makes six essential changes to the gadget for resolving alternate disputes. When considered together, the brand new WTO gadget is a miles greater effective and authoritative device for resolving disputes than the GATT gadget.

Dispute Resolution is appeared with the aid of using the World Trade Organization because the vital pillar of the multilateral buying and selling system. The first important extrade is the advent of a unmarried entity, the Dispute Resolution Body (the 'DSB') to supervise all disputes. Eighty four Because the GATT lacked such an over converting commission, there has been an possibility for events to forum –save for the unique dispute decision mechanism that high-quality appropriate their objectives. The formation of the DSB resulted the risk of inconsistent choices that forum-purchasing normally rises.

The World Trade Organization (WTO) facilitated an appeals process. The Understanding allows parties the power to appeal panel rulings to the Appellate Body in a clear attempt to make the conflict resolution system more consistent, fair, and effective. The DBS appoints seven judges to the Appellate Body, which is a permanent court.

The agreement addresses a significant flaw in the GATT system by effectively automating the adoption of panel and appellate body rulings. Adoption of a decision can only be avoided if all member countries, including the winning nation, agree, by consensus not to

adopt it[37]. The losing party could single-handedly overturn a panel judgment under the GATT by voting against it. This shift away from political sabotage strengthens the power of panel rulings.

The GATT's dispute settlement mechanism was open-ended, with panels deliberating in multiple sessions over several months. The agreement sets rigorous deadlines for the resolution of disputes. At every level of the processes, the Panel91 consults with the Appellate Body and the DBS, and urges everyone engaged to fulfil their responsibilities as quickly as possible.

It additionally offers enamel to the dispute decision device with the aid of using empowering the WTO to impose sanctions on countries that refuse to conform with followed decisions. The Understanding gives for ongoing surveillance of the transgressor's change practices to make certain that they agree to the decision. Viewed together, those modifications mirror the choice of the WTO member countries to depoliticize change dispute decision and inspire more predictability and equity within side the software of change agreements.

[37] Art.16(4),17(4) of WTO

CHAPTER-III

METHODS OF RESOLUTION OF INTERNATIONAL TRADE DISPUTES

Disputes are certain to rise up while exchange takes vicinity among distinctive countries. Usually, the techniques of dispute Resolution in global exchange are labeled in distinctive ways. The first wide class represents diplomatic or non-judicial techniques, and consists of negotiations, mediation, inquiry, right workplace and conciliation. In this class, the events stay in ordinary manipulates of the dispute, and may both take delivery of and reject the recommended Resolution. The different standard class is called judicial or criminal Resolution because the foundation of Resolution is global law. The sort's right here is arbitration and judicial Resolution and is hired wherein a choice this is binding at the events is needed. Judicial Resolution includes referring the problem to the ICJ or different status courts. Arbitration on different the hand desires the events themselves to institute the techniques of resolving the dispute among them[38]. After outlining the two broad categories, this chapter delves into each conflict resolution process, its significance, merits, and drawbacks, as well as the procedures that follow.

3.2 Non-Judicial Methods of dispute Resolution

According to Art.2 (3) of United Nation's Charter all participants shall settle their worldwide disputes through non violent approach in one of these way that worldwide peace, protection and justice aren't endangered39. A tribunal can be set up, and can require the events to barter in accurate faith, and will country what components the events have to take into account whilst negotiating. Negotiation also can be described as: a non-binding manner related to direct interplay of the disputing events wherein in a celebration procedures the alternative with the provide of a negotiated Resolution primarily based totally on an goal evaluation of every other's position.

Negotiation, the International Court of Justice remarked that "there may be no want to insist upon the essential man or woman of this technique of Resolution. It determined on this connection as did its predecessor the Permanent Court of International Justice that is not like different way of Resolution.

[38] Merrill J. G, 'International Dispute Resolution', 4th edn., New York
[39] Charter of UN (1945)

It is a consensual bargaining system wherein events try and attain an settlement on a disputed or probably disputed matter. Negotiation which ends up in the direct and pleasant Resolution of disputes among events is universally accepted. Furthermore, negotiations are normally a prerequisite to inn to in different manner of disputes. It have to be cited that the term ‘diplomacy’ is utilized in a few treaties including the 1949 Revised General Act for the Pacific Resolution of International Disputes, as a synonym of ‘negotiations as is likewise the phrase ‘via the standard diplomatic channels because it seems for instance, within side the 1948 Charter of the Organization of American States. Negotiation also can be described as a non binding process concerning direct interplay of the disputing events in which in a celebration tactics the alternative with the provider of a negotiated Resolution primarily based totally on an goal evaluation of every others position.

Negotiation will contain session and change of opinions. Essentially, it's far to do with the events discussing the disagreement, that allows you to apprehend it. It is the technique via way of means of which they determine the way to continue subsequently. By negotiating, the events can separate the dispute into issue components to acquire their ambitions. Moreover, the duty to barter does now no longer always suggest a responsibility to attain agreement; in fact, negotiation represents step one in dispute resolution, now no longer always its conclusion. According to Art. Sixty six of the UN Charter, if a dispute isn't resolved inside 12 months within side the manner blanketed via way of means of Art.33 then there are different strategies to follow[40].

The Characteristics of Negotiation

a) Flexibility: The Manila Declaration on the Peaceful Settlement of International Disputes emphasizes flexibility as one of the qualities of direct discussions as a technique of resolving disputes peacefully. It's also adaptable; it can be used in a variety of situations. It is so adaptable that it may be used in a variety of situations, including political, legal, technical, and commercial issues.

b) Effectiveness: Another feature of negotiating is its efficiency. In this regard, and in the realities of international existence, suffice it to say, negotiation is one of the means of peaceful

[40] Shaw. M. N. ‘International Law’, 5th edn., (Cambridge, Cambridge University Press, 2003),Ch 16, p.85 8.

Resolution of disputes. States frequently use it to resolve controversial matters, and while it is not always successful, it does resolve the vast majority of disagreements[41].

c) Cost and Time Savings: In most cases, this technique decreases the cost and time required in resolving conflicts. The majority of negotiations are meant to be completed in a single day. The expense of the negotiator is normally split between the disputants. When compared to the expense of litigation, the total cost of negotiating is quite low.

(ii) Initial Phase

Normally the negotiating method begins off evolved because the end result of 1 nation intending with the life of a dispute and welcoming the alternative celebration to go into into negotiations for its Resolution. The begin of the negotiating method is conditional upon the recognition through the alternative nation of such an invitation. It may also arise that a nation invited to go into into negotiations has legitimate motives to trust that there may be no dispute to barter and that there may be, therefore, no dispute to negotiate and that there may be, therefore, no foundation for the outlet of negotiations. It can also arise that a nation or celebration agreeing to go into into negotiations may also lay situations unacceptable to the primary nation. The discretion of states with appreciate to the initiation of the negotiating method is but challenge to positive limitations[42].

Several treaties require states parties to engage in "negotiation consultation or exchanges of views" whenever a dispute occurs in relation to the treaty or agreement in question.

International organizations can help kick start the bargaining process. Such organizations also provide as a venue for representatives of state parties to a dispute to meet in order to reach an agreement. Negotiation is the most frequently advised method of resolution by the General Assembly to disputing parties.

[41] Ibid

[42] Hand book on the Peaceful Resolution of Disputes betwee n States-United Nations New York, 1992

It should be remembered that the parties may be compelled to negotiate by a binding judicial decision. In this regard, the International Court of Justice stated the following in the Fisheries Jurisdiction cases:

The responsibility to barter as a result flows from the very nature of respective rights of the parties; to direct them to barter is consequently a right workout of the judicial feature on this case. This additionally corresponds to the ideas and provisions of the constitution of the United Nations regarding non violent Resolution of disputes. As the courtroom docket said within side the North Sea Continental Shelf case this responsibility simply constitutes a unique utility of a precept which underlines all global relations, and that is greater over diagnosed in Art.33 of the Charter of the United Nations as one of the strategies for the non violent Resolution of global disputes.

(iii) Behavior of the Negotiating Process

Structure of the negotiating process in Bilateral Negotiations

Bilateral talks are usually performed directly between duly appointed representatives or delegations or by written correspondence, and have been substantially facilitated in contemporary times by advances in telecommunications and transportation.

There are numerous examples of bilateral negotiations taking place within the framework of diplomatic joint commissions, particularly for territory or waterway issues. It's worth noting that disputes over international waterways are frequently resolved by treaty-mandated standing joint commissions[43].

Individuals who do not hold a government post, such as former ministers, university rectors, and others, may be tasked with conducting bilateral negotiations or establishing the groundwork for appropriate negotiations in some instances.

Structure of the negotiating method in Plurilateral or Multilateral Negotiation

[43] Foran analysis ofthe many waterway treaties providing forthe establishment ofstanding joint comm issions, See Yearbook of the International Law Commission,1974,vol.II(Part II),United Nations publications, s ales No. E75.v.7(part II),document A/5409; 'Legalproblemsrelating totheutilization and useofinternation alrivers report of the Secretary-General

When numerous states are events to disputes a worldwide convention may also offer the framework for the negotiating process. There are examples of meetings convened on the invitation of one of the events and wherein one or numerous of the opposite events avoided taking part. States having an hobby in Resolution of a dispute however now no longer events to it can keep a convention without the participation of the events to have a look at the dispute and make proposals for its Resolution. In the absence of 1 or numerous of the events, no negotiation is viable however such meetings may also, if their tips to the events deliver to the Resolution of the dispute; a contribution comparable to properly workplace or mediation[44].

(iv) Place of Negotiation

Bilateral or plurilateral negotiations are normally held in one of the parties' capital cities. They could potentially be hosted in each of the capitals in turn. In the event of adjacent states, a location near the shared boundary could be chosen.

While collective negotiation within an international organization normally takes place in the organization's seat, a specific organ with expertise in the area of peaceful conflict resolution may choose to meet anywhere other than the organization's seat.

(v) Quantity of Publicity of the Proceedings

When it comes to bilateral negotiations, the parties must agree on the level of publicity they want to give their conversations. They may choose to keep things private, at least in the beginning. International groups have pushed for bilateral agreements. They may receive some publicity as a result of this.

[44] Hand book on the Peaceful Resolution of Disputes between States -United Nations.NewYark,1992

Negotiations within an international organization's organ are conducted in part in public and documented in official documents. However, an increasing number of such informal and secret collective bargaining sessions are taking place[45].

(vi) Period of the Negotiation Process

The length of the negotiation process varies depending on the situation. The procedure could take a few days or several decades to complete. Many examples of intermittently conducted discussions can be found in practice. A time restriction is imposed for the completion of the negotiation process in various treaties, after which alternate peaceful ways of resolution may be used.

(vii) Disadvantage

The following are some of the drawbacks of using negotiation as a method of dispute resolution.

a) Negotiation will fail in practice if the parties do not share a common interest in resolving their issues.

b) A weaker side in a disagreement with a stronger party will not benefit through negotiation. Greater political and economic strength here translates to greater political and economic strength.

c) It is also anticipated that extensive institutionalization of negotiation forums will stifle the common law's development and improvement. Because informal dispute resolution isn't based on records or precedents, it may impede the codification of impartment social norms in the long run. To summaries, the first stage in identifying and resolving an international conflict is negotiation.

3.2.2 Inquiry and Fact finding

(i) Meaning, Functions and Relations to other peaceful means

When a disagreement between two contracting parties is based on differing accounts of an incident rather than a stated difference in terms of international law,

---

[45] Supra note.1

A traditional approach has been to create an inquiry committee comprised of well-qualified individuals tasked with discovering the truth[46].

As a result, the Hague Convention of 1899 defined the scope of an inquiry committee. An inquiry's objective is to aid in the resolution of conflicts by illuminating the facts through a fair and thorough investigation.

As a neutral third-party mechanism for fact-finding and investigation, inquiry may indeed assist to the reduction of tension and the prevention of international trade conflicts, as opposed to aiding their resolution.

Even if there is a legal foundation for the issue, the inquiry could aid in resolving it," Collier and Lawe say[47].This might be viewed as a form of unbiased detective work to avoid the possibility of two distinct national inquiries yielding contradictory results. When the parties voluntarily welcome the involvement of an impartial commission, an inquiry is appropriate.

(ii) Initiations and Methods of Work

Inquiry can be set in movement with the aid of using mutual consent of the states worried as an adhoc basis, depending upon a treaty in pressure among them, growing a standard duty to settle disputes with the aid of using non violent means. It will also be initiated according with the phrases of an relevant treaty, specially setting up inquiry because the mode of managing a class of disputes and indicating how the procedure can be initiated together with approach of work[48]. It can be made concern to a unique settlement among the events to a dispute. A treaty may imply the situations beneathneath which the jurisdiction of the hooked up fee can be invoked through one party celebration unilaterally and those beneathneath which the jurisdiction may also handiest be invoked through mutual consent. A provision will also be made in a treaty requiring that events invoking the jurisdiction of the fee draw up a protocol wherein they kingdom the query or questions which they choice the fee to clarify those aimed toward allowing the fee to clarify.

[46] Shaw. M.N. 'International Law',5th edn, (Cambridge: Cambridge University Press, 2003),ch.18,p.923
[47] Anglo-Russian Declaration of St.Petersburg, 25/1/1904
[48] Art.9 Supra note. 17

The strategies of labor of a fee of inquiry are the ones aimed toward permitting the fee according with the competence conferred upon it, to accumulate all vital records with a view to emerge as absolutely knowledgeable of the problems giving upward push to a dispute. A fee of inquiry might also additionally pay attention the events to a dispute, observe witnesses and experts, perform investigations instant with consent of the events and get hold of and overview documentary evidence. The events are each in exercise and below applicable treaties, entitled to be represented at some point of the complaints through marketers and suggest. Here the events are entitled to hire unique marketers to wait the fee of inquiry, whose obligation is to symbolize them and act as intermediaries among them and the fee .They are in addition legal to interact suggest or advocates appointed through them, to nation their case and uphold their pursuits earlier than the fee.

According to Art.21.of the Convention each research and exam of a locality should be made within side the presence of the retailers and suggest of the events or once they have been duly summoned". Further it states that "the sittings of the commissions aren't public nor the mines and files related with the enquiry published, besides in distinctive feature of a decision of the fee fascinated with the consent of the events.

Finally, the commission must write a written report and send it to the parties to the dispute or the international organization's organ that launched it. The purpose of the investigation is to aid in the resolution of conflicts by illuminating the facts through a fair and thorough investigation.

(iii) Composition

The following aspects are often observed when forming the inquiry commission. First and first, it should be recognized that an investigation does not have to be done by a group of persons who form a commission or a panel. An investigation can be carried out by a single individual.

Second, an investigation does not always have to be in the form of a third-party procedure, which entails the appointment of a commission or an individual to conduct an impartial investigation on behalf of the disputants.

A number of bilateral treaties include this practice of removing the third party element from an investigation method[50].

When celebration or events fails or fail to meet their exchange responsibility according with their settlement, events can set up enquiry fee according with their settlement or settlement. Each celebration to the dispute appoints contributors and the 4 contributors as a consequence targeted or failing settlement, a 3rd state, collectively agreed upon, selects the 5th. Under Additional Protocol I to the 1949 Geneva Conventions, the states events to the Protocol decide on from a listing of people to which every of groups might also additionally nominate one person, the 15 contributors of the International Fact Finding Commission : as to the Seven member chamber to be installation except in any other case agreed with the aid of using the events involved in case of an inquiry is asked, it includes 5 contributors appointed with the aid of using the President of the fee after consultations with the events and of the 2 advert hoc contributors to be appointed with the aid of using every side. Under the 1982 United Nations Convention at the regulation of sea, there's a unique 1/3 celebration manner constituted according with Art. three of which can be asked to perform an inquiry and set up the statistics giving upward thrust to the dispute, and which includes 5 contributors of which every celebration choose , the 5th member being appointed with the aid of using settlement with the aid of using the events to the dispute, ideally from a pre-constituted listing of professionals mounted beneathneath the convention. While diverse such fashions exist, account need to additionally be taken of the inquiry fee appointed with the aid of using a unmarried authority, which include the Secretary- General of the United Nations or diverse organs of the United Nations, 30 and in addition to the fee of inquiry beneathneath Art.26 of ILO charter that is to be appointed with the aid of using the Governing Council at the notion of the Director General.

As to the query of guidelines of technique, it is able to be determined typically that commissions have loved various tiers of freedom in settling the information of such procedures. In one instance, the Commission become informed to "decide its personal technique and all questions affecting the behavior of investigation" difficulty to the provisions of the settlement which instituted it.31 In some other instance, the provisions of the Hague Conventions have been made relevant to the fee with appreciate to all factors now no longer mainly included via way of means of the settlement at the settling up of the inquiry fee.

[50] For Such agreements, see e.g. UN'S , 'A survey of Treaty Provisions for the Pacific Resolution of Disputes' 1949 - 1962.(1966),pp788-866.

32 In nevertheless some other instance, an settlement at the inquiry associated with the fee and supplied that the guidelines contained within side the 1907 Hague Convention could be relevant as a ways as they have been now no longer at variance with the provisions of the inquiry convention[51].

(iv)Disadvantages

This form of conflict resolution has the following drawbacks: Resolution.

a) In a wide spectrum of disagreements, simply establishing the facts is insufficient to resolve the conflict.

b) In all forms of trade disputes, such formal third-party engagement would be impractical; as a result, several governments are opposed to it.

c) Because the findings of a neutral investigation commission are not legally binding, it is sometimes a waste of time and effort. It has a problem with enforceability.

3.2.3 Good offices

(i) Meaning, Characteristics, Framework and Relation to other peaceful means

When nation events to a dispute are not able to settle it immediately among themselves, a 3rd celebration can also additionally provide its appropriate workplaces as a method of stopping similarly deterioration of the dispute; and additionally as a technique of facilitating efforts in the direction of a non violent Resolution of the dispute. It can be initiated with the aid of using the 0.33 celebration or with the aid of using the request of 1 or greater events to the dispute, and is challenge to popularity with the aid of using all of the events to the disputes.

Though good offices are not directly mentioned in Art. 33(1) of the United Nations Charter, they are relevant when a third party attempts to persuade opposing parties to negotiate[52]. As a result, the 1982 Manila Declaration on the "Peaceful Resolution of International Disputes" equalizes good offices with the other peaceful approaches listed in Art.33. The goal of good offices was to create a league among parties to an international dispute.aimed,

[51] Art.8 of Agreement for inquiry in the Tubantia case.
[52] Ibid .p.921

as the case may be, aimed at reducing hostilities and tensions and bringing the dispute to a peaceful conclusion

(ii) Functions of the Good office

a) The purpose of the good offices method is to bring the parties together in order for them to reach a mutually acceptable solution[53].

b) It inhibits further worsening of disagreements while also encouraging the disputants to achieve an acceptable settlement.

(iii) Initiation of the Procedure:

Good workplaces can be set in movement both via way of means of the initiative of a 3rd celebration, whose provide has been well-known via way of means of the events or via way of means of an invite via way of means of all of the events to the dispute. Thus, the 1/3 celebration tendering appropriate workplaces cannot impose itself upon the events to the dispute. It can be resorted to according with the provisions of an relevant settlement negotiation among the events to the dispute on the idea of a well-known responsibility diagnosed via way of means of the events to settle their disputes via way of means of non violent means.

(iv) Method of Work and Avenue

The 3rd party celebration exercise desirable workplaces commonly establishes touch with the events to the dispute thru some of casual conferences with every party celebration, for the duration of which it ascertains the positions of each aspects after which transmits to the events every other's function with admire to the dispute. In appearing the features assigned through the events to the dispute, the 0.33 party celebration contributing desirable workplaces in the direction of the non violent Resolution of the dispute might also additionally relying upon the character of the dispute and with the consent of the events, adopt area missions that might permit it to be completely familiar with the troubles involved.

[53] 6 Art. ix of the Pact of the Bagota

(v) Termination and Outcome of the Process

Good workplaces is a non violent technique which having been resorted to may also to provide manner to different non violent processes frequent with the aid of using the events to the dispute. Though, there also are forms of disputes, the non violent Resolution of which keeps to elude the events for an extended time, thereby permitting the best workplaces technique to stay one of the alternatives for the feasible success of non violent Resolution. In this type of situation, there's no time restriction which may be set for the termination of the best workplace technique[54].

(vi) Demerits

The following are some of the drawbacks of this technique of trade dispute resolution.

a) The outcome is uncertain; it is totally dependent on the attitudes of the disputants.

b) Third party does not have enforcement aptitude.

c) As a result, as correctly stated, the findings of good offices are only advisory in nature and never have binding force.

3.2.4 Mediation

(i) Main characteristics and legal framework

In contrast to good offices, mediation involves a third person who participates actively in the negotiation. "Mediation is the cooperation of a third state or states, a disinterested individual, or a United Nations entity with contesting states in an endeavor to reconcile the claims of the opposing parties and to propose suggestions aiming at a compromise," according to the definition.solution[55].

Mediation is a technique of non violent Resolution of an worldwide dispute wherein a 3rd party celebration intervenes to reconcile the claims of the contending events and to enhance its very own proposals that goal at a collectively desirable compromise solution. In maximum of the worldwide instruments, mediation and exact places of work are dealt with in large part as interchangeable procedures. Only within side the Pact of Bagota of 1948 and 1964 OAU Protocol, include provisions which cope with mediation as a extraordinary method.

---

[54] Shaw.M.N. Supra 6

[55] Collier J and Lowe. V, 'The Resolution of Disputes In International Law', Oxford, Oxford University Press, 1990

Thus, mediation as a technique of non violent Resolution is greater than adjunct to negotiation. A very essential reality concerning mediation is that it helps for the disputing events to recourse to a non violent method to the dispute.

(ii) Functions

a) The primary goal of mediation is to minimize tensions that may have arisen throughout the course of an international dispute, thereby serving as a preventative measure.

b) Its objective is to prevent the rapture of pacific relations.

c) Its purpose is to reconcile the parties' opposing claims and to promote a solution that will provide them with some level of satisfaction.

d) The functions of the mediator or mediators, according to the Pact of Bagota42, shall be to aid the parties in the resolution of conflicts in the simplest and most direct manner possible, avoiding formalities and seeking an agreeable solution.

(iii) Procedures and Institutional Aspects

Mediation is a process which can be set in movement both upon the initiative of a 3rd party celebration whose provide to mediate is normal through the events to the dispute or initiated through the events to the dispute themselves agreeing to mediation. An provide of mediation can be normal through a written agreement. Mediation can not be imposed upon the events to an worldwide dispute with out their consent or their popularity of the specific mediator. Mediator or mediators are to be selected through mutual consent of the events.

Mediation is typically resorted to simply on an advert hoc basis, despite the fact that it could be done according with the provisions of an relevant treaty among the events to the dispute. Components of the mediation technique, relying upon the character of the dispute, consist of the verbal exchange function, explanation of issues, drafting of proposals, look for regions of settlement among events, elaboration of provisional preparations to bypass or decrease difficulty on which the events stay divided in addition to change answers etc[56].with the primary purpose of resolving the disagreement as soon as possible. The primary purpose of resolving the disagreement as soon as possible and in its entirety.

---

[56] Supra Note.6

The number one requirement of the system is informality and confidentiality. With recognize to composition, the system relies upon upon the sort of mediator common through the events to the dispute. Thus, mediation can be undertaken through a unmarried state, through a collection of states or in the framework of an worldwide employer along with the United Nations, it specialized agencies, different worldwide groups and institutions or through a outstanding people appearing by myself or with the recommendation of a longtime committee.

(iv) Demerits

This strategy is not without flaws as well. The following are some of the system's flaws.

a) Mediation is not a legally binding process. As a result, the mediation resolution is non-binding. As a result, it can occasionally lead to a waste of time and energy.

b) Mediation is unlikely to be a successful method if both parties are powerful (politically or economically) and have very different goals.

c) Cooperation is critical to the effectiveness of mediation; if parties do not cooperate with the mediator, mediation will fail to resolve the conflict.

d) The success of mediation is frequently determined by the timing of the process and the personalities involved. There are no predetermined terms for resolving the disagreement.

3.3 Legal Methods of dispute Resolution

3.3.1 Conciliation

In international trade agreements, conciliation is commonly employed. If successful, a conciliation procedure brings the parties together in front of a third person they have chosen for the purpose of resolving their dispute; the Resolution agreement is recorded in conciliation minutes signed by the parties and the conciliator.

It is a type of organized negotiation in which the commission assists the parties in resolving their differences as a means of peacefully resolving international disputes between parties.

The approval in 1922 by the League of Nations of a resolution urging governments to submit their disputes to conciliation commissions was significant among the conciliation that resulted from a series of bilateral treaties made in the first decade of the twentieth century. Following that, a number of multilateral accords, the first of which was the Geneva General Act for the Pacific Resolution of International Disputes in 1928, introduced conciliation as one of the third-party mechanisms for resolving disputes under the treaty (later revised in 1949).

In its Art. 33 paragraph 1, the United Nations Charter cites conciliation as one of the peaceful techniques of resolving disputes to which member states must resort. Both the 1970 'Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations' and the 1982 'Manila Declaration on Peaceful Resolution of International Disputes' mention conciliation as one of the means that states should use when seeking an early resolution of international disputes.

(i) Functions of Conciliation

Following are a few of the key functions of conciliation

a) To look into and clarify the facts behind the disagreement.

b) To persevere in bringing the disputants together in order to establish an agreement by proposing a solution to the problem that is acceptable to both parties.

c) Conciliation is required as a pre-requisite to judicial procedures, establishing a link between conciliation and arbitration and judicial procedures on the one hand.

(ii) Institutional and Related Aspects

(a) Composition

The numerous multilateral treaties creating conciliation commissions provide for the nomination of an odd number of conciliators; typically, a five-member commission, but occasionally a three-member commission. Each disputant has the option of appointing one of the three conciliators or two of the five conciliators, depending on the circumstances.

The 1/3 or 5th conciliators, who's additionally frequently detailed as chairman, is generally appointed through a joint choice of the 2 events to the disputes and, in a few cases, through the joint choice of both of the 2 or 4 conciliators already appointed through the events. Where problems get up withinside the appointment of both the 1/3 or the 5th member, as a result stopping the final touch of the composition of a commission, the events may also assign the proper of creating the vital appointment in the sort of case to a 3rd party, typically a outstanding individual[57].

One conciliator now no longer of the nationality of that country or of any of those states will be selected from the list. The country or states constituting the alternative celebration to the dispute shall employ conciliators, within side the equal way. The 4 conciliators selected with the aid of using the events will be appointed inside sixty days following the date on which the Secretary-General gets the request. The 4 conciliators shall, inside sixty days following the closing date of their own appointment, employ a 5th conciliator selected from the list, who will be the Chairman.

If the appointment of the chairman or any of the alternative conciliators has now no longer been made inside the length prescribed above for such appointment, it will be made through the Secretary- General inside sixty days following the expiry of that length. The appointment of the chairman can be made through the Secretary-General both from the listing or from the club of International regulation Commission; any of the intervals inside which appointments need to be made can be prolonged through settlement among the events to the dispute.

(iii) Initiation of the Process

A conciliation system can be set in movement in two ways; both through mutual consent of the states events to an global dispute on an advert hoc foundation depending upon a treaty in pressure among them and growing an responsibility to settle such dispute through non violent approach or in accordance with the phrases of a settlement which both specifies the information of the way an advert hoc conciliation can be constituted there below or establishes a everlasting conciliation fee inside the treaty itself.

The contract addressing the terms of the conciliation procedure will invariably make the crucial decision as to whether the process and the establishment of the parties to the dispute, or the processes of the conciliation commission, may be requested by only one of the parties to the disagreement.

[57] According to Art.7 of European Convention which providesthat, insuchacase, appointment should be tried first by a third state, failing which it should be made by the Int ernational Court of Justice.

(iv) Rules of procedure and methods of work

In terms of procedural regulations, most treaties merely provide that the commission "shall adopt its own method" or that the commission "shall determine its own procedure unless the parties otherwise agree." A majority vote of the commission's members may be used to make decisions on procedural and other matters.

The International Conciliation Commission's Regulations on Procedure provide that the commission will name its Secretary at its first meeting and will establish the rules of procedure, including the question of the parties' submission of written pleadings and the time and place where the parties' agents and counsel, as the case may be, should be heard.

As to the approach of paintings, it combines factors of truth locating and it might as a consequence rely on sure strategies for amassing and comparing the data giving upward push to the dispute. Thus in all treaties in organizing conciliation as a 3rd party celebration procedure, there are provisions giving the fee the proper to listen the events, to take a look at their claims and objections and make proposals for an amicable answer or to attract the eye of the events to the dispute to any measures which would possibly facilitate an amicable Resolution. In wearing out its functions, the fee might also summon and listen witnesses and professionals and go to with the consent of the events, the localities in question. Other provisions offer additionally the proper of the events to the dispute to be represented earlier than the fee via way of means of agents, recommend and professionals appointed via way of means of them, whilst additionally being required to deliver the fee with the vital files and records which might facilitate its paintings. Some treaties offer that, until the events in any other case agrees, the paintings of fee isn't always to be carried out in public[58].

(v) Duration and Termination

Consistent with its feature as a technique able to bringing approximately an amicable Resolution of the dispute stated it or with its feature of imparting the vital hyperlink among the non-judicial and the judicial processes wherein so required, conciliation ought to be predicted to reach its preferred consequences inside an inexpensive time.

[58] Art.10 of the Geneva General Acts, Art.11 of the European Convention Act,1957,The 1948 Pact of Bogot a, the OAU Protocol, Vienna Convention on law of Treaties address the same.

Thus, as to period, numerous time-limits inside which a conciliation fee is predicted to finish its paintings had been stipulated. Six months period is not unusual place in advance treaties: one year is now the period of conciliation observed in current multilateral treaties encouraged with the aid of using the 1969 Vienna Convention at the Law of Treaties.

Regarding termination the sooner multilateral treaties even the 1969 Vienna Convention at the Law of Treaties does now no longer deal with the query of termination of contract. It changed into addressed withinside the 1982 United Nations conference at the Law of the Sea which says as follows the conciliation intending are terminated while a Resolution has been reached, while the events have customary or one of the events has rejected the tips of the record via way of means of written notification addressed to the Secretary-General of the United Nations, or while a duration of three months has expired from the date of the transmission of the record to events.

(vi) Outcome of the Process

Traditionally, as properly established, the consequences of a conciliation manner are commonly with inside the shape of non-binding hints to the events to the dispute. But later, sure treaties began out giving impact of binding pressure e.g. 1975 Vienna Convention for the Protection of the Ozone Layer recommends the events to keep in mind in proper faith. The 1981 treaty of the Organization of Eastern Caribbean States, which created a conciliation procedure obligatory and binding states that any selections or hints of the conciliation fee in decision of the dispute will be very last and binding at the Member States.

(vii) Disadvantages

This strategy is not without flaws as well. The following are the disadvantages of this form of trade dispute resolution.

(a) **Conciliation hasn't shown to be a particularly effective strategy.**

It's because the treaties in which it's been employed contain limitations that have kept it from being widely adopted.

(b) Because it is a time-consuming formal procedure, it is likely to be avoided in minor conflicts.

Because it is a time-consuming formal procedure, it is likely to be avoided in minor conflicts.

(c) No access to the judicial system

One of the most significant disadvantages of conciliation is that parties are unable to use the state or federal judicial systems to resolve their disputes. There is no access to a jury or the official rules of evidence during conciliation. The formalities of the court system are absent in alternative conflict resolution, and the arbiter is allowed to conduct the hearings in whatever way he or she sees fit. In practically all alternative dispute resolution settings, hearsay evidence may or may not be permitted, and the ability to appeal is removed. In contrast to a court of law, which will either grant the plaintiff what he asks for or nothing at all, conciliation may result in coerced compromise or arbitrary dividing of the disputed sum.

(d) Competence of Arbiter

Another disadvantage of conciliation is that it raises doubts about the conciliator's qualifications and potential biases. In a court of law, all parties are aware that the judge has a formal legal education and has worked as an attorney for many years before taking the bench. Conciliator training, on the other hand, is significantly less rigorous than law school and usually includes some form of certification training. Parties are not assured of an arbiter's potential biases, in contrast to state and federal courts, who are required by law to intervene if they have personal knowledge of the case. Conciliators have no obligation to speed up the process and can spend as much time as they want conducting sessions at the cost of the parties. Conciliators make decisions based on their own personal perceptions of fairness, rather than on the law or statutes.

(e) There isn't a Discovery Phase.

Parties have the right to an extensive discovery process in a court of law. Each side has the right to all evidence that will be used by the opposing side in the case preparation. Only evidence protected by the attorney-client privilege is exempt from this provision. There is no discovery phase in alternative dispute resolution, and parties join the conversation with no knowledge of the opposing side's evidence or proposed argument. One side may offer a particularly damaging piece of evidence, leaving the other side with no time to respond.

(f) Difficulty in Reaching a Decision.

Alternative dispute resolution may appear practically impossible for some parties in some instances, such as when their conflict is bitter and they may never reach an agreement. The arbitrator or conciliator must stay with the parties until they reach an agreement, which could take weeks or months. Parties are free to stick to their bottom lines, and many will be unwilling to talk or come to any form of agreement. In other cases, arbitration is not binding on the parties, so disgruntled persons file a lawsuit instead, resulting in higher costs for both parties.

3.3.2 Arbitration

(i) Significance, essential features, and legal framework

Arbitration is a method of resolving disputes that results in a legally binding ruling for the disputants. Arbitration, according to Collier and Lowe, is the process of resolving a dispute between states or between a state and a non-state body through the decision of one or more arbitrators, an umpire, or a tribunal other than the International Court of Justice or another permanent tribunal[59].

The purpose of international arbitration, according to the Hague Conventions for the Pacific Resolution of International Conflicts of 1899 and 1907, is "the resolution of disputes between states by judges chosen by the parties themselves and on the basis of respect for law"60. They further stated that using the procedure entails submitting to the tribunal's decision in good faith. The decision reached in arbitration is final and binding on both parties. It is susceptible to judicial review and can be enforced against a losing party who fails to comply with the arbitral award's provisions.

---

[59] Supra note 6 Ch.2, p.31

[60] Art.15andArt.37 respectively ofthe1898and1907 HagueConventionsforthe Pacific Resolution of International Disputes.

(ii) Arbitration Characteristics

a) The arbitrator's decision is final.

b) Arbitration is established by the parties to a dispute agreeing to it.

c) It has become one of the most widely used third-party mechanisms for resolving international disputes.

d) It has several limits, for example, it cannot hear disputes involving questions that are solely within the state's jurisdiction, disputes involving military activity, and so on.

3.3.3 Aspects of the institution and others.

(i) Arbitration Agreement Types

(a) Ad hoc arbitration

It is a type of arbitration in which the parties must assume full responsibility for the establishment of the arbitration tribunal, the tribunal will resolve their disputes, and they must designate the rules that will regulate the arbitration processes. Fees and expenses must be agreed upon directly between the parties and the arbitrators.

(b) Institutional arbitration

In this case, the parties appoint an arbitration centre or arbitral institution to handle the proceedings in line with the institution's arbitration rules.

There are two types of institutional arbitration. Partially administered arbitration and fully administered arbitration are two types of arbitration. The institution has the power to fix a sum of money believed to be sufficient to meet the arbitration expenses at the end of the proceedings to determine the final costs in partially run arbitration.

In contrast, in a fully administered arbitration institution, the institution not only accepts the request for arbitration and notifies the other party, but it also forms the arbitral panel and determines the location of the arbitration. The arbitration institution submits the file to the arbitrators and supervises the procedures until the award is rendered once the advance on the costs has been paid. IIC arbitration is a good example of this type of arbitration institution.

(ii) Composition

Arbitration as a third-party procedure can be carried out by a single person nominated by the disputants as a solitary arbitrator or umpire, or by a group of people appointed as an arbitral tribunal[61]. Most treaties call for an odd number of arbitrators when creating an arbitration tribunal; some need five arbitrators53,

[61] See Geneva General Act for Pacific Resolution of International Disputes.

but the most prevalent norm has been a three-member arbitral body. Each disputing party then has the option of appointing one of the three arbitrators or two of the five arbitrators, as the case may be. In most situations, the chairman is appointed by a joint decision of the tribunal's members, and in certain cases, by a combined decision of the parties' respective arbitrators. Some arbitral courts are made up of individuals selected by the parties from a pre-determined list of arbitrators.

(iii) Rules of procedure

The tribunal is normally in charge of the rules of procedure. For example, one agreement stated that "the tribunal shall establish its own method and all questions affecting the conduct of the arbitration, subject to the requirements of this compromise." Another agreement said that "the arbitration shall decide any procedural questions that may arise during the course of the arbitration." On the other hand, some compromises employed more restrictive language when it came to procedural norms. e.g. The tribunal will take into account the individual or joint requests of the agents of the two parties in establishing any additional procedure and scheduling further meetings. Another agreement directs the tribunal to seek the parties' input before deciding on a certain procedural norm.

(iv) Applicable of Law

Arbitration parties can agree on the law that will be applied to their disputes by the panel. Some arbitration agreements call for the application of specific rules, while others just make a broad reference to the applicable legislation. Many arbitration agreements state that international law will govern the proceedings. On this point, some arbitration agreements are silent. Article 28 of the Revised General Act of 1949 recommends a remedy in such situations.

As a result, if no law appropriate to the merits of the dispute is specified in the arbitration agreement, the tribunal should apply the substantive rules outlined in Article 38 of the Statute of the International Court of Justice. Other arbitration agreements have chosen equity, justice, an equitable settlement, and other concepts to apply to the dispute.

[62] Art. 22, League of Nations International Convention for the Protection of New Varieties of Plants of 2 Dec, 1961.

(v) Methods of work and proceedings before the tribunal

Parties to a dispute before an arbitral tribunal are represented by agents, whose appointment and powers may be established in a settlement, together with the timeframe for their appointment. Such agents are normally allowed to appoint an assistance agent as the situation requires, and they can also enlist the help of any consultants, attorneys, or employees that the agent feels essential.

The parties' attorneys file written pleadings, which may be limited to memorials and counter-memorials, and which must be filed in the order and within the timeframes set by the Tribunal. The tribunal may also make such a decision based on the oral proceedings and appropriate documentation evidence.

In terms of documentary evidence, article 75 of the Hague Convention stated that "the parties undertake to give the tribunal with all the information essential for settling the dispute as fully as they believe possible". Arbitral tribunals have used expert witnesses on behalf of parties to a dispute and have used expert witnesses to provide expert opinion to the tribunal on a certain topic, as may be explicitly stated in a compromise, as appropriate.

(vi) An arbitral tribunal's seat and administrative aspects

The arbitral tribunal's location is frequently indicated in the compromise. If no such specification exists, the tribunal may, on the advice of its president, decide where it will perform its business. The arbitration agreement can also specify the location of the tribunal's first meeting and leave the location of subsequent meetings to the tribunal's discretion. The tribunal's seat is decided on the basis of administrative convenience and cost considerations.

A secretariat or registry is frequently present to assist arbitral tribunals. The registry's role is to serve as a conduit for communication between the parties and the tribunal, to provide for the custody of papers and documents submitted to the tribunal, to supply interpreters and translators, and to handle all of the tribunal's administrative concerns. Standing tribunals, which deal with a large number of issues over a lengthy period of time, typically have a well-organized secretariat in place. The parties may also agree to enable the tribunal or its president to select a secretary or registrar, as well as any other supporting staff, for ad hoc tribunals.

The parties may also agree to designate a joint secretary or registrar, as well as equal numbers of support employees.

(vii) Expenses of arbitral tribunal

In an arbitration case, there are two types of costs. One has to do with each party's case preparation and presentation to the arbitral tribunal. Counsel costs, expert fees, expenses for obtaining evidence, document translation, travel, and other expenses that are incurred by the parties themselves are examples of such expenses. Other expenses include the arbitral tribunal's common expenses, such as arbitration fees, the registrar's and staff's salaries, interpreters, and clerical facilities, among others.

Parties to a dispute bear their own costs and share the tribunal's administrative costs. The arbitrator's fees are usually shared equally by both parties. Some compromise parties, on the other hand, provide technical help to the arbitral tribunal on occasion; each party is responsible for the remuneration of its own expert.

(viii) Outcome of arbitration and related issues

Arbitration results in a binding award for all parties involved in the dispute. Parties to the case invariably specify in such compromises that they will abide by the arbitral tribunal's ruling. Typically, arbitral awards are written, signed, and dated. An award may be susceptible to rectification or amendment after it has been issued if there are evident flaws such as clerical, typographical, or arithmetical errors.

The arbitral award must be carried out in the last stage of arbitration. Parties may include the essential steps to be done towards the execution of the award in the compromise, depending on the nature of the dispute in question. The judgment can be appealed by either party. This is something that both sides do at times. Appeals must be based on legal issues like legal interpretation. The panel's legal findings and conclusions can be upheld, modified, or reversed on appeal.

(ix) Demerits

The disadvantages of this approach of resolving international trade disputes are as follows.

a) Exorbitant Fees: Conducting an international arbitration is expensive. In fact, the average arbitration might be more expensive than a lawsuit due to lawyer expenditures, administrative costs, and arbitration fees.

b) Delay tactics: One of the advantages of arbitration used to be speed. That is no longer the case. In the case of a technical or difficult legal issue, arbitration can continue as long as, if not longer than, a court case.

c) Judicial Review Is Confined: Judicial reviews of the arbitration proceedings and subsequent awards are limited to procedural or public policy checks only, not a review of the case's merits. This means that there is now a risk of having to defend against an obviously erroneous arbitration award in each country where one is required to help and that is a signatory to the New York Convention, because the arbitration award can no longer be annulled in the arbitration suit's jurisdiction.

d) Different Arbitration Laws: Despite its name, international arbitration is controlled by the arbitration laws of the location of the arbitration actions, not by international treaties.

3.3.4 A judicial decision

(i) Main characteristics, legal framework and function

States parties to a dispute may seek a resolution by referring the disagreement to a pre-established international court or tribunal comprised of impartial judges tasked with resolving claims based on international law and issuing enforceable verdicts. This is commonly referred to as judicial Resolution, and it is one of the methods for peacefully resolving international disputes outlined in Article 33 of the United Nations Charter.

The Permanent Court of International Justice, established by the League of Nations Covenant in 1922, was the first international court on a global scale. It was followed by the International Court of Justice, which was formed in 1946 as the UN's main organ. The International Court of Justice has comprehensive jurisdiction under Article 36 of its statute in all issues referred to it by the parties, as well as all topics specifically provided for in the United

Nations Charter or the treaties and conventions in force.

Both judicial Resolution and arbitration seek binding judgments from an independent judicial body, but they are fundamentally ad hoc in character, and are made up of judges chosen on the basis of parity by the disputants, who also define the procedural procedures and the law applicable to the case at hand. In contrast, international courts and tribunals are pre-constituted in the sense that they are permanent judicial bodies whose composition, jurisdiction, and procedural procedures are pre-determined by their founding treaties. In addition, judicial Resolution differs from arbitration in that international courts and tribunals' decisions are typically not appealable.

(ii) Resort to judicial Resolution

Many of the issues presented to the Permanent Court of International Justice and the International Court of Justice for judicial resolution include questions of treaty interpretation or application, according to a quick examination of both courts[63] or concern specific issues such as sovereignty over certain territories and border disputes, maritime delimitations and law of the sea disputes, and cases involving the law of diplomatic protection of nationals abroad, as well as cases involving contract enforcement and violations of certain principles of customary international law.

(iii) Institutional and procedural aspect

(a) Jurisdiction, competence and initiation of the process

Jurisdiction

International courts can only resolve international issues if the parties to the case recognise the courts' jurisdiction. A formal agreement between the states parties to a dispute imposing jurisdiction on a court in a particular dispute, a compromissory clause providing for agreed or unilateral referral of a disagreement to a court, or other measures may be used to indicate recognition. If there is a disagreement over whether a court has jurisdiction, the question is resolved by the court's ruling.

[63] S.S.Wimbledon France,United Kingdom, Italy, Japan v. Germany, P.C.I.J Series, A.No 1,P.15

Initiation of process

Depending on the provisions of the relevant agreement in force between the parties, contentious actions before international courts are initiated unilaterally by one of the parties to a dispute or jointly by the parties. If the parties to the agreement have agreed to the International Court of Justice's obligatory jurisdiction over the issue, then the applicant state may initiate proceedings unilaterally. However, in the absence of such prior approval, procedures can be conducted before international courts based on the parties' mutual consent.

The method for initiating contentious proceedings is outlined in the individual international courts' basic statute. Article 40 of the International Court of Justice's Statute reads as follows:

1. Cases are brought before the Court either by notification of the special agreement or by a written application sent to the Registrar, depending on the circumstances. The subject of the disagreement and the parties must be stated in any situation.

2. The Registrar will notify all parties involved as soon as possible.

3. He must also notify the United Nations Members, as well as any other States that are eligible to appear before the court, through the Secretary General.

Advisory opinion

An international body may be able to ask an international court for an advisory opinion on a legal point relating to an ongoing international dispute between States[64].

(b) Access and third party intervention

Access to an international court is prohibited to a state that is not a party to the legal instrument that established it. States that are not parties to the United Nations Charter may, nonetheless, appeal to the International Court of Justice,

---

[64] 5 E.g..Permanent Court of International Justice(Covenant of the League of Nations,Art.14);Internatio nal Court of Justice(Charter of United Nations, Art.96;Statute of the Court,Art.65

Become a party to the Statute of the Court on conditions to be decided by the General Assembly on the suggestion of the Security Council, pursuant to Article 93 paragraph 2 of the Charter.

(c) Composition

The size of the actual body varies depending on the wording of each document — for example, the International Tribunal for the Law of the Sea has 21 members, while the International Court of Justice has 15 members. The procedure for selection is normally outlined in the legislation of the court in question. The judges can be appointed via way of means of not unusualplace settlement of member states, as furnished for the Court of Justice of the European Communities or elected via way of means of one greater political organs e.g. the General Assembly and the Security Council of the United Nations within side the case of the International Court of Justice In addition a celebration to a dispute may also employ an advert hoc choose of its nationality if the courtroom docket involved does now no longer encompass upon the bench a choose of that nationality. The judges are chosen solely on the basis of their legal competence in their individual capacities. Judges' mandates are nine years, for example, in the International Court of Justice, with one-third of the bench being elected every three years.

(d) Procedural Rules

The court processes are governed by rules of procedure. The core law of the international court or tribunal in question, as well as the extra regulations approved by it, determines technical requirements such as official languages, the organization and phases of the procedures, and the contest and delivery of the decision. The International Court of Justice's official languages are English and French65. The Registrar is the conduit for all communications and papers relevant to proceedings before the Court[66].

In a matter involving a contention, the party must notify the appropriate court of the identity of the agent who will act as its representation in the proceedings when filing a document starting proceedings; the other party must subsequently select its agent as quickly as practicable. In most contested matters, there is a written and an oral component to the proceedings. The written phase usually consists of the filing of pleadings with the court within a set time limit.

[65] Ibid Art.39

[66] ICJ Rules,Art.26,paragraph.1(a)

The pleadings are usually limited to a statement of the case (memorial) and a defiance (counter-memorial) and, if necessary, a reply and a rejoinder, as well as supporting papers and documents[67]. These pleadings may be filed simultaneously by both parties or, alternatively, each party replying to the other, depending on the manner agreed upon by the parties or governed by the court rules. Written pleadings should include a complete statement of the party's relevant facts as well as its legal arguments.

At the conclusion of the written proceedings, the oral phase commences. Oral proceedings are, in general, held in public unless special circumstances dictate otherwise. Only the parties' agents, attorneys, or advocates may address the court. The opposing party may request a judgment in favor of its final claims if the party fails to appear before the court in oral proceedings or fails to defend its case. Following the conclusion of the oral hearings, the court considers the claim's factual and legal underpinnings. The statute or a particular agreement for the contains specific instructions as to the appropriate law. The deliberations of the court are kept private and secret.

The court establishes the regulations that govern the procedure for reaching a decision. Its judgment is determined by a majority vote of the judges present, with the president or the judge acting in his place casting the deciding vote in the event of a tie of votes for and against. Reasons for the decision should be provided. A judge whose opinion differs in whole or in part from the majority may deliver an independent opinion in addition to the judgment, which may be phrased as a "separate opinion."

(e) Seat and administrative aspects

The location of international courts and tribunals is determined by the underlying legislation and procedural procedures that govern them. The seat of the International Court of Justice is established in The Hague. This, however, does not preclude the Court from acting and performing its powers elsewhere if the Court deems it necessary.

[67] Ibid Art.50

International courts and tribunals elect a president, a vice-president81, and a president of chambers for a certain term of office from among their members. The president is in charge of the court's judicial business and administration, as well as presiding over all court meetings.

A secretariat established for this purpose is known as the registry, and it is responsible for the administrative responsibilities of international courts. The registrar, the registry's executive leader, is appointed by the relevant court for a set period of time. The registrar's responsibilities are outlined in the rules of court, and they include, among other things, the execution of all correspondence and the transfer of papers to the court and disputants.

(f) Expenses and other financial considerations

The means for financing the costs of settling claims are determined by the core statutes and procedural procedures of international courts or tribunals. In principle, the costs of running these courts or tribunals are borne on a regular basis by their member states. As a result, the International Court of Justice's expenses are covered. 86If a party to a case does not contribute to the United Nations budget, the court determines the amount the party must pay as a contribution to the court's case expenditures. Each party is responsible for its own claim preparation and presentation costs, such as legal fees, printing costs, and travel expenditures, 87 unless the court orders the other party to pay the other party's costs, 88or unless a party qualifies for financial help from the United Nations Secretary-Trust General's Fund created in 1989 to assist States in the resolution of disputes through the International Court of Justice.

(iv) Outcome of judicial Resolution

The decisions reached in contentious proceedings involving international issues are final and binding on the parties. The parties are also bound by interim procedures judgments, such as those for provisional measures of protection preliminary rulings or objections, and interventions by a third party state.

(v) Criticisms

(a). Expensive: obtaining justice through international courts or tribunals is not inexpensive. One must bear significant costs. Advocates' fees, travel expenses, expert fees, documentation, and other charges will be more expensive than the other options for resolving international trade disputes.

(b). There is no time restriction: The basic statutes and procedural procedures of international courts and tribunals do not provide a time limit for matters to be decided. As a result, there's a potential of delaying tactics.

CHAPTER - IV

INTERNATIONAL AND REGIONAL DISPUTE RESOLUTION ALTERNATIVES

There has been an upsurge in cross-border trade between countries over the years. With technological advancements resulting in a new global corporate paradigm, different trade and governmental organisations, such as the World Trade Organization (WTO) and Regional Arbitrations, have increased their efforts to abolish protectionism, establish cross-border liberalisation and eliminate the prevalence of beggar-thy-neighbor economic policies70. Despite the fact that these initiatives have been enormously effective, trade barriers are being built in an unanticipated location: international business arbitration. Conflicting national arbitral rules, the applicability of substantive and procedural law, forum shopping, the unenforceability of arbitration agreements, and the consequent arbitral rulings, particularly against state parties, have all contributed to the construction of these trade barriers. The difficulties faced by foreign investors in resolving arbitration disputes with their local partners resulted in a slew of international measures aimed at resolving the issue. The integration of arbitration rules in all signatory states' arbitration law under the supervision of the United Nations Commission on International Trade Law (UNCITRAL) and the founding of the International Chambers of Commerce are two of the most notable examples (ICC) Arbitration Procedures.

4.2 The Importance of Alternative Dispute Resolution in International Disputes.

There are various forums with the authority to hear disputes and render binding decisions in those cases. The most powerful and binding one is that which receives its authority from each nation's supreme laws, i.e. constitution, to resolve conflicts within its jurisdictional limits.

[70] Faturoti, Bukola. "Complementarity or Disparity? The UNCITRAL Model Law on International Commercial Arbitration 1985 and English Arbitration Act 1996 Revisited" Vol.2, No.1, University of Ibadan Law J ournal, 2012 pp.97-118
[71] Ibid

Furthermore, traditional and alternative dispute resolution mechanisms augment the role of courts of law by addressing a variety of disputes in domestic relationships. These devices' fields of operation are primarily limited to issues that arise at the national level. If the disagreement is of an international nature, that does not rule out the possibility of the case being heard in these national forums. The issue here is the potential for a conflict of interest between the disputants in terms of venue and legislation, as well as the enforceability of such outcomes in the other nation. International accords have attempted to alleviate these conflicts of interest by making court judgments more streamlined and enforceable in other countries.

Furthermore, the United Nations has established international tribunals to act as a platform for international conflicts. Most countries throughout the world use their institutions, such as the United Nations, to improve their diplomatic and commercial relations. Though there are numerous criticisms of the enforcement and reasonableness of outcomes made by UN dispute resolution mechanisms, it effectively addresses a large percentage of international issues. The WTO panel is also the other most frequently accepted dispute resolution tool, dealing with a wide spectrum of international trade issues between member nations.

The expansion of international trade is inevitable to result in international conflicts that cut beyond national borders and geographical limits. The preference for international arbitration over litigation in national courts for the resolution of such disputes is understandable, given that arbitration is preferable to litigation in courts and that the foreign element in international arbitration is preferred to the domestic elements in national courts. This is also due to the lack of an international court to deal with international commercial disputes. "In such situations, recourse to international arbitration in a convenient and neutral forum is generally seen as more acceptable than recourse to the courts as a way of resolving any dispute that cannot be resolved by negotiation."[73].

The rationale and purpose of international arbitration should be to provide a convenient, neutral, fair, expeditious and efficacious forum for resolving disputes relating to international

[72] Tefera Eshetu and Mulageta Getu Aiternative, 'Dispute Resolution Resolution, Teaching material' spo nsored by the Justice and LEGAL System Research Institute, 2009

[73] Alan Redforn and Martin Hunter, Law and Practice of International Commercial Arbitration, 2nd edn, p .2

Commerce. The three stages of the legal framework for resolving international business disputes are: I jurisdiction, (ii) choice of law, and (iii) recognition and execution of judgments and awards..

A important element to keep in mind is the trend toward increased judicial intervention, which tends to conflict with arbitral autonomy as well as finality. Arbitral autonomy and finality must be reconciled and harmonised with judicial review of the arbitral procedure. On this subject, national laws differ. In this area, the UNCITRAL Model Law aims to foster harmony and uniformity. The goal is to establish arbitral autonomy combined with neutrality or impartiality in the arbitral process by appointing competent and impartial members to the arbitral tribunal, ensuring equality between the parties and giving them enough time to present their case. Although a complete lack of judicial participation is contrary to current trends, the extent of judicial oversight must be narrowed to the bare minimum. The agreement of the parties, not the mandate of the state, is the basis of authority for the international arbitral tribunal. The applicable legislation is also established by the arbitration agreement's provisions. he demand for reasons for the award has increased as arbitral autonomy has increased. Apart from providing openness in the arbitral process, it also serves as an inherent check on the arbitrators by disclosing the grounds of the decision as well as the logical process by which the arbitrators arrived at their conclusion. The scope of judicial monitoring is also limited by the presence of the reason.

The arbitral process' informality allows for a relaxation of strict evidence norms, as well as a reduction in the costs and delays that are typically unavoidable in litigation. The application of basic principles of natural justice, on the other hand, cannot be overlooked. Appropriate mechanisms for award enforcement are required for international arbitration to be effective.

4.2.1 Access to Justice should be promoted.

People's right to access to courts is denied not only on a national level, but also in international relations at times. It can happen, for example, when none of the disputants' home courts have jurisdiction over the case.

[74] Jonathan Hill, in the Law Relating to International Commercial Disputes, para. 1.1.3.
[75] International Conflict Resolution; Consensual ADR Process, American Case Book Series, Thomson West Pub, 2005, p. 18

To put it another way, the national courts of the disputants may not always have the jurisdiction to hear the case under their respective national laws. In such cases, the parties will be denied access to any of the courts, leaving them with no choice but to seek ADR based on their free consent.

The ADR movement spread around the world after exploding in popularity in the United States. ADR has attracted national courts in Europe, which have been stalled by the volume of cross-border litigation. Members of the European Union consider ADR as a tool to make access to justice easier, which is guaranteed by Article 6 of the European Convention on Human Rights and Fundamental Freedoms. Growing interest in alternative dispute resolution in the European Union has resulted in a Green Paper recommending increased use of alternative dispute resolution in civil and commercial proceedings, as well as efforts to draught a European Code of Conduct on mediation[76].

4.2.2 E-commerce is growing in popularity.

In most cases, it is assumed that three parties will be participating in ADR: the two disputants, regardless of their number, and the third neutral intermediator. However, instead of a triangle, ADR is now commonly shown as a square or rectangle. The technology that works alongside the mediator or arbitrator is the fourth party, a new presence at the table. The burgeoning cyber market place, a market place for transactions taking place via the internet known as ecommerce, has sparked interest in this fourth party. These consumers and sellers require a low-cost, quick-to-resolve method for resolving disputes that emerge from online transactions. These buyers and sellers require a low-cost dispute resolution method with fees that are significantly lower than the purchase price of the product. For these little transactions, going to court or scheduling mediation is not an option[77].

'As e-commerce grew in popularity, so did the demand for ADR. Given the challenges of resolving e-commerce disputes in a global e-marketplace, online dispute resolution has emerged as a viable option, especially for minor conflicts.

[76] Supra note 10
[77] Supra note 6

When ADR processes like mediation and arbitration take place over the internet, it's known as online dispute resolution (ODR).

ADR techniques, such as negotiation and mediation, presented a civilised way to address international problems in the context of civil disputes. They were created to address the shortcomings and failings of domestic judicial systems, as well as the lack of a legally enforceable worldwide public process[78].

4.2.3 Influence of the UN Charter

The UN Charter lists the customary dispute resolution mechanisms accessible under international law.

i) Any parties to a dispute whose continuation is likely to jeopardize international peace and security must first seek a resolution through negotiation, inquiry, mediation, conciliation, arbitration, judicial resolution, recourse to regional agencies or arrangements, or other peaceful means of their own choosing.

ii) When the Security Council deems it necessary, it may summon the parties to settle the disagreement through such means.

Negotiation is widely regarded as the most basic of these procedures. The most popular method for resolving international disputes The diplomatic or consensual techniques of resolution, on the other hand, are mediation and good offices, inquiry, and conciliation. Despite the fact that it is not stated in Article 33 of the UN Charter, the consultation process is a type of negotiation that should be included in the traditional set of procedures for resolving international conflicts. These methods, when combined with pre-negotiation activities including public peace processes, coalition-building, dialogue groups, and co-existence practices, provide a wide range of options for dispute and conflict resolution practitioners.

This clause of the UN Charter, as well as the global trend toward ADR as a means of resolving disputes, encourages disputants to have faith in the procedure. The International Court of Justice (ICJ), a court established under the aegis of the United Nations under its charter, recognises ADR as a first choice before turning to the International Court of Justice (ICJ),

[78] Supra note.10, p. 19-20

Dictates the ease with which ADR outcomes can be implemented and the quality of the results. It is also seen as a preliminary step before proceeding to the International Court of Justice.

4.2.4 International Courts' Limitations

The International Court of Justice (ICJ) and the Criminal Court of Justice (CCJ) of the United Nations, as well as the WTO's Dispute Resolution Body, have many limitations. The first is the identification of the parties who have the legal authority to bring or defend a case before these tribunals. Only sovereign governments and, on rare occasions, international organisations can be parties before the ICJ. The WTO tribunal, by the same token, exclusively takes claims from member states. All cases cannot be heard before these tribunals because of the topic matters that they can see. Most of the time, the ICJ hears cases involving territorial sovereignty, non-use of force, non-interference in state internal affairs, diplomatic relations, asylum, nationality, guardianship, rights of passage, and economic rights[79]. On the other side, the CCJ has jurisdiction over only the most serious international crimes, such as genocide, crimes against humanity, and war crimes. The WTO tribunal hears cases involving the application of any of the organization's documents, such as the GATT.

Despite the fact that these courts attempt to cover the majority of probable conflicts in terms of subject matter, the international community's right to bring its claims before them is not fully guaranteed. As a result, there are many more parties who do not have a right to appear before any of these tribunals, such as people, NGOs, and businesses. There are several other types of conflicts that can't be heard in any of these courts, such as property ownership, tort claims, and so on. ADR aims to fill in the gaps or solve issues that aren't properly covered by these well-known international tribunals.

4.3 International ADR's Scope and Parties

It may be unavoidable to consider the possibility of disagreements in fields where multiple parties are involved or where humans interact. Human relationships are growing more diverse as a result of modern technology.

---

[79] Ibid, p.42

At least two nations or inhabitants of a nation must be involved in the world's commercial and diplomatic relations. Trade is becoming a worldwide phenomena that necessitates the participation of several governments, citizens, or entities from various countries. It is also becoming increasingly difficult to think of domestic peace and security without having good diplomatic relations with neighbours and even those that are geographically distant. Border disputes between governments are also widespread, particularly after the mid-twentieth century, as a result of numerous independence movements in Africa, Asia, and even Europe. Extra-territorial crimes are a threat to the international community's peace and stability, and they require international cooperation to ensure that perpetrators do not find refuge in a country other than the one where the crime was committed and are promptly prosecuted. A disagreement may occur between one country's extradition policy and the other's desire to prosecute the suspect. As a result, there are disagreements or conflicts that are difficult to resolve through the formal courts of one of the countries concerned[80].

These are only a few examples of international conflicts that are common in today's world. The question to be asked at this point is whether anyone can bring all of these and other types of disputes before an ADR tribunal and obtain a legal and enforceable outcome in front of the worldwide community and the disputants. Is there anything about a dispute that ADR can't handle safely? Another related problem is the capacity and identification of parties who can participate in international ADR proceedings. The latter point is similar to the debate over whether sovereign nations and international organizations are the only subjects of international law, or do individual persons and private institutions play a role as well?

Rosanne T. Mitchell, for example, conducted study on the adequacy of the Resolution of trade mark disputes that arise around the world[81]. The present dispute resolution methods for trademark issues over Internet domain names, according to this article, are insufficient. The author believes that as the number of generic top level domains and registrars grows around the world, an alternate dispute resolution system should be implemented.

[80] Supra note 6

[81] Rosanne T. Mitchell, Resolving Domain Name-Trademark Disputes: A New System of Alternative Dispute Resolution Is Needed in Cyberspace, 14 OHIO ST. J. ON DISP. RESOL. 157 (1998), Cardozo Journal of Conflict Resolution.

Mitchell claims that by using this technique, he will be able to eliminate uncertainty in choosing an acceptable forum and drastically reduce litigation time and costs. The World Intellectual Property Organization facilitated the International Ad Hoc Committee's proposal, which achieves these goals by providing three dispute resolution procedures: (1) on-line mediation, (2) on-line accelerated arbitration, and (3) administrative challenge panels. This concept, according to the author, embodies an ideal answer for deficient dispute resolution approaches. Mitchell proposes that the US government and the World Intellectual Property Organization (WIPO) use this strategy to successfully resolve any trademark domain name conflicts. International arbitration has shown to be an effective means of resolving some territory disputes between countries. It has been determined that using arbitration to resolve territorial disputes can only be successful if both parties are committed to resolving the dispute peacefully through arbitration, which is unlikely if the dispute involves a matter of essential national interest. As a result, this note argues that an attempt by the international community to compel governments to arbitrate such conflicts may deter future parties from doing so.

The utility of many types of ADR in settling international conflicts of various types is demonstrated in the preceding discussion. In international relations, public disagreements that would be challenged in the home jurisdiction of ADR have been openly and fruitfully entertained. As a result, it would be difficult to argue that there are some types of disputes that cannot be resolved using ADR at the international level[82].

In the event of parties' capacity before international ADR, the same result can be reached: as long as a party has a cause of action and both disputants consent, the panel or tribunal is obligated to enforce the parties' interests. The stipulations of various international documents attest to this. A party's ability or obligation to arbitrate an international dispute in arbitration stems from its permission as a signatory to a contract with an arbitration clause. According to the AAA's International Arbitration Rules, an international arbitration will take place if the parties have agreed to arbitrate their problems in writing[83]. A comparable writing obligation is imposed by the 1958 United Nations Convention on the Recognition and Execution of Foreign Arbitral Decisions,

---

[82] Ibid

[83] Art.1 of AAA International Arbitration Rule

which is the legal framework by which the international community has opted to regulate the enforcement of arbitral agreements and awards.

The effort performed above demonstrates that the limitation of ADR's domestic jurisdiction over public interest cases does not apply to international relations, as the majority of international disputes are settled through ADR. Furthermore, public international law prohibits the right to be a party before it to parties other than sovereign nations and international organizations. This will not occur in ADR since private persons, private commercial and civic institutions, states, and collective interests are all free to present their cases.

4.4 Documents and Organizations that Regulate ADR on a Global Scale

ADR is increasingly being recognised as the most successful method for resolving all types of international conflicts. In general, the use of friendly dispute settlement processes improves diplomatic and business relations. Many treaties have been made thus far, either under the supervision of the UN or at the initiative of other public and domestic institutions and nations, to aid this propensity to ADR rather than other tribunals. As a result of these treaties, tribunals have been established to serve as the best platform for resolving international and local issues.

The American Arbitration Association (AAA), the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC), and the Stockholm Chamber of Commerce are all well-known international institutions. There are other ADR tribunals that specialize in resolving specific types of disputes, such as the London Maritime Arbitration Center.

For a better understanding of ADR on a worldwide level, the researcher chose four different sets of international documents. The first was the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards, which was enacted by the United Nations diplomatic convention on June 10, 1958 and came into force on June 7, 1959. Second, the five instruments that make up the Permanent Court of Arbitration (PCA) are summarised, two of which are conventions that founded the PCA and the rest are optional legislation.

The International Chamber of Commerce, its tribunal (ICA), and its regulations have all been explored, as has the United Nations Commission on International Trade Law (UNCITRAL).

4.4.1 The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is a treaty that governs the recognition and enforcement of foreign arbitral awards.

On June 10, 1958, a United Nations diplomatic assembly enacted the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, often known as the New York Convention, which went into effect on June 7, 1959. Courts of contracting nations are required by the Convention to give effect to private arbitration agreements and to recognize and enforce arbitration judgments made by other member states. It applies to arbitrations that are not deemed domestic awards in the state where recognition and enforcement is sought. It is widely regarded as the basic tool for international arbitration. Although there are several international accords that apply to the enforcement of arbitration judgments across borders, the New York Convention is by far the most important[84].

The first draught Convention on the Recognition and Enforcement of International Arbitral Awards was presented to the United Nations Economic and Social Council in 1953 by the International Chamber of Commerce (ECOSOC). The ECOSCOC submitted the convention to the International Conference in the Spring of 1958, with minor amendments. Willem Schumann, the Dutch Permanent Representative to the United Nations, and Oscar Schechter, a leading figure in international law who later taught at Columbia Law School and the School of International and Public Affairs, as well as serving as President of the American Society of International Law, co-chaired the conference.

For cross-border commercial transactions, international arbitration is becoming increasingly popular as a form of alternative conflict resolution. The main benefit of international arbitration over court action is its enforceability: an international arbitration ruling is enforceable in almost every country on the planet. Other benefits of international arbitration include the option to pick a neutral forum to resolve disputes, the fact that arbitration rulings are final and not usually appealable, the ability to adopt flexible arbitration processes, and secrecy. The winning party must collect the award or judgment once the disagreement between the parties has been resolved.

[84] www.newyorkconvention.org retrieved on 09/05/2016

Unless the losing party's assets are located in the same country as the court judgment, the winning party must acquire a court judgment in the jurisdiction where the other party resides or its assets are located. The winning party will be unable to collect unless there is a treaty on the recognition of court decisions between the nation where the judgment is rendered and the country where the winning party wishes to collect.

(b) A Summary of the Convention

The convention has divided the XVI articles into sub-articles, but there is no further classification into parts. It defines a foreign arbitral award as "arbitral awards made in the territory of a State other than the State where recognition and enforcement of such awards are sought, and arising out of physical or legal differences between persons." Furthermore, arbitral awards that are not considered domestic in the state where recognition and enforcement is sought can be assimilated to overseas arbitral awards I (1).30 It also requires the party seeking recognition and enforcement to provide a copy of the authenticated original award or a duly certified copy of it, as well as the original agreement (arbitral submission) or a duly certified copy of it, in the language of the country where enforcement or recognition is sought.[85]

A contracting state's arbitration award can be freely enforced in any other contracting state, subject to certain, restricted defenses, according to the Convention provisions. These are the defenses.

i) a party to the arbitration agreement had some incapacity under the legislation that applied to him.

ii) Under its governing law, the arbitration agreement was void.

iii) A party was not properly notified of the arbitrator's appointment or the arbitration procedures, or was otherwise unable to state its case.

iv) The award addresses a topic that was not addressed in the submission to arbitration or that did not fall within the conditions of the submission to arbitration, or it contains matters that were outside the scope of the arbitration (subject to the rules of the submission to arbitration).

with the condition that an award containing such decisions may be enforced to the extent that it comprises decisions on subjects submitted to arbitration that can be distinguished from those not so submitted);

v) The arbitral tribunal's composition was not in conformity with the parties' agreement or, in the absence of such agreement, with the legislation of the jurisdiction where the hearing took place.

vi) The award has not yet been binding on the parties, or has been set aside or suspended by a competent authority, either in the country where the arbitration took place or according to the arbitration agreement's law.

vii) the award's subject matter was ineligible for arbitration, or the award's subject matter was ineligible for arbitration,

viii) Enforcing the law would be against public policy.

(c) Member States' List

The New York Convention commits countries that have ratified it to recognize and enforce international arbitration rulings. The New York Convention has been approved by 156 of the 192 United Nations Member States34 as of June 2015. 35 Only 36 countries have yet to ratify the New York Convention.

This agreement, in effect, unified the enforcement of foreign arbitral awards because it was approved by the vast majority of the world's states. Its contents assist disputants in gaining confidence in the enforceability of tribunal decisions made outside of their national jurisdiction.

4.4.2 The Permanent Court of Arbitration and the Convention for the Pacific Resolution of International Disputes (1899 and 1907) (PCA)

In July 1899, during the first International Peace Conference in The Hague, the sovereign powers approved a "Convention for the Pacific Resolution of International Disputes."[86] The Permanent Court of Arbitration was formed as a global organization for the resolution of international disputes. The PCA as conceived by the drafters of the 1899 Hague Peace Conference, the world's first successful egalitarian assembly of a political character, can be said to be a precursor of the League of Nations and the United Nations, just as the 1899 Hague Peace Conference can be said to have been a precursor of the League of Nations and the United Nations.

All modern means of international conflict settlement, including the International Court of Justice, have their origins in the Convention (ICJ).

At the Second Hague Peace Conference in 1907, the 1899 Convention was updated by the acceptance of a second "Convention for the Pacific Resolution of International Disputes[87] ' Both Conventions are still in force, despite the fact that the majority of States are parties to the 1907 Convention. Currently, there are 97 Contracting States.

Construction of The Hague's Peace Palace was finished in 1913. The Peace Palace, which was originally intended to house the PCA's headquarters, today contains the International Court of Justice, the Carnegie Library, and the Hague Academy of International Law.

A considerable number of interstate disputes were filed to tribunals formed under the PCA's auspices throughout the first few decades of its existence. 40 Because the PCA was created with the goal of settling inter-state conflicts, Disputes concerning public international law, such as territorial sovereignty, state liability, and treaty interpretation, was brought before all of the organization's early tribunals. Many of the ideas established in the early PCA decisions are still valid today, and are recognized by other international tribunals, such as the International Court of Justice[88].

In the prologue of the agreements, the goals that motivated the creation of these conventions are stated. The following are their goals.

i) a great desire to contribute to the preservation of global peace

ii) to resolve and promote the peaceful resolution of international conflicts by their best efforts;

iii) recognizing the unity that exists among citizens of the civilized world's society;

iv) desirous of expanding the empire of law and improving international justice's appreciation

[87]Convention for the Pacific Resolution of International Disputes, Oct. 18, 1907, 36 Stat. 2199 [hereinafter, "1907 Convention"].

v) confident that the permanent establishment of an arbitration tribunal, open to all, in the midst of the autonomous Powers, will effectively contribute to this result

vi) in light of the benefits associated with the general and regular structure of the arbitration procedure

vii) sharing the august originator of the International Peace Conference's opinion that it is necessary to codify in an international accord the principles of equality and right on which the security of States and the prosperity of peoples are based.

The following points were among those that compelled the creation of the new Convention, which was signed in 1907. (it is noted that the second Convention also shares the objectives set by the first one listed here above)

1) Assuring that Commissions of Inquiry and Tribunals of Arbitration perform more efficiently in practice, as well as making arbitration more accessible in circumstances where a summary procedure is permitted.

2) The need to update and complete the work of the First Peace Conference for the Peaceful Settlement of International Disputes in some areas.[89]

There are 61 articles in the first Convention, divided into four titles. In order to avoid, as far as practicable, recourse to force in the relations between States, the Contracting Powers agree to do their best efforts to ensure the pacific resolution of international differences, which is summarized in a single article. The next step was to establish the first options for resolving disputes among member states by utilising Good Offices and Mediation, as well as the procedures that go along with them. The title discusses the potential of establishing an International Commission of Inquiry to aid in the resolution of international disputes by explaining the facts through a fair and thorough examination[90]. In depth, the final Title governs international arbitration between member states. This section established The Hague as the seat of the Permanent Court of Arbitration.

[89] Held in 1899

Finally, the Convention features a General Provision that addresses the ratification or membership procedure, the Convention's entry into effect, and other issues.

Except for a few exceptions, the most of the provisions of the second Convention are comparable to those of the 1899 Convention. It does, in fact, have 97 articles divided into five parts. The first two sections of this convention are a carbon copy of the previous one. More precise regulations about the International Commission of Inquiry's working procedure have been inserted in Part III. The commission has been placed under the supervision of the Permanent Court of Arbitration's International Bureau, which also serves as a registrar. Part IV contained a new mechanism that did not exist under the previous Convention. Arbitration by Summary Procedure in Disputes Admitting a Summary Procedure was established in Chapter IV of it. Part V, the final section, is dedicated to―Final Provisions regarding membership and coming in to force of the Convention.

When it comes to memberships, there are three different types of nations: member for one of the Conventions, member for both Conventions, and member for neither Convention. 119 states have ratified one or both of the PCA's founding conventions in general[91].

The main provision of these Rules, which, as indicated above, allows one party to stop conciliation if it determines that it is no longer desirable, is the ultimate precaution against using conciliation to postpone the start of arbitration. Furthermore, by consenting to conciliation under these Rules, the parties agree that if the conciliation does not result in a Resolution, they will not submit certain specified evidence that could be damaging in any subsequent arbitration or court procedures. The following types of evidence are prohibited by these Rules: I any statements made by either party in the conciliation, (ii) any admissions made by either party in the conciliation, (iii) any recommendations made by the conciliator(s), or (iv) the fact that a party indicated willingness to accept a conciliator's proposal for resolution[92]. These safeguards successfully protect parties, encouraging candor and a free exchange of viewpoints during the conciliation process. Additional safeguards in these Rules include the parties' agreement that, unless the parties agree otherwise, a conciliator will not participate as an arbitrator or a party's representative in any arbitration.

[91] Ibid

Or a judicial action in relation to a dispute that is the topic of conciliation, in which no side will call a conciliator as a witness.

A related precaution is provided by a provision of these Rules that states that the conciliator may converse with the parties jointly or separately as necessary[93]. These Rules further state that a party may communicate information to the conciliator with the understanding that it would not be shared with the other party. These rules urge parties to trust the conciliator, which may be important in leading the conciliator in the quest for an agreeable solution as well as protecting parties in arbitration or court proceedings if the conciliation fails.

The Conventions for the Pacific Resolution of International Disputes were the first treaties to bring the public to a common awareness of the importance of alternative dispute resolution in the resolution of all types of international disputes. The fact that the PCA was functioning well even before the League of Nations and the court established under it, the Permanent Court of Justice, demonstrates that the leaders of the nation shared a common understanding of the threat of dispute to world peace and the importance of ADR in dealing with it. The new three rules are not mandatory, and anyone can utilize them whether or not they are a PCA member, as long as the subject has not been reported to the PCA.

4.4.3 UNCITRAL

The General Assembly founded the United Nations Commission on International Trade Law (UNCITRAL) in 196655. The General Assembly recognized that inequalities in national laws controlling international commerce caused barriers to trade, and it saw the Commission as a vehicle through which the United Nations might take a more active role in decreasing or eliminating these barriers.

UNCITRAL is a subsidiary body of the United Nations General Assembly tasked with promoting the progressive harmonization and unification of international trade law.

Since then, UNCITRAL has drafted a slew of conventions, model laws, and other instruments addressing the substantive law that governs commercial transactions as well as other parts of business law that affect international trade. UNCITRAL convenes once a year, usually in the summer and alternates between New York and Vienna.

It is critical to clarify the distinction between UNCITRAL and the World Trade Organization (WTO) because some people are confused about the two and mistake one for the other, which is not the case. The United Nations Commission on International Trade Law (UNCITRAL) is a subsidiary body of the United Nations General Assembly. The International Trade Law Division of the United Nations Secretariat's Office of Legal Affairs is the UNCITRAL Secretariat. The World Trade Institution (WTO), on the other hand, is an intergovernmental organization separate from the United Nations. Furthermore, the WTO and UNCITRAL deal with separate topics. The World Trade Organization (WTO) deals with trade policy issues like trade liberalization, the removal of trade barriers, unfair trade practices, and other similar issues that are usually dealt with by public law, whereas UNCITRAL deals with the laws that apply to private parties in international transactions. As a result, UNCITRAL stays out of "state-to-state" problems like anti-dumping and countervailing tariffs.

UNCITRAL contributes to the improvement of the legal framework for international trade by preparing international legislative texts for States to use in modernizing international trade law, as well as non-legislative texts for commercial parties to use in negotiating transactions. UNCITRAL legislative texts address international sales of products, international commercial dispute resolution, including both arbitration and conciliation, electronic commerce, bankruptcy, including cross-border insolvency, and cross-border insolvency. International products transportation; international payments procurement; infrastructure development; and national security concerns. Rules for conducting arbitration and conciliation proceedings, notes on organising and conducting arbitral proceedings, and legal guidance on industrial construction contracts and counter trade are examples of non-legislative literature[95].

When it comes to the Commission's purpose or aims, the General Assembly gave it a broad mandate to further the progressive harmonisation and unification of international trade law.

---

[94] 6 Ibid. The resolution also mandated that the Commission becomposed of twenty-nine states representing the principal economic and legal systems of the world, to be elected by the General Assembly. For see U. N.Doc.A/216 (1968)

[95] Supra note 6

Since then, the Commission has grown to become the UN system's primary legal body in the subject of international trade law.

The process of creating and adopting law that facilitates international commerce is referred to as "harmonization" and "unification" of international trade law. Factors such as a lack of a predictable governing legislation or out-of-date rules appropriate to commercial activity might stymie international commerce. The United Nations Commission on International Trade Law analyses such issues and then carefully creates solutions that are acceptable to countries with a variety of legal systems and economic and social development levels. The UNCITRAL Arbitration Rules are an important pillar in the international system of arbitration[96].

Harmonization can be viewed of as a process by which domestic rules are changed in order to improve predictability in cross-border business transactions. Unification can be defined as states adopting an uniform legal standard that governs a certain component of international economic dealings. A model law or legislative guide is an example of a text created to harmonies domestic law, whereas a convention is an international instrument adopted by States to unify the law at a global level. Conventions, model laws, legal guides, legislative guides, rules, and practice notes are among the texts produced by UNCITRAL. In practice, the two ideas are intertwined.

(b) Membership

UNCITRAL membership is limited to a smaller number of States, as is the case with other subsidiary organizations of the General Assembly, which are made up of all United Nations member states, in order to expedite deliberations. Members of the Commission are chosen by the General Assembly from among UN member states. UNCITRAL was founded in 1969 with 29 members; its membership was raised to 36 in 1973 and then to 60 in 2004. The membership reflects the world's many geographic regions as well as the major economic and legal systems. The Commission's members are chosen for six-year periods, with half of the members' mandates expiring every three years.

[96] See H. Holtzmann, The Conduct of Arbitral Proceedings, Report submitted to ICCA Interim Meeting at L ausanne, in UNCITRAL's Project for a Model Lawon International Commercial Arbitration, 2 ICCA CONGRESS SERIE S 159 (1984).

In addition, the Commission is represented by five regional groups: African, Asian, Eastern European, Latin American, and Caribbean countries; Western European, and other countries.

The level of engagement of developing countries is kept as high as possible. UNCITRAL, in accordance with its mandate, considers the interests of all peoples, particularly those of developing nations, in the extensive development of international trade in its work." Members of the Commission are elected by the General Assembly "with due consideration for the adequate representation of the world's primary economic and legal systems, as well as of developed and developing countries."[97].

Both the development and adoption of UNCITRAL documents are heavily influenced by developing countries. The Commission and the Secretariat have a long-standing and consistent commitment to provide training and technical assistance to those nations. Likewise, the United Nations General Assembly has expressed strong support for this effort. For example, the General Assembly emphasizes the importance of the Commission's work in the field of international trade law training and technical assistance, such as aid in the formulation of national legislation based on Commission legal texts, in particular for developing countries.

Though UNCITRAL texts are largely initiated, drafted, and adopted by a body of 60 elected member States representing various geographic regions, the drafting process also involves the Commission's member States and other States (referred to as "observer States"), as well as interested international intergovernmental organizations ("IGO's") and non-governmental organizations ("NGOs").

(c) UNCITRAL Documents Adopted

UNCITRAL has approved four papers for the purpose of "Harmonization" and "Unification" of international trade law since its inception by vote of the United Nations General Assembly. The UNCITRAL Arbitration Rules of 1976, the UNCITRAL Conciliation Rules of 1980, the UNCITRAL Model Law on International Commercial Arbitration of 1985 (as revised in 2006), and the UNCITRAL Model Law on International Commercial Conciliation of 2002 (as amended in 2004) are all examples.

---

[97] Ibid, para. 1.

The Arbitration Rules of 1976 were enacted as a result of the following circumstances.

a) Recognizing the importance of arbitration as a means of resolving disputes that arise in the context of international trade.

b) Believing that establishing standards for ad hoc arbitration that are acceptable in nations with diverse legal, social, and economic systems will make a substantial contribution to the development of peaceful international economic relations.

There are 41 articles in this rule, divided into four sections. The first section discusses the Introductory Rules, including their scope of applicability. The second section discusses the composition of the arbitral tribunal, followed by the arbitral action, and finally the substance of the decision, including the fees associated with it.

The General Assembly enacted UNCITRAL's second rule, the 1980 Conciliation Rules, which govern conciliation as a form of alternative dispute resolution. There are 20 articles in the rules, as well as a Model Conciliation Clause. It established a detailed rule about the rule's scope of application, the conciliators' nomination, role, and ethical responsibilities, the rule of evidence before them, and the conciliation proceeding's effect and expenses. In addition to the UNCITRAL's overall aim, the following observations of the time prompted the creation of these guidelines.

a) Recognizing the usefulness of conciliation as a means of resolving disagreements amicably in international commercial relationships.

b) Convinced that developing conciliation norms that are acceptable in nations with diverse legal, social, and economic systems will considerably contribute to the development of peaceful international commercial ties.

The two most current UNCITRAL agreements, both of which are model laws, are intended to regulate arbitration and conciliation proceedings in international economic relations.

A model law is a legislative text that states are encouraged to include into their domestic legislation. Unlike an international agreement, model legislation does not require the adopting state to notify the UN or other countries that may have implemented similar laws[98].

4.4.4 The International Chamber of Commerce (ICC) and the International Court of Arbitration (ICA) are two organizations that work together to resolve disputes.

The International Chamber of Commerce (ICC) was established in 1919 to promote international trade and investment, as well as open markets for products and services and free capital flow. The ICC's International Court of Arbitration (ICA) was established in 1923, and the organization's international office was established in Paris.

The Multinational Chamber of Commerce (ICC) is a private, non-profit international organization that promotes and supports globalization and trade. In the interests of economic growth, job creation, and prosperity, it acts as an advocate for select multinational corporations in the global economy. It assists the development of global business outlooks as a global business organisation made up of member states. Through its national committees, the ICC has direct contact to national governments all around the world[99].

ICC has devised a number of actions to achieve this goal. The International Court of Arbitration (ICA) of the International Chamber of Commerce (ICC) hears and resolves private disputes between parties. Its voluntary rule-making for businesses disseminates best practices in banking, marketing, anti-corruption, and environmental management. Their policy-making and lobbying work keeps national governments, the UN system, and other global agencies informed about the perspectives of the global business community on some of the most urgent issues of the day.

It began by representing the private sectors of Belgium, the United Kingdom, France, Italy, and the United States, and has since grown to represent over 140 countries.

---

[98] Supra note 6

[99] World Trade Organization, International Trade, Joint Venture and Foreign Collaborations, (New Delhi : Institution of Company Secretaries of India, 2004

National Committees, World Council, and International Secretariat:

The ICC World Council is a significant intergovernmental organization's general assembly made up of corporate executives. Delegates to the Council are chosen by national committees. A total of ten direct members may be invited to take part. It meets twice a year on average. The Chairman and Vice-Chairman are elected for two-year terms by the Council. On the Chairman's proposal, the Council elects the Executive Board.

The International Secretariat is led by the Secretary General. The World Council appoints the Secretary General, who works with the national committees to carry out the ICC's work programmers. The ICC International Secretariat is the organization's operational arm, situated in Paris. It carries out the World Council's work programmed, feeding business perspectives into multilateral bodies.

(b) Services for resolving conflicts

Since its foundation in 1923, the ICC International Court of Arbitration (ICA) has received 14000 cases, making it the most trusted system of commercial arbitration in the world. The Court's workload has increased dramatically during the last decade.

The number of countries represented before the Court has increased to 86. The ICC Court has considerably boosted its training efforts on all continents and in all main languages used in international trade, with representatives in North America, Latin and Central America, Africa, the Middle East, and Asia.

The ICC is perhaps best recognized in the realm of international commerce for its role in promoting and managing international arbitration as a means of resolving disputes originating from international contracts. With the American Arbitration Association, the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC), and the Stockholm Chamber of Commerce, it is one of the world's major institutions in offering international dispute resolution services[100].

[100] Ibid

(c) ICC Rules

The ICC has enacted a number of guidelines to encourage the use of alternative dispute resolution (ADR) since its inception. The most current rule, ICC Rule of Arbitration, is the one that created the International Court of Arbitration. In addition, the ICC Rules of Optional Conciliation, which went into effect in January 1988, were adopted. The ICC ADR has largely taken the place of the previous norm. The ICC does not entirely accept the commonly used definition of ADR. For example, ADR has been characterized as "Amicable Dispute Resolution," rather than the more commonly used "Alternative Dispute Resolution." Furthermore, most official ICC papers and guidelines define ADR as proceedings that do not result in a Neutral's judgment or award, which can include arbitration.

The ICC ADR Rules were developed through negotiations between dispute resolution specialists and industry leaders from 75 nations. Their goal is to provide business partners with a method for resolving issues amicably and in the manner that best suits their needs. The parties are given the flexibility to choose the technique they believe is best conducive to Resolution as one of the Rules' distinguishing features. If no agreement can be reached on the method to be used, mediation will be used as a last resort[101].

ICC ADR should be distinguished from ICC arbitration as an amicable means of dispute resolution. They are two different ways of resolving conflicts, yet they may be complementary in some cases. Parties can, for example, stipulate that ICC arbitration will be used if they are unable to reach an amicable agreement. Similarly, parties in arbitration may turn to ICC ADR if their issue appears to require a more cooperative approach. The two services, however, are managed separately by secretariats situated at the ICC headquarters in Paris. The ICC ADR Rules, which supersede the ICC Optional Conciliation Rules of 1988, can be utilised both domestically and internationally.

4.5 ADR at Regional Level

This section is dedicated to discussing the importance of ADR at regional institutes in greater depth.

[101] Supra note 59

As a result, the European Union's and North American nations' experience with dispute resolution under NAFTA is taken into account. Finally, the African approach to ADR is considered, despite the fact that it is still in its infancy.

4.5.1 Europe

In every European Union member state, access to justice is at the top of the political agenda. A growing number of disagreements are being taken to court. As a result, not only have there been lengthier wait times for disputes to be resolved, but legal expenses have risen to levels that are sometimes disproportionate to the worth of the case.

ADRs are useful in this situation. Extrajudicial approaches for resolving civil or commercial disputes are known as alternative dispute resolution (ADR). These usually entail disputing parties working together to find a solution to their disagreement with the assistance of a neutral third-party. Because there are so many different types of ADR methods, they can be used and adapted in a wide range of situations, whether civil or commercial.

The creation of the European Union's single market has boosted the mobility of products and people throughout the continent. Regrettably, it has also increased the amount of disputes involving citizens from various Member States. These cross-border conflicts add still another layer of complication to already difficult matters. ADRs are seen as a key component in the effort to offer fair and effective dispute-resolution systems at the EU level in this setting.

The use of ADRs in the European Union has risen dramatically in recent years. They're employed to settle conflicts between citizens and governments, inside families, in professional relationships, and, of course, in commercial and consumer issues[102].

4.5.2 America (NAFTA)

The North American Free Trade Agreement (NAFTA) is an intergovernmental agreement between the United States, Mexico, and Canada that establishes a free trade zone in North America. The goals of NAFTA are to eliminate trade obstacles, promote fair competition, expand investment opportunities, and protect intellectual property rights.

---

[102] Supra note.6

Developing processes for implementing and enforcing NAFTA, as well as establishing a platform for furthering and expanding NAFTA's benefits.

NAFTA establishes three new channels for resolving disputes: For starters, NAFTA Chapter 20 governs disputes between signatory countries. Chapter 20 establishes a non-binding method for resolving most other treaty issues, and this process can only be launched by federal governments. Consultation, negotiation, and the issuance of a report by a five-member arbitral panel are all stages of the chapter 20 dispute settlement procedure. Second, Chapter 19 of NAFTA governs disputes between signatory governments over anti-dumping and countervailing duty (AD/CVD) investigations. Private parties may commence this process. Finally, Chapter 11 governs disputes involving signatory nations and investors from other signatory states (foreign investors). This is one of the more contentious sections of NAFTA, as it empowers foreign investors to sue another signatory state for violating NAFTA's investment restrictions through binding arbitration. NAFTA does not create a private right of action, but it does encourage the use of alternative dispute resolution techniques and research into their efficiency in resolving private international issues.

Parties to the NAFTA should seek talks with one another in order to reach a mutually acceptable agreement. During the consultation phase, the parties have three tasks under Article 2006 of NAFTA: (1) to provide adequate information to the other parties to allow a thorough analysis of how the proposed measure would influence NAFTA's operation; (2) to protect sensitive or proprietary information; and (3) to prevent a resolution that negatively affects any other party's NAFTA interests.

If the consultations fail to resolve an issue within the required time frame, any of the parties may request a meeting of the Commission, which is charged under Chapter 20 with addressing disputes involving the interpretation or application of NAFTA. The Commission must meet as soon as a party requests its involvement in a disagreement and seek to "resolve the matter as soon as possible." Furthermore, the Commission has the authority to bring in expert advisors and make recommendations in order to resolve the issue. It may also be able to use good offices and participate in conciliation, mediation, or other forms of dispute settlement. If the parties have not reached an agreement by the end of the statutory period,83 any party to the dispute may seek that the Commission intervene.

The disputing parties must agree on a chairperson from among the five panellists; each party then selects two additional panelists who are citizens of the other disputing party.

When a dispute resolution panel is formed, NAFTA establishes precise Rules of Procedure that the panel must follow[103]. These guidelines ensure that at least one hearing before the panel will take place, as well as the ability to submit initial and rebuttal arguments. The panel must issue an initial report containing the following information after hearing all arguments and considering all submissions: (1) factual findings; (2) a judgment of whether the measure in question is or would be incompatible with NAFTA requirements; and (3) recommendations for resolving the disagreement. The panel must issue a final report thirty days after the initial report is released. Following receipt of the final report, the disputing parties must reach an agreement on a resolution that follows the panel's recommendations.

Notably, the parties are not bound by the findings in the final report. The parties must agree on a resolution after receiving the final report, and this resolution "usually shall conform to the conclusions and recommendations of the panel," according to the agreement. 86 As a result, the parties are not obligated to follow the decision of a particular panel to the letter.

4.5.2.1 NAFTA Commercial Disputes in the Private Sector

NAFTA does not provide a private right of action, but it does encourage the use of alternative dispute resolution (ADR) methods and requires research into their efficiency in resolving private international issues. When it comes to resolving international investor conflicts, ADR approaches have numerous advantages over litigation. Many other cultures regard litigation as a personal failing, despite the fact that American firms embrace it as a means of resolving disagreements. International investors that use arbitration may not have to worry about issues like choice of law, forum non convenience, home country bias, foreign court procedures, or foreign rules of evidence that can arise in international litigation.

[103] Article.2012 of NAFTA

NAFTA requires signatory states to establish an Advisory Committee on Private Commercial Issues to investigate the efficacy of arbitration and other alternative dispute resolution techniques in resolving private international commercial disputes. The Advisory Committee was given the task of.

(b) The Institutional Structure

African leaders have in the past built a variety of organisations to deal with conflict. Ad hoc committees and commissions have been used in some cases. In July 1977, at the 14th Ordinary Session of the OAU Assembly in Libreville, African leaders formed the Ad Hoc Committee on Inter-African Disputes. Whatever the advantages of impromptu dispute resolution, one of the drawbacks is that such agreements are reactive rather than proactive. The following section, on the other hand, discusses three important institutional frameworks devised by African leaders for conflict management and resolution. The first is the OAU Commission of Mediation, Conciliation, and Arbitration, which is now defunct but is discussed below to provide context for the other arrangements. The MCMPR is the second, while the Peace and Security Council is the third and most current.

(i) The Commission on Mediation, Conciliation, and Arbitration of the Organization of African Unity (OAU)

In 1963, African countries adopted the OAU Charter, which established the Commission of Mediation, Conciliation, and Arbitration to carry out the Charter's goals. It operated as a mechanism for resolving conflicts peacefully among member states. The Commission has been dubbed the OAU's raison d'être, owing to the fact that peaceful resolution of conflicts, major and small, provided the necessary circumstances for Africa's overall and OAU Member States' orderly advancement. However, it has been claimed that African governments gave the Commission a high priority because of the border tensions that existed at the time between Ethiopia and Somalia, as well as between Algeria and Morocco.

The OAU enacted a Protocol in 1964 that outlined the Commission's responsibilities and powers. The Protocol was made an integral element of the OAU Charter, which meant that there was no need for formal ratification because the Protocol only needed the OAU Assembly's agreement to become an integral part of the OAU Charter. This approval was given at the first Assembly at its meeting in Cairo, Egypt, in July 1964.

In order to prevent undue delay that could stifle efforts to solve pressing security issues afflicting Member States, the assembly decided to forego formal adoption of the Protocol.

(iii) The Peace and Security Council

The African Union's Assembly of Heads of State and Government accepted a Protocol on the Establishment of a Peace and Security Council (PSC) for Africa in Durban, South Africa, in July 2002. The PSC will serve as a permanent decision-making body for conflict prevention, management, and resolution. It will be a collective security and early-warning arrangement to help Africa respond to conflict and disaster circumstances in a timely and effective manner. The PSC will be supported by the Commission, a Panel of the Wise, a Continental Early Warning System, an African Standby Force, and a Special Fund. The Protocol will replace the Cairo Declaration and override all OAU resolutions and actions dealing to the MCMPR in Africa that are in conflict with it once it enters into force.

CHAPTER-V

THE ROLE OF WTO IN RESOLUTION OF INTERNATIONAL TRADE DISPUTES

The General Agreement on Tariffs and Trade (GATT[104]) reformulated and institutionalized as the World Trade Organization (WTO) in 1994, has provided much of the framework through which international trade has flourished for over fifty years. The post-war philosophy of trade liberalization has also paved the way to the creation of regional trade agreements. Regional and multilateral4 trade arrangements have promoted this growth in trade with the creation of institutions and procedures, particularly dispute Resolution systems, through which signatories can ensure and enforce predictable and stable business environments for their citizens. During negotiations, state actors formulate institutions and structures within the agreements to enable the dispute Resolution processes which may be most effective in resolving these disputes. The primary purpose of dispute Resolution systems in international trade agreements is to guarantee respect for the agreement(s), in responding to violations and legitimate expectations under such agreements. The existence of rules, however, is not the only factor determining whether a dispute Resolution system is effective.

Despite debuting to little fanfare under the General Agreement on Tariffs and Trade (GATT), dispute Resolution under the World Trade Organization (WTO) has been called the "backbone of the multilateral trading system[105]. Indeed, whereas GATT dispute Resolution could scarcely have seemed more flawed the WTO's Dispute Resolution Understanding (DSU) is widely touted for boosting confidence in an increasingly rules based global economy.8 Why such starkly different views of GATT and WTO dispute Resolution? The conventional wisdom is that the GATT's diplomatic norms have been supplanted by the WTO's more legalistic architecture, 9 resulting in a system in which "right perseveres over might. Perhaps unsurprisingly, many observers insist that a wider variety of Members and developing countries, in particular are achieving more

[104] The General Agreement on Tariffs and Trade, signed in 1947, was created by the Bretton Woods meeting s that took place in Bretton Woods, New Hampshire (U.S.), in 1944, setting out a plan for economic recovery after World War II, by encouraging reduction in tariffs andotherinternational trade barriers. General Agreemen t on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GAT]

[105] Moore, Michael. "WTO's Unique System of Settling Disputes Nears 200 Cases in 2000." PRESS/180. Geneva: World Trade Organization 2000

favourable results in dispute Resolution due to the reforms introduced with the DSU and the WTO's greater clarity of law.

The 1994 signing of the World Trade organization (WTO) Agreement marked the initiation of the most far-reaching and comprehensive international agreement on trade in the the past of the modern world.The creation of an actual trade organization was a marked improvement over the WTO's predecessor, the 1994 GATT, Among the many improvements to the GATT, the WTO Agreement substantially changed the mechanism for dispute Resolution whenever conflict arose between member states. This change, was initially hailed as a great improvement over the GATT dispute Resolution provisions.

Unfortunately, the DSU has not been the comprehensive dispute Resolution mechanism its framers had hoped to create.14 After explaining the the past of dispute Resolution before GATT, and in GATT, this chapter will discuss the current aspect and procedure of the DSU, examine the problems with these procedures, and suggest how the dispute Resolution system under the WTO can operate in a more effective and efficient manner.

5.2.1 Early Trade Dispute Resolution

What explains early Resolution in the shadow of weak law? In domestic litigation, the expectation is that plaintiffs withdraw cases lacking merit, and defendants plead meritorious cases. But this happens in the shadow of strong law, backed by credible enforcement. Under the GATT which was long derided as a "court with no bailiff rulings could hardly have been argued to carry much legal weight, assuming these rulings were adopted in the first place. Even under the WTO regime where defendants are more likely to face binding rulings compliance remains a question mark, given the difficulty of following through on authorization to retaliate, assuming the complainant even asks for such authorization. What then, explains early Resolution in GATT/WTO disputes?.

It has been shown that the answer is rooted in the way uncertainty about the disputants' resolve enters into the bargaining process[106]. The defendant, meanwhile, must weigh various considerations: the economic damage from potential retaliation; the desire to avoid the normative

[106] Reinhardt, Eric. 2001. "Adjudication without Enforcement in GATT Disputes." Journal of Conflict Resolution 45 (2):2001, pp174-195

condemnation elicited by overtly breaking the trade rules; possible strategic concerns about setting a precedent which could, in turn, spark a wave of future non-compliance by others; or narrower tactical considerations (e.g., a defendant's executive branch, or other liberalizing domestic groups, may be better able to overcome domestic protectionist opposition by "tying hands" with a ruling17). There is accordingly inherent uncertainty both as regards the complainant's will to follow through on costly retaliation and as regards the defendant's will to bear the costs of non-compliance. Both the complainant and defendant seek to exploit this uncertainty concerning their own course of action to their own advantage, leveraging concessions or upholding the status quo, respectively. The complainant's (often low-probability) estimate that the defendant is going to concede in the event of an adverse ruling leads it to set a high bar for the kinds of early Resolution offers that it will accept. At the same time the defendants desire to avoid normative condemnation compounded by the desire to forestall potential retaliation, induces the defendant to meet the complainants (high) demands and thus to offer more generous concessions up front than after a ruling. The increased value of concessions in early Resolution is thus a product of the anticipation of both normative condemnation[107] and market punishment. The twist here is that the uncertainty about the defendant's preparedness to incur the costs of non-compliance ends once the ruling is issued and the defendant acts, or fails to act. Rulings thus eliminate the uncertainty that serves, ex ante, as the basis for the complainant's heightened resolve, and thus the defendant's richer early Resolution offer. This anticipation, and not the realization of a ruling, is thus the system's most effective means of extracting market-liberalizing concessions. Sometimes Resolution talks fail, and the dispute goes to a ruling. This occurs when there is little ex ante expectation either that the defendant would prefer to avoid the appearance of overt non-compliance, or that the complainant would be willing to retaliate in any event. In such cases the window for Resolution is too small, such that the parties escalate the dispute fully. A ruling against the defendant, then, is most likely when an adverse ruling is least likely to affect the defendant's behaviour. This is not to say that the direction of a ruling is in- consequential, for in fact these verdicts do matter to the extent that non-compliance, given the system's norms, can be costly. Still, there is likely to be a nontrivial level of non-compliance with adverse rulings; such instances would occur disproportionately

[107] Hudec, Robert E. ''Transcending the Ostensible': Some Reflections on the Nature of Litigation Betwee n Governments."Minnesota Law Review 72 (December) 1987: 211-26.

where defendants care less about these costs. More generally, market power, or asymmetric dependence, should be only a partial predictor of the defendant's level of concessions, for all the reasons outlined above. These predictions offer a window on the efficacy of likely reforms of the DSU. Most noteworthy, in this regard, is that, because retaliation depends on the resolve of the complainant, not the regime's official authorization, reforms such as those which eased approval for the suspension of concessions should have little impact on dispute outcomes. Similarly, because the regime's normative power lies in the interpretations of its rulings not in their official legal force once adopted reforms such as those which removed the defendant's ability to veto adoption should also have little effect. This should improve the likelihood of realizing trade liberalizing. That said, reforms are unlikely to yield benefits to developing countries lacking the expertise required to navigate the complexities of the legal regime, especially if they favour recourse to litigation rather than to diplomacy and thus reduce the likelihood of early Resolution, the stage of the process where concessions are most likely.

5.2.2 GATT Dispute Resolution

First codified in an annex to the 1979 Understanding on Dispute Resolution, the process by which GATT adjudicated trade conflicts shares much in common with the system set out by the DSU. Then, as now, a case would first manifest itself in a request for consultations. If a mutually satisfactory solution to the dispute were not struck in consultations, a complainant would then request a panel proceeding. Of course, the wrinkle in this story is that, under the GATT, a defendant could block the complainants request for a panel, a possibility long regarded as one of system's most glaring birth defects. Interestingly, few defendants blocked requests for a panel[108]. Rather, they more frequently blocked the adoption of panel reports, taking advantage of GATT's other notorious shortcoming. For example, in both GATT-era Bananas disputes, the European Communities (EC) blocked the adoption of panel reports, revealing the challenge of winning a ruling against a recalcitrant defendant. Given the prospect of being denied a panel proceeding, let alone a favourable panel report, one could be forgiven for wondering why complainants would ever have made use of GATT dispute Resolution, never mind that they did so quite often, and often quite successfully.

[108] Van Bael, Ivo. 1988, "The GATT Dispute Resolution Procedure."Journal of World Trade 22 (4): 67 -77.

The 1989 Dispute Resolution Procedures Improvements closed the first of these loopholes, giving complainants the right to a GATT panel. Although the threat of nonadoption still loomed large, defendants could no longer block, or significantly delay, a panel request. In the GATT-era Bananas cases, for example, the EC conceded that the Improvements had removed the tactic of delay, and urged that the panel not proceed too quickly in hearing this complicated case. In this sense, the Improvements gave complainants a way to escape the "power politics" of the consultation stage. Perhaps not surprisingly, the Improvements were thus argued to have revitalized dispute Resolution given GATT teeth and encouraged the paneling of disputes more generally.

5.2.3 Principal shortcomings of GATT Dispute Resolution System

i) The relevant Articles were brief and did not specify clear objectives and procedures, such that Resolution relied upon the creation of ad hoc processes.

ii) Ambiguity concerning the role of consensus, leading to the 'blocking' of adverse decisions.

iii) Delays and uncertainty in the dispute Resolution process, given that there was no right to apanel and no hard time constraints on any aspect of the proceedings.

iv) Delays in, and partial non-compliance with, panel rulings.

In spite of the apparent success of the GATT system there was a clear decline in its compliance performance after 1980 affecting a significant number of new dispute cases. It is evident that the increasing volume and complexity of trade disputes between a growing number of member countries put undue strain on a system that had not been designed to bear the burden of such economic, legal and political expectations. These weaknesses were evident in three high profile cases of non-compliance in the final years of the GATT system. They involved bananas, beef hormones (both EU non-compliance) and foreign sales corporations (US non-compliance).

Nevertheless, it is important to realize that, given the alternative forms of international dispute Resolution available, the GATT system must be recognised has having been a success25 . Further, in spite of its shortcomings, the GATT dispute Resolution system served its purpose

sufficiently well to form part of the foundations of the WTO Dispute Resolution Understanding[109].

5.3 WTO's Dispute Resolution System

The WTO Dispute Resolution Understanding (DSU) superseded the GATT system from 1 January 1995 and is regarded as being one of the central achievements of the Uruguay Round negotiations. Prior to the commencement of the Uruguay Round negotiations, there was a general consensus among the GATT Contracting Parties that the dispute Resolution system required reform. This was state very clearly in the Punte del Este Declaration: 'To assure prompt and effective resolution of disputes to the benefit of all contracting parties, negotiations shall aim to improve and strengthen the rules and procedures of the dispute Resolution process, while recognizing the contribution that would be made by more effective and enforceable GATT rules and disciplines. Negotiations shall include the development of adequate arrangements for overseeing and monitoring of the procedures that would facilitate compliance with adopted recommendations[110]. This is not to say however, that there was a great degree of consensus concerning how any new dispute Resolution system should be constructed. A primary objective of Canada, the EU and Japan, along with many developing countries, was to limit the use of unilateral action by the United States, permitted under its federal law. The principal objectives of the United States however, were the adoption of a ruleoriented approach (automaticity), a clear timetable for dispute resolution and agreement on the potential for cross-retaliation. The negotiated outcome, the WTO DSU, satisfied most of these desired modifications and improvements to the GATT system. Unilateral action by the United States and other Members is restrained in several ways. Article XVI.4 of the Agreement Establishing the WTO requires that Members' national laws comply with their obligations under the WTO. The DSU also requires that Members abide by its rules and procedures, further ensured by its inclusion in the covered agreements listed in Appendix 1 of the DSU. The DSU incorporates the US objective of automaticity as a pivotal element of the dispute Resolution process[111]. The negative consensus

[109] Jackson, John H. 1998. "Designing and Implementing Effective Dispute Resolution Procedures: WTO Disp ute Resolution, Appraisal and Prospects." In The WTO As An International 180 Organization, edited by Ann e O. Krueger. Chicago: University of Chicago Press
[110] GATT,1986
[111] Stoler, Andrew L, "The Current State of WTO", workshop on the EU, the US and the WTO, Stanford Univer sity, 28 February-1 march, 2003.

requirement means that the adoption of Panel Reports can no longer be blocked by losing respondents and thus triggers the right of plaintiffs to retaliate. A strict, and therefore predictable, timetable for the dispute Resolution process is provided in Article 20. The limited potential for cross-retaliation between sectors, given noncompliance, is dealt with in Article 22.3.

(ii) The Articles of the WTO Dispute Resolution Understanding

The WTO DSU is an integral part of the Uruguay Agreements, running to 27 Articles and four Appendices[112]. As such, it provides a significantly more substantial and effective framework for settling international trade disputes than the GATT system that preceded it.

Article 1: Coverage and Application

The coverage of the DSU is identified in Article 1.1 and the Agreements included are listed in the DSU. These Agreements include: the WTO Agreement, its component multilateral trade agreements – for goods, the General Agreement on Trade in Services34 , the Agreement on Trade-Related Aspects of Intellectual Property Rights35 and the DSU – together with four plurilateral trade agreements – covering Civil Aircraft, Government Procurement, Dairy and Bovine Meat. The special or additional applications of the DSU rules are covered in Article 1.2. In the case of differences in the rules or procedures of these specific Agreements and the DSU, the former take precedence over the latter.

Article 2: Administration

This Article outlines the functions and procedures of the Dispute Resolution Body (DSB) which administers the DSU.

Article 3: General Provisions

Article 3.1 explicitly recognizes the foundations of the DSU in GATT Articles XXII and XXIII. The remaining eleven paragraphs cover the various objectives of the DSU. These include its role in providing security and stability to the multilateral trading system36, the prompt Resolution of disputes37 and the use of the DSU3.

Article 4: Consultations

[112] 3 WTO,1999

The 11thParagraphs of this Article cover the function of, and timetable, for Consultations between Members in dispute. A request for consultations is required as a pre-condition for a request for the establishment of a dispute panel [113]. Special attention is to be given to the particular problems and interests of developing country Members[114].

Articles 11, 12, 13 and 14: Panel Functions, Procedures, Rights to Seek Information and Confidentiality

The function of a WTO Panel is to assist the DSB by making an objective assessment of the facts of a case and the applicability and conformity with the relevant covered agreements.50 Panel procedures are laid down in the DSU51, including a proposed timetable for Panel work. Further, WTO Panels are empowered to seek information and technical advice from any appropriate individual or body. Evidence may also be requested from an Expert Review Group. All Panel deliberations are confidential 54 and non-attributable.

[113] Article 4.3
[114] Article 4.10

Article 21: Surveillance of Implementation of Recommendations and Rulings

This Article is concerned with the response of Members in bringing their trade policy into compliance with the WTO rules. Members have 30 days after the adoption of a Report to inform the DSB of their intentions regarding the implementation of Panel or Appellate Body recommendations65. This is to be 'within a reasonable time', according to the conditions laid out in Paragraphs 3(a), (b) and (c). In the event of disagreement concerning Members' compliance with a Panel's recommendations and rulings, recourse may be made to the dispute Resolution procedures and leading to a Panel Report within 90 days66. Under Article 21.6, the DSB keeps the implementation of adopted recommendations and rulings under surveillance.

(iii) Procedure followed by the WTO's DSU to Resolution Trade Disputes

Dispute Resolution is the central pillar of the multilateral trading system, and the WTO's unique contribution to the global economy. Without a means of settling disputes, the rule-based system would be less effective because the rules could not be enforced. The WTO's procedure underscores the rule of law, and it makes the trading system more secure and predictable. The system is based on clearly –defined rules, with timetables for completing a case.86 However DSU is not aiming to pass judgments. The priority is to settle disputes, through consultations if possible. By April, 2016 the 507 cases have registered. Most of them have either been notified as settled "out of court" or remain in a prolonged consultation phase since 1995.

(iv) Principles of WTO's Dispute Resolution understanding

'Equity, fast, effective, mutually acceptable' are the principles of the WTO's DSU is following. Disputes in the WTO are essentially about broken promises. WTO members have agreed that if they believe fellow –members are violating trade rules, they will use the multilateral system of settling disputes instead of taking action unilaterally. That means abiding by the agreed procedures, and respecting judgments. A dispute arises when one country adopts a trade policy measures or takes some action that one or more fellow-WTO members considers to be breaking the WTO agreements, or to be a failure to live up to obligations. A third group of countries can declare that they have an interest in the case and enjoy the same rights.

(vi) How are the disputes settled?

Settling disputes is the responsibility of the Dispute Resolution Body which consists of all WTO members.89 Unless it decides by consensus not to do so, the DSB will (1) approve requests to establish panels, (2) adopt panel and Appellate Body reports, and (3) if requested by the prevailing Member in a dispute, authorize the Member to impose a retaliatory measure where the defending Member has not complied. In effect, these decisions are virtually automatic. Given that panel reports would otherwise be adopted under the reverse consensus rule, WTO Members have a right to appeal a panel report on legal issues. The DSU creates a standing Appellate Body to carry out this added appellate function. The Appellate Body has seven members, three of whom serve on any one case.

First Stage (Consultation up to 60 days[115])

Under the DSU, a WTO Member may request consultations with another Member regarding "measures affecting the operation of any covered agreement taken within the territory" of the latter. If a WTO Member requests consultations with another Member under a WTO agreement, the latter Member must enter into consultations with the former within 30 days.

5.4 Criticisms of WTO's Trade Dispute Resolution System

i) Rules for joining consultations are not adequate: Current rules allow the Member being consulted to establish its own standard as to whether the request to join is well founded, and do not provide for deadlines.

ii) Sanctions are unfair to, and unworkable for, most developing countries: Sanctions are a tool for the economically powerful. Sanctions also run counter to the WTO's ethos. It is therefore unacceptable to retain sanctions as the ultimate method of enforcement.

iii) Lack of transparency: Lack of transparency is a critical issue for the credibility of the WTO dispute Resolution system. In practice, amicus curiae brief do little to contribute to transparency, but not satisfactory. The result is that the WTO has neither adequate transparency in terms of the

[115] Article 4

openness of its dispute Resolution processes to public observation nor adequate provisions for any amicus or intervener process.

The WTO dispute Resolution system seems a permanent part of the international economic law landscape and it is difficult to conceive of the multilateral trading system without it. After all, the dispute Resolution system has been one of the success stories of the WTO. Of course, there are criticisms and there are many proposals in the context of DSU reform. But no government is currently calling for the abolition of WTO dispute Resolution. Indeed, many proposals for reform are calling for quicker, more effective dispute Resolution.117 Modifications may be on the horizon, but surely the future of WTO dispute Resolution is assured.

CHAPTER-VI

THE OVERALL EFFECTS OF DISPUTE RESOLUTION MECHANISM ON THE TRADE, COMMERCE AND ECONOMIC GROWTH OF DEVELOPING AND LEAST DEVELOPED COUNTRIES

The WTO's legalized dispute Resolution system has been hailed as a new development in international economic relations in which law, more than power, might reign[116].However, while these developments in international law constitute a great achievement, the system remains far from a neutral technocratic process in its structure and operation. Large developed countries are much better-positioned to take advantage of the resource- demanding legalized system and have done so. The system's rules on remedies, in particular, are structured to favour them. Many developing countries do not even consider bringing cases or otherwise participating as a third party in the dispute Resolution system. In fact, there is little rationale for many of them to do so on account of the significant costs and uncertain benefits of participating.

The World Trade Organization (WTO) dispute Resolution mechanism can be critical for developing countries seeking to defend their trade rights and development interests. The system has been essential for challenging harmful subsidy programs, eliminating unfair anti-dumping duties and ensuring that Least Developed Countries (LDC) can pursue strategies to diversify trade in order to create new employment and income opportunities[117].

It has often been said that the DSU works more in favour of the richer members with their vastly greater resources, as well as an army of staff lawyers, to pursue trade problems, which is difficult, costly and time-consuming for the developing members to do. On the other hand, one of the principal objectives of the Dispute Resolution Understanding (DSU) was to create a fairer system, in which every member could bring forward a complaint, have it fully investigated, obtain a ruling on the compatibility of the measure or practice with WTO rules, and – more generally – "to have its day in court"3 . The guiding principle was intended to be: 'Every member is equal before the law', and this was designed to lead to fairer and more equal opportunities than a system where power politics could, and did, influence the results. Few

[116] Julio Lacarte- Muro and Petina Gappah, Developing Countries and the WTO Legal and Dispute Resolution System: A View from the Bench, 4 J.Int'l Econ.L.395,401(2001)
[117] 2 Ibid

would dispute that the DSU has successfully introduced a more juridical approach to trade disputes, one that is based upon careful analysis of the rules and neutral interpretation of them. These changes have led to a situation where all stages of a dispute, from the first lodging of a complaint to securing a formal ruling, have become largely de-politicized, and the current area which can in certain cases create difficulties relates to the enforcement of the ruling following adoption of a panel report and often an appeal body report. So, in this rather positive atmosphere, how have the developing countries been able to exploit their right to a day in court.

The World Trade Organization's dispute Resolution mechanism can be critical for developing countries seeking to defend their trade rights and development interests. The system has been essential for challenging harmful subsidy programs, eliminating unfair anti-dumping duties and ensuring that least developed countries can pursue strategies to diversify trade in order to create new employment and income opportunities.

But countries can only take advantage of the WTO dispute Resolution mechanism if they can effectively pursue their rights in this complex legal regime. Their ability to do so largely depends on having staff with adequate legal, economic and diplomatic experience and a large network of external experts and private sector representatives. Research by ICTSD has shown that a lack of such legal capacity has impeded developing countries' ability to participate fully in the system[118].

6.2 The Participation in the WTO Dispute Resolution System and its effect on WTO Law and International Economic Relations

Participation in the WTO dispute Resolution system is essential for shaping WTO law's interpretation and application over time. Participation in WTO judicial processes is arguably more important than is participation in analogous judicial processes for shaping law in national systems for two reasons. First, the difficulty of amending or interpreting WTO law through the WTO political process enhances the impact of WTO jurisprudence. Unlike national or EC law, WTO law requires consensus to modify so that the WTO political/legal system remains extremely weak.6Changes in WTO rules only take place through infrequent negotiating rounds

[118] Busch et al, 'Does Legal Capacity Matter? Explaining Dispute initiation and Antidumping Action in th e WTO', ICSTD Dispute Resolution Programme Series, Issue Paper No.4,(ICTSD,2008).

held around once per decade involving complex tradeoffs between over one hundred and forty countries with widely varying interests, values levels of development and priorities. In addition, because of the complex bargaining process within the WTO rules are often purposefully drafted in a vague manner as part of a political compromise. WTO member thereby delegate significant de facto power to the WTO dispute Resolution system to interpret and effectively make WTO law. Second, WTO law, although it does not formally adopt a common law approach, has taken more of a common law orientation, with the WTO Appellate Body and the WTO panels citing and relying on past WTO jurisprudence in their legal reasoning. Individual WTO cases involve more than the judicial resolution of an individual dispute. WTO panel and Appellate Body decisions also produce systemic effects for future cases.

As a result of the increased importance of WTO jurisprudence and the rigidity of the WTO political process to modify it through treaty amendment or formal interpretation, those governments that are able to participate most actively in the WTO dispute Resolution system are best-positioned to effectively shape the law's interpretation and application over time to their advantage. Not surprisingly, the United States and EC remain by far the predominant users of the system, and thereby are most likely to advance their larger systemic interests through the judicial process. From 1948 to the Nov 2016, the United States was either a complaint or defendant more than 50% of the total number of disputes, while European Community was a party in 36% of that total.[119] The U.S and EC participation rates are much higher than the United States and EC's percentages of global trade.

In its broadest sense, participation would cover any form of activity in the WTO system. But it is clear that it is much easier to engage in certain types of activity than in others: for example, to seek to join in (that is, to be present) as a third party during bilateral consultations does not take much effort (a simple request), nor require any active participation, whereas the pursuit of a case into a panel procedure as a complainant does involve substantial, and at times prolonged, investment of resources in time and effort. While, therefore, we have to bear in mind that developing countries will often have participated in the disputes launched by other members as third parties, it is difficult to take this as a fair measure of their ability to participate in the system as a whole. It is true that third party participation in panel meetings or appeal hearings

[119] According to WTO website. accessed on 23-11-2016

will impose a somewhat heavier burden on members that decide to use these rights; but it is nevertheless not the principal area where problems for developing countries would be expected to arise.

6.3 Participation of Developing Countries in DSU System

The term developing country is broad, covering economies ranging from those largely based on substance agriculture to those of Brazil and India which have highly industrialized sectors that include commercial aircraft production and software engineering. Although the term "developing country" is often used in WTO agreements, the term is left undefined so that countries largely self-designate their status, subject to challenge from another.

The general lack of definition of what constitutes a "developing" compared to a "developed" country has generated criticism[120]. Yet, it is easy to explain the difficulty for WTO members to legally define what constitutes a developing country in the WTO context. Differentiating developing countries in terms of which countries receive meaningful preferential treatment is highly controversial in an agreement among onehundred-forty members that can have real economic impacts on commercial sectors. Developed countries are wary of granting special and differential ("S&D") treatment where doing so can affect their own commercial constituencies. They thus prefer either to retain control over the application of preferential programs (as under General System of Preferences(GSP)programs), limit their international obligations under preferential programs to "least developed" countries that pose little competitive threat or make their obligations merely declaratory when applied to all "developing countries" so that they again retain discretion as to how to apply them(as under most "S&D" WTO provisions).20 In general, developed countries have agreed to include special treatment provisions in WTO agreements for an undefined mass of "developing countries" because the special provisions, in operation, are of limited relevance. They also have been willing to grant preferential market access to developing countries under national GSP programs because they can unilaterally modify them at will by withdrawing product coverage, resetting quotas, or "graduating" countries from the program. Were internationallybinding special and differential treatments to have real bite, such as through

[120] See, e.g. T. Ademola Oyejide, Special and Differential Treatment, Trade and the WTO: A Handbook, 504, 507 (Bernard Hoekman et.al. end, 2002)

the creation of a preferential system of remedies, developed countries likely would insist on a much tighter definition of what constitutes a "developing country" beneficiary?

6.3.2 'Participation' in the system

In its broadest sense, participation would cover any form of activity in the WTO system. But it is clear that it is much easier to engage in certain types of activity than in others: for example, to seek to join in (that is, to be present) as a third party during bilateral consultations does not take much effort (a simple request), nor require any active participation, whereas the pursuit of a case into a panel procedure as a complainant does involve substantial, and at times prolonged, investment of resources in time and effort. While, therefore, we have to bear in mind that developing countries will often have participated in the disputes launched by other members as third parties, it is difficult to take this as a fair measure of their ability to participate in the system as a whole. It is true that third party participation in panel meetings or appeal hearings will impose a somewhat heavier burden on members that decide to use these rights; but it is nevertheless not the principal area where problems for developing countries would be expected to arise[121].

6.3.3 Special observation of Special and differential treatment for developing countries

The DSU generalised for all members the privileges of the right to a panel and observance of time limits that were reserved only for developing countries in the 1966 Special Procedures for Developing Countries. Although the Special Procedures thus lost much of their relevance, in Article 3.12 of the DSU, developing countries retained the right to invoke those procedures as an alternative to the provisions of the DSU.34 The additional benefits that this provided were shorter time frames and mediation by the Director General to settle the dispute before the panel stage. A qualification was added that where the panel considers that the time frame provided for submission of its report in the 1966 Decision is insufficient, the time frame might be extended with the agreement of the complaining party. In addition, certain other provisions of the DSU accord special and differential treatment (S&DT) to the developing countries.35 The full list of such provisions is Articles 4.10, 8.10, 12.10, 12.11, 21.2, 21.7, 21.8,

[121] Are Developing Countries Deterred from Using the WTO Dispute Resolution System? - Participation of Developing Countries inthe DSM intheyears 1995-2005 ECIPE WORKING PAPER. No. 01/2007

and 27.2. Two provisions, Articles 24.1 and 24.2 give certain privileges to the Least Developed Countries (LDCs). Article 4.10 is a very broadly phrased provision requiring all Members to give special attention to developing country Members' particular problems and interests. Article 8.10 mandates that when a dispute is between a developing country Member and a developed country Member, the panel must include a panelist from a developing country if so requested by the developing country concerned. Article 12.10 allows time extensions to them in the pre-panel consultations involving a measure taken by a developing country. If there is disagreement on whether the consultation period has concluded, the Chairman of the DSB has been empowered to extend the period of consultation. In such cases, the panel is also mandated to give to developing countries sufficient time to prepare and present its arguments.36 Article 12.11 is an important 9 provision, which calls for an explicit indication of the form in which account was taken of the S&DT of developing countries envisaged in the covered agreement in question. Article 21.2 is another broadly phrased provision that stipulates that particular attention should be paid to matters affecting the interests of developing country Members. Article 21.7 requires that during surveillance of implementation, if the matter is one that has been raised by a developing country Member, the DSB may consider what further appropriate action could be taken.37 Article 21.8 adds that in considering such appropriate action the DSB must take into account not only the trade coverage of the measures complained against but also their impact on the economy of the developing country Member concerned. Article 27.2 requires the WTO Secretariat to make available a qualified legal expert from the WTO technical co-operation services to any developing country Member which so requests. The qualification is added that the expert must assist the developing country Members 'in a manner ensuring the continued impartiality of the Secretariat'. Lastly, Article 24.1 requires that particular consideration be given to the special situation of least developed countries (LLDCs) in all stages of dispute Resolution procedures. Further, all Members have been mandated to exercise due restraint in raising disputes against the LDCs and in asking for compensation or seeking authorisation of retaliatory measures in cases in which nullification or impairment has been found to result from a measure taken by them. Article 24.2 provides that in a dispute involving a least- developed country Member and where consultations have not led to a solution, the least- developed country Member concerned may request the Director General or the Chairman of the DSB for their good offices, conciliation and mediation, before making a request for the establishment of a panel.

6.4 Effects of DSU on the Developing and Least developed countries' trade, commerce and economic growth

To participate in DSU by developing countries and least developed countries means facing many challenges especially relating to trade, commerce and its economic growth. Major effects are discussed below.

a) It's economic growth

The World Trade Organization (WTO) dispute Resolution mechanism can be critical for developing countries seeking to defend their trade rights and development interests. The system has been essential for challenging harmful subsidy programs, eliminating unfair anti-dumping duties and ensuring that least developed countries (LDC) can pursue strategies to diversify trade in order to create new employment and income opportunities.

But countries can only take advantage of the WTO dispute Resolution mechanism if they can effectively pursue their rights in this complex legal regime. Their ability to do so largely depends on having staff with adequate legal, economic and diplomatic experience and a large network of external experts and private sector representatives. Research by ICTSD has shown that a lack of such legal capacity has impeded developing countries' ability to participate fully in the system.

CASE STUDY

The United States first raised this issue in March of 1987 during the early stages of the Uruguay Round of multilateral trade negotiations. Arguing that the three Council Directives were not supported by scientific evidence and were in violation of the Agreement on Technical Barriers to Trade (TBT) Agreement, the US requested the establishment of a ìtechnical expert group (ìTEGî) pursuant to Article 14.5 of the TBT Agreement. The TBT Agreement was signed by 102 nations during the Tokyo Round of multilateral trade negotiations. The EU denied the USí request stating that the use of growth promotion hormones was a process and production method (PPM) and, thus, was not subject to the TBT Agreement.52 The EU instead requested the establishment of a Panel to evaluate the case.

The case went unresolved, and in 1989, the United States ìintroduced retaliatory measures in the for m of 100 per cent ad valorem duties on a list of products imported from the European Communities.î53 The EU then requested the establishment of a Panel to address the US duties, but the US blocked this action.54 The US and the EU formed a joint task force to address the problem in 1989. The task force was only able to reduce the list of products subject to the US retaliation. When the US requested th at thematter be addressed under the newly formed Dispute Resolution Body, the WTO convened a Panel to hear the case and the US withdrew its retaliation measures (see Box 2.1).

The EC- Hormones dispute case began in the 1970s when European consumers became concerned over thepossibleeffectsofgrowthhormonesusedonlivestock.Inresponseto thisconcern,the ECCounc ilof Ministers began to legislate restrictions on certain growth hormones and their uses. The Council of Ministers implemented three Council Directives. The first of these restrictions, Council Directive 81/602/EEC, went into effect on July 31, 1981 and the last, Council Directive 88/299/EEC, went into effect May 17, 1988. The US first raised the issue in March of 1987 at the Tokyo Round of multilater al trade negotiations arguing that these restrictions were in violation of the Technical Barriers to Tr ade Agreement (TBT Agreement). When the EC refused to amend their restrictions, the US introduced retaliatory measures in the form of 100 per cent ad valorem duties on a series of products from the EC. The dispute continued unresolved until the formation of the World Trade Organization and its Dispute Resolution Body in January of 1995. A dispute Panel was established on May 20, of 1996.

CONCLUSION

The WTO's Dispute Resolution system is seen as a critical component in ensuring the multilateral trading system's security and predictability. The Members recognize that it helps to protect Members' rights and duties under the covered agreements, as well as to explain existing provisions of those agreements in conformity with standard public international law interpretation principles. The DSB's recommendations and judgments cannot increase or decrease the rights and duties set forth in the covered agreements. The WTO DSB's recommendations or decisions must try to reach a satisfactory resolution of the case in accordance with the rights and obligations set forth in this Agreement and the covered agreements[122].

Before filing a matter, a Member should exercise his or her judgement as to whether action under these processes would be productive, in my opinion. The goal of the dispute resolution system is to reach a satisfactory conclusion to a disagreement. A remedy that is mutually acceptable to the disputants and compatible with the covered agreements is plainly desired. "In the absence of a mutually accepted solution, the dispute Resolution mechanism's initial goal is normally to secure the withdrawal of the measures in question if they are determined to be in conflict with the requirements of any of the covered agreements.

The WTO Dispute Settlement system is one of the most comprehensive in international dispute resolution; yet, the current reliance on political realities implies that the enforcement mechanism needs to be strengthened and the system's flaws addressed. As a result, more collaborative implementation machineries are required.

In the absence of the Ministerial Conference, the Dispute Resolution Body (DSB) is the General Council, the WTO's top decision-making body, which meets to carry out the tasks outlined in the Dispute Resolution Understanding (DSU). When legal deadlines may fall on a WTO nonworking day, the (DSB) developed working methods to address practical tasks such as notification submissions and distribution of dispute resolution papers. However, it is vital to remember that the DSB's primary function is to provide a platform for WTO members to express their opinions and provide feedback on the panel's and Appellate Body's legal interpretation reasons.

[122] Art. 6. 4 of the DSU.

The WTO's Dispute Resolution Body (DSB) is made up of all of the organization's members. It provides a solid institutional structure for the disputants to settle their trade disagreements.

The DSB is in charge of enforcing the DSU; in other words, it is in charge of the entire dispute resolution process. It has the power to create panels, adopt panel and Appellate Body Reports, monitor the implementation of recommendations, and authorize punitive measures if a Member does not follow the rules.

For the parties to a dispute, the DSB provides a robust institutional vehicle for resolving their trade issues. At various stages of the process, the DSB's role is critical. There is a need for the DSB's function to be strengthened in areas such as implementation.

The World Trade Organization's (WTO) Dispute Resolution System attempts to offer adequate methods for resolving disputes brought before it. As a result, the method attempts to ensure that disagreements are resolved in a favorable manner. A remedy that is mutually acceptable to the disputing parties and consistent with the covered agreement is manifestly preferable. As a result, the DSU's preferred goal is for the parties involved to resolve their dispute in a way that is consistent with WTO standards.

Suggestions

Since 1998, the Dispute Resolution Understanding, which went into effect in 1995, has been subjected to multiple reviews. So far, the most significant efforts have been made under the Doha mandate in 2002 and 2003. Almost every provision of the DSU has received feedback, including comments on each stage of the process and on the majority of horizontal issues. All previous attempts to evaluate and alter the system have failed due to a lack of consensus among members on a set of changes.

WTO Members are concerned about the need for reform of the WTO Dispute Settlement System. The issue of improving the implementation and enforcement of Dispute Resolution Body recommendations and decisions has a direct impact on the level of enforcement pressures that would be imposed to nations who violate WTO commitments.

The central issue of how strong the WTO Members want their legal system to be accepted, regardless of the legal particulars of the rules and recommendations to be taken by the WTO DSB

is that the matter of reforming the DSU rests with the WTO Members, who make their decisions by consensus, so the reforms should be acceptable to all WTO Members.

There are various lines of thought on the approach and substance of DSU reforms linked to DSBrulings and recommendations implementation and enforcement. Some people believe that by developing and expanding the current system, they can preserve and strengthen it Others, on the other hand, see their opinions as advocating for a complete overhaul of the system, as well as the establishment of a new implementation and enforcement system.

It has been observed that the second viewpoint appears to make it more difficult to entirely reform the dispute system, whereas the first viewpoint is thought to be more rational for improving the process of adopting rules and suggestions.

During its operation, the WTO Dispute Resolution system for settling trade disputes between WTO Members has achieved exceptional success in several areas.

It was said that no functional dispute resolution method is ideal; there are advantages and disadvantages to each.

The time factor is one of the weak areas in the conflict resolution system; in fact, the first dispute resolution method still takes a significant amount of time. If the contest measurements are clearly conflicting, this reflects on the complainant suffering economic harm. Another flaw is the high expense of defiance, which is particularly problematic in developing and least developed countries.

In fact, the majority of WTO disputes have been won by the challenger countries, particularly wealthy ones. However, emerging and least developed countries (poor countries) do not use the dispute resolution mechanism because their laws are threatened by richer members. The other flaw, a failure to follow WTO rules and recommendations, is thought to be the most serious threat to the system.

Foremost, there are challenges in developing the Dispute Resolution System (DSU), which have a detrimental impact on active involvement. Many underdeveloped and least developed countries do not employ it due to a lack of confidence in its value in resolving disputes. There is a feeling that resorting to dispute resolution will be perceived as an unfriendly conduct. Furthermore, the majority of developing and least developed countries lack the guts and expertise to deal with trade conflicts.

BIBLIOGRAPHY

GATT, Basic Instruments and Selected Documents. APPELLATE BODY REPORTS

Banana Case (1998) WT/DS 27/AB/R.

Brazil- Measures Affecting Desiccated Coconut Case, (1997) WT/DS 22/AB/R.

Brazil- Export Financing Programme for Aircraft Case,.(1999), WT/DS/96/AB/R.

Canada - Measures Affecting the Export of Civilian Aircraft Case, (1999), WT/DS/70/ AB/R.

Hormones Case, (1999), WT/DS/26/ABR.

Indian - Patent Protection for Pharmaceutical and Agricultural Chemical Products Case, (1998), WT/DS/AB/R 50.

Shrimp Case, (1999), WT/DS/ 58/AB/R. Shirts and Blouses Case, (1998), WT/DS33/AB/R.

US Standard for Reformulated and Conventional Gasoline Case, (1996), I.L.M. 603. US- Cotton Man-Made Fiber Underwear Case, (1997). WT IDS 24/ ABIR.