CRANBROOK LAW REVIEW
Volume 10(1) 2020 pp. 45 - 56
ISSN 2045-8479 (Print) ISSN 2045-8487 (Online)
www.juliapublishers.org
Accepted:
22 June 2020

The United Nations and the Principle of Peaceful Settlement of Disputes Between States: Some Reflection on The Mechanism of Arbitration as a Means

Felix Chukwuemeka Amadi* & Nuleera Ambrose Duson**

Abstract

The quest for peace by man is as old as the Human Society itself. Mankind is aware and very conscious of the importance of peace. After World War 1, the League of Nations was established to provide a forum for resolving International Disputes. The idea of establishing the organisation came as a result of the unprecedented destruction of lives and property during the First World War. The league's goals were disarmament, preventing war through collective security, settling disputes between countries through negotiation, diplomacy and improving global welfare. After the Second World War, the United Nations organization was established, precisely in 1945. The ultimate aim of establishing the organization is the maintenance of International Peace and Security, developing friendly relations among nations and promoting social progress, better living standards and human rights. World peace is usually breached by the activities of states. Inter-state disputes usually arise and sometimes even leading to war. International law regulates the settlement of disputes between states in the International arena. Under International law, states are under an obligation to settle their disputes by peaceful means in such a manner that International peace and security is not endangered. This paper seeks to explore and examine the various means and methods provided by International law for the settlement of disputes between states. This paper specifically undertakes a comparison between the various means and methods for the settlement of International Disputes between states as recognized by the United Nations in Article 33 (1) of the UN charter and contends that arbitration seems to be the best suitable means for the settlement of International Disputes between states considering its advantages and states should be encouraged to use it the more in the settlement of their disputes when they arose. The researchers made use of the doctrinal approach. This paper is divided into five sections. Section one is the introductory part, Section two examines the United Nations principles of Peaceful settlement of Disputes, Section three deals with the Forms of Dispute Settlement as recommended in Article 33 (1) of the United Nations charter, section four takes a look at the uniqueness of Arbitration as a means of Disputes settlement recommended in the UN charter. The paper concludes in Section five with recommendation.

Keywords: United Nations, Peaceful Settlement of Disputes, States, Arbitration and Reflection**.**

1. INTRODUCTION

The prevention and settlement of Disputes are among the main purposes of the law.[1] Inter-state Disputes arise when perceptions that states have regarding their relative rights and interests come into conflict. A Dispute manifest itself when feuding states disagree on a point of law or fact, a conflict of legal views or of interest between two persons.[2] Although states generally agree that disputes should not be settled by the use of force, these same states often resort to war when the conflict cannot be resolved peacefully.[3]

* LLB, LL.M, PhD (Nig.), B.L., Senior Lecturer, Department of Private and Property Law, Faculty of Law, Rivers State University, Port Harcourt, Nigeria. E-mail: fca_legalchambers@yahoo.com;
** PhD (Nigeria), BL, Lecturer, Department of Law, Institute of Legal and Global Studies, Captain Elechi Amadi Polytechnic, Port Harcourt, Email of the corresponding author: drnuleera@gmail.com
[1] A.K. Biswas, Shared Natural Resources: Source of Conflict or Springs of Peace? 13 Dev. Forum (1982)
[2]Mavromattis Palestine concessions (Greece v. Great Britain) 1924, P.C.I.J (Ser. A) No 2 at 11 (AnG. 30)
[3] G. Bosco, 'New trends on Peaceful Settlement of Disputes Between States', North Carolina Journal of International law, volume 16 Number 2, Article 3, 1991, P.234

The International community, recognizing that war is not always unavoidable, attempts to restrict its excesses through various instruments and conventions loosely described as the 'law of war'.[4] The Hague conventions of 1899[5] and 1907[6] did not require states to settle their Disputes peacefully, and although the league of Nations made some progress by requiring states to give some time for the Dispute to 'cool down' before the states could resort to hostilities,[7] it was the United Nations charter that marked a watershed in the history of the peaceful settlement of Disputes between states.[8]

Historically, International law has been regarded by the International Community as a means to ensure the establishment and preservation of world peace and security. The maintenance of International peace and security has always been the major purpose of International law. It was the basic objective behind the creation of the League of Nations in 1919 and United Nations in 1945. Since the direct cause of war and violence is always a dispute between states, it is therefore in the interest of peace and security that disputes should be settled[9]. The settlement of International Disputes is one of the most important roles of the United Nations. The charter of the United Nations stipulates that it is the task of the United Nations to bring about by peaceful means, and in conformity with the principles of Justice and International law, adjustment or settlement of International Disputes or situations which might lead to a breach of peace[10]. To this end, the charter provides a system for the pacific settlement of International Disputes.

The objective of this paper is to explore and examine these methods of peaceful settlement of dispute between states as recommended by the UN charter. The paper will specifically do a comparative analysis between Arbitration and other methods to establish why arbitration is a more suitable means of settling international disputes and should be preferred by states over other means. This paper is divided into five sections. Section one is the introductory part, Section two examines the United Nations principles of Peaceful settlement of Disputes, Section three deals with the forms of dispute Settlement as recommended in Article 33 of the United Nations charter, section four takes a look at the uniqueness of Arbitration as a means of Disputes settlement recommended in the UN charter. The paper concludes in Section five with recommendation.

2. The United Nations and The Principle of Peaceful Settlement of Disputes

The principle of the Peaceful Settlement of Disputes occupies a pivotal position within a world order whose hallmark is the bam on force and coercion[11]. States are under obligation to settle their international disputes by the peaceful means in such a manner that international peace and security and justice are not endangered[12]. While this obligation is addressed primarily to members of the organization, there is no doubt that this principle is one of the central

[4] H.S. Levie, The code of International Armed Conflict, 1986
[5] Convention with Respect to the laws and customs of war on land, July 29, 1899.
[6] Convention Respecting the laws and customs of war on land, Oct. 18, 1907
[7] Art. 12, league of Nations Covenant.
[8] G. Bosco, (note 3)
[9] A. M. Hamza, M. Todorovic, Peaceful settlement of Disputes, Global Journal of Commerce and Management perspective, vol. 6 (1), P. (11)
[10] Ibid, P.15
[11] B. Simma, (ed), The charter of the United Nations: A Commentary, 2nd edn, (Oxford: Oxford University Press 2002), P. 103
[12] Art. 2 (3) of the UN Charter

obligations of International law which all states must observe[13]. The obligation is the natural counterpart to the prohibition of the use of force and may also have acquired the status of *jus cogens*[14]. The principle of peaceful settlement of International Disputes has been recognized by the ICJ as having the status of customary law[15]. The forceful resolution of disputes, the use of force by one state to impose its will on another, is now legally absolute and the obligation to settle disputes by peaceful means is a corollary of this[16]. The precise scope of the obligation is, however, that all states should settle disputes peacefully, not that they should settle them. In other words, there is no general rule requiring a state to settle its grievances. Rather, the rule is that if a state does decide to settle, this must be done in a peaceful manner.[17]

The state obligation to settle disputes peacefully, enshrined in Article 2 (3) of the charter, applies only to international disputes. International Disputes, however are not restricted to those between states, they are also applicable to disputes involving other entities, including international organizations, de-facto regimes, ethnic communities enjoying a particular kind of status under international law, National liberation movements, and people who are holders of the right to self-determination[18]. Non-state actors are also required to resolve disputes peacefully. Charges brought by an individual against a state for non-compliance with human rights obligations do not create an international dispute. Only when one party to a human rights treaty requires a second party to comply with its legal obligation might an international dispute arise.

Since there is no explicit rule in general International law requiring a state to settle internal grievances peacefully, a state may use force in its relations with its own citizens in its own territory, subject only to limitations imposed by human rights law or other specific obligations, such as mandatory resolution of the Security Council.[19]

The principle of peaceful settlement of International Disputes has been reaffirmed by numerous Declarations and Resolutions of the UN General Assembly, in particular: The friendly Relations Declaration, Resolution 2625 (XXV) of October 1970 which extends the obligation of peaceful settlement of International Disputes to all states and not only to the member states of the UN; and the Manila Declaration in the peaceful settlement of International Disputes (approved in General Assembly resolution 37/10 of November 1982) which imposes on states the obligation to seek in good faith and spirit of co-operation an early and equitable settlement of their Disputes[20]. In 1988, the General Assembly in resolution 43/51 adopted the Declaration on the prevention and Removal of Disputes and situations which may threaten International Peace and Security and on the Role of the UN in this field, which emphasises the need for the ICJ to play a greater role in the settlement of International Disputes and recommends the adoption of a Universal Convention on Peaceful Settlement of Disputes.[21] This resolution is a departure from the more restricted scope of Article 2 (3), which addresses only existing

---

[13] Legality of the use of force case (Provisional Measures) *Yugoslavia v Belgium (and nine other NATO Countries)* (199.9) 3 G ILM 950
[14] M. Dixon, Textbook on International law, 4th edn, Oxford University Press, 2000, P. 262
[15] *Nicaragua Case: Nicaragua v US (Merits) (1986) ICJ Rep. 14*
[16] M. Dixon, (n 14)
[17] Ibid
[18] B. Simma, (n 11)
[19] M. Dixon, (n 14)
[20] A. Kaczorowska, Public International law, Old Bailey Press, London, 2002, P. 344
[21] Ibid

disputes, not potential one. Similarly, Boutrous- Ghali's recommendations in *An Agenda for Peace,* reaffirmed in General Assembly resolution 47/120 of December 1992, highlighted within the pacific settlement of disputes, the importance of Preventive Diplomacy, fact-finding; and involvement of the General Assembly, and urged states to find early solutions to disputes through peaceful means[22]. The world summit outcome document of 2005 equally devoted four paragraphs to the pacific settlement of disputes echoing the relevance of peace-making in intergovernmental practices[23]. Today, the principle of peaceful settlement of international disputes is universally recognized. Although the path towards it recognition was long and bristling with difficulties. Indeed, before the views of humanity on war and peace became more sophisticated, the main method of resolving disputes was war.[24]

3. Forms of Dispute Settlement Recommended by the United Nations for The Peaceful Settlement of Disputes Between States.

The technique of conflict management in International law can basically be divided into two categories namely: Diplomatic Procedures and Adjudication. The charter directs in Article 33 that parties to a dispute that might endanger peace should first 'seek a resolution through negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their choice.[25] Article 33 reinforces the obligation in Article 2 (3) of the charter. Article 33 leaves the parties free to choose the means which they consider as the most appropriate to the circumstances and the nature of their dispute. However, if the parties fail to make any meaningful attempt to resolve a dispute which threatens International peace and security then, under Article 33, the security council may call upon the parties to settle the dispute without specifying what means to use. However, it may recommend a particular means of settlement, it may recommend the actual terms of settlement, it may investigate the dispute and it may set up machinery for settlement.[26]

3.1 Diplomatic Means of Dispute Settlement between States

Diplomatic means of settlement of International Disputes tend to facilitate an agreement between the parties as in contrast to legal means, they are not binding on the parties and place less emphasis on their formal position under the law[27]. Such methods include negotiation, good offices, inquiry and conciliation. Diplomatic means are flexible. The parties to a dispute exercise full control over these procedures[28].

a) Negotiation

Negotiation is the first procedures listed in the UN charter. This is no doubt the simplest way for states to resolve disputes and by far the most often resorted to[29]. It is a universal truth that even when ultimately parties to a dispute may resort to other means to settle their dispute, they will usually first try to resolve their dispute by direct negotiations. States often resort to negotiations very frequently, probably owing to the fact that they are rather anxious to retain control to the very end over the decisions arising out of differences which divide them.

---

[22] R. Mani and R. Ponzio, Peaceful Settlement of Disputes and Conflict Prevention, available at <https://www.stimson.orgfiles> accessed on 8/2/2017

[23] 2005 world summit outcome, UN document A/60/L-I, 15 September 2005, Paras. 73 -76

[24] A. Kaczorowska, (n 20)

[25] U.O Umozurike, Introduction to International law, spectrum publishing, Ibadan, 1993, P.189.

[26] A. Kaczorowska, (n 20)

[27] Ibid

[28] Ibid

[29] S.C. McCaffrey, understanding International law, Lexis Nexis, 2005, P.189

There are of course many International Disputes and problems which cannot be solved otherwise…[30] Negotiation does not always, by any means, take the form of sitting down at a table with the other state and discussing the matter under disputes. States frequently exchange views through diplomatic notes, communications through their ambassadors or in other ways involving diplomatic channels.[31] Negotiation is the primary vehicle for attaining settlement on the International scene, as peaceful co – existence and conciliation are seen as being more important than the characterization of one state as 'guilty' and another as 'innocent'.[32] Negotiations do not of necessity always presuppose a more or less lengthy series of notes and dispatches; it may suffice that a discussion has been commenced, and … a deadlock is reached, or if finally a point is reached at which one of the parties definitely declares himself unable or refuses, to give way.[33] Negotiations may be required by International agreements before other settlement procedures may be attempted.[34] In certain International regimes, particularly those involving maritime boundaries, states may actually be under an obligation to negotiate.[35] The International court of Justice explained the meaning of this obligation in the *North Sea continental shelf cases*[36]. Thus: "The parties are under an obligation to enter into negotiations with a view to arriving at an agreement …; they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of the parties insists upon its own position without contemplating any modification of it."

Judge Lachs further clarified the meaning of the obligation when he observed that 'the obligation to negotiate … does not imply an obligation actually to reach agreement. The obligation is only to try one's best.[37] The Manilla Declaration on the Peaceful Settlement of International Disputes describes negotiation as a 'flexible and effective means' of dispute settlement.[38] It can be applied to all kinds of disputes, whether political, legal or technical.

It involves only the state parties to the disputes, those states can monitor all the phases of the process from its initiation to its conclusion and conduct it in the way they deem most appropriate.[39]

b) Good Offices and Mediation

Good offices involve the participation of a third party, whether a state, an individual or a body, offering assistance to prevent further deterioration of the disputes.[40] When states parties to a dispute are unable to settle it directly between themselves, a third party may offer his good office as a means of preventing further deterioration of the dispute and as a method of facilitating efforts towards a peaceful settlement of the dispute. Such an offer of good offices, whether upon the initiative of the third party in question or upon the request of one or more parties to the dispute, is subject to acceptance by all the parties to the dispute. In other words, the third party offering good offices, be it a single state or a group of states, an individual or an organ of a universal or regional international organization, must be found acceptable to all the

---

[30] M. Lachs, The law and the settlement of International Disputes, in K. V. Raman (ed), Disputes Settlement through the United Nations (1977)
[31] S. C. McCaffrey, (n 29)
[32] R. M. M. Wallace, International law, Sweet and Maxwell, London, 2002, P. 287
[33] *Mavromatis Palestine Concession Case*, (n 2) at P. 13
[34] R. M. M. Wallace, (n 32)
[35] S. C. McCaffrey, (n 29)
[36] I. C. J Rep. 1969. P. 3
[37] M. Lachs, (n. 30)
[38] UNGA Res. 37/10 of November 1982, annex, seet. 1, para. 10.
[39] *Ibid*
[40] A. Kaczorowska, (n 20), 345

parties to the dispute.[41] The third party exercising good offices normally seeks to encourage the parties to the dispute to resume negotiations, thus providing them with a channel of communication.[42] The impartiality of a third party is of the essence as confidence in its reliability constitutes a necessary condition of establishing contact between the parties in the dispute.[43] The third party does not participate in the actual settlement of a dispute. However, if the third party becomes actively involved and starts to make proposals for the solution of a dispute, he no longer exercises the function of 'good offices' but becomes a mediator.[44]

A mediator is a person, again approved by both parties, who takes part in the negotiations and whose task is to suggest the terms of settlement and to attempt to bring about a compromise between the two opposing views. The transformation of good offices into mediation occurs very often in practice, taking into account the acceptance of a third party by the parties to the controversy.[45] Mediation therefore is an extension of good offices. The main difference is that a mediator submits his recommendations and advice which are not however binding on the parties.[46] Good offices are based on customary International law and has been included in many international agreements, such as The Hague Convention I for the pacific settlement of International Disputes 1907, the Bogota Pact 1948 and the Vienna Convention on Diplomatic Relations 1961.[47]

Although Article 33, Paragraph 1, of the UN charter does not specifically mention 'good offices' among the peaceful means for the settlement of disputes between states, the 1982 Manilla Declaration on the peaceful settlement of international disputes places 'good offices' on an equal footing with the other peaceful methods enumerated in Article 33, Paragraph 1 of the charter by providing in its paragraph 5, as follows:

> "States shall seek in good faith and in the spirit of cooperation an early and equitable settlement of their international disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements or agencies or other peaceful means of their own choice, including good offices. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate to the circumstances and the nature of their dispute.[48]"

The 1988 Declaration on the prevention and Removal of disputes and situations which may Threatens international peace and security on the Role of the United Nations in this field.[49] Also provides, in its paragraph 12 that 'the security council should consider sending, at an early stage, fact- finding or good offices missions or establishing appropriate forms of United Nations presence, including observers and peace-keeping operations, as a means of preventing the further deterioration of the dispute or situation in the areas concerned'.[50]

---

[41] United Nations Handbook on the Peaceful Settlement of Disputes between States, New York, 1992, P. 33
[42] *Ibid*
[43] A. Kaczorowska, (n 20), P. 346
[44] *Ibid*
[45] *Ibid*
[46] *Ibid*
[47] *Ibid*
[48] Para 5, 1982 Manilla Declaration
[49] General Assembly Resolution 43/51 of December 1988, annex
[50] United Nations Handbook on the Peaceful Settlement of Disputes Between States. (n 41), P. 34

c) **Inquiry**

The parties to a dispute may initiate a commission of inquiry or fact- finding to establish the basic information about the case, to see if the claimed infraction was indeed committed, to ascertain what obligations or treaties may have been violated, and to suggest remedies or actions to be undertaken by the parties.[51] The use of commissions of inquiry is most often intended to establish the factual basis for a settlement between states. The parties to a dispute will agree to refer the matter to an impartial body whose task is to produce an unbiased finding of facts. It is then up to the parties to negotiate a settlement on the basis of these facts.[52]

These findings and recommendations are not legally binding and the parties ultimately decide what action to take.[53] The two Hague Conventions of 1899 and 1907 made provisions for commission of inquiry in the settlement of international dispute between states.[54] The mechanism has been very successful in the few cases in which it was applied. For example, in 1917, during World War 1, a German submarine sank a Norwegian ship, the Tiger, of the coast of Spain which was neutral in the war. The Justification was that the Norwegian Vessel although neutral was carrying contraband (that is, war material). Under the laws of war, it is permitted to sink a neutral ship on the high seas if it carries contraband to the enemy but this may not be done in the territorial sea of a neutral state. The crucial Question was the vessel's location. Spain claimed that the attack had taken place on the high sea (and hence was lawful). The commission had difficulties in ascertaining where the attack had actually taken place, but in the end concluded that it had happened in Spanish waters. The obvious conclusion was that the act was unlawful; however, the commission did not have to deal with the question of legality but only with factual question.[55] The report of the commission of inquiry in any situation is limited to fact-finding and not expected to include any proposal for the settlement of the dispute in question.

d) **Conciliation**

Conciliation is a Quasi-Judicial procedure.[56] It occurs by agreement between the parties, whereby a third party is appointed to investigate the dispute and to suggest terms for a settlement.[57] The task of a conciliation commission is to examine the claims of the parties and make proposals to them for a friendly solution.[58] A third party entrusted with conciliation examined all aspects of the dispute. In this respect conciliation exceeds the inquiry procedure as not only the facts of the dispute are established but also the dispute in its entirety is subject to examination.[59]

Conciliation commissions are different from commissions of inquiry because the latter do not produce concrete proposals. Generally, the reports of conciliation commissions are not legally binding on the parties, although the simple fact that the matter had been referred to a third party

---

[51] R. Mani and R. Ponzio, (n 22). P. 12
[52] M. Dixon, (n 14) P. 264 – 265
[53] R. Mani and R. Ponzio, (n 22), P.12
[54] Articles 9 – 14 of the 1899 Convention, and Articles 9 -35 of the 1907 Convention
[55] R. Lapidoth, Some Reflection on Peaceful Means for the Settlement of Inter – State Disputes, Georgetown University Law Centre, Washington Dc, P. 17
[56] A. Kaczorowska, (n 20), P. 347
[57] *Ibid*
[58] R. M. M. Wallace, (n 32), P. 287
[59] A. Kaczorowska, (n 20), P. 347

combined with the force of a formal recommendation means that the great majority of the proposed settlements are not ignored. The report and the proposed solution of the conciliation commission may, of course, form the basis for future negotiations. Conciliation is, then, the middle ground between inquiry and arbitration.[60]

e) **Arbitration**

The idea of entrusting an impartial authority, with finding a legally based solution to international disputes is an old one and examples of arbitration settlement were evident in Ancient Greece, China and amongst Arabian tribes.[61] Modern arbitration dates back to the Treaty of Amity, Commerce and Navigation between Britain and USA (Jay Treaty) of 1974 under which three mixed commissions were appointed in equal numbers by both parties with the power to refer to an umpire in the event of a disagreement. They were to settle outstanding issues that had not been resolved. The practices of referring to mixed commissions grew during the 19th century and was popularised by the successful arbitration in the *Alabama Claims* (US-Britain).[62] In which the US alleged a breach of neutrality rules during the American Civil war. Further to this was the inclusion of arbitration clauses in Treaties for the arbitration of certain classes of disputes and indeed the general development of the law of arbitration.[63]

The 1899 convention on the pacific settlement of international disputes.[64] adopted by the first Hague peace conference, marked a new era in arbitration settlement with the convention providing for the creation of a Permanent Court of Arbitration. In 1987 following a second Hague conference, a further convention was adopted revising its predecessor, but maintaining the court.[65] The permanent court of Arbitration established in 1900, began functioning in 1902. It is still in existence, but it is rather a panel of some 300 persons (Four nominated by each contracting party to the 1899 and 1907 conventions) from whom states may select one or more arbitrators to constitute a tribunal for the settlement of a particular dispute.

Arbitration between states is a different form of arbitration from that often used in the settlement of civil disputes, and from the concept of mixed arbitral tribunals dealing with claims by natural legal persons.[66] The convention for the pacific settlement of international disputes 1899 states that 'International arbitration has for its object the settlement of disputes between states by Judges of their own choice and on the basis of respect for law. Recourse to arbitration implies an engagement to submit in good faith to the award.[67] The International law commission defined arbitration as 'a procedure for the settlement of disputes between states by a binding award on the basis of law as a result of an undertaking voluntarily accepted'.[68]

Arbitration in international law involves the application of rules of international law to the facts of the case which leads to a binding settlement of a dispute. The disputes set out in a *Compromis* the issues to be decided, the Jurisdiction of the tribunal, the applicable law and the procedure.[69]

---

[60] M. Dixon, (n 14), P. 267
[61] R.M.M. Wallace, (n 37), P. 289
[62] (1872*) Moore, 1 Int. Arb.* 495
[63] U. O. Umozurike, (n 25) P. 191
[64] *U. K. T. S.* 9 (1901) Cd. 798
[65] *U. K. T. S.* 6 (1971) Cmd. 4575
[66] A. Kaczorowska, (n 20), P. 347
[67] *Ibid*
[68] 11 YBILC, 1953, P. 202
[69] U. O. Umozurike, (n 25), P. 191

The recourse to arbitration is based on the consent of the parties to the dispute and may result from:

(1) Arbitration clauses inserted into treaty which require that if dispute arises between the contracting parties in respect of the interpretation or application of that treaty they will be bound to submit it to arbitration.

(2) *Compromis* which is a formal agreement, after the dispute has occurred, to submit the dispute to arbitration. *Compromis* will normally stipulate the terms under which the tribunal will function, its composition, competences and law applicable to the dispute.

(3) The provision on arbitration in several treaties. Arbitration as a method of settlement of international disputes is provided for in numerous treaties, including the General Act for the settlement of disputes 1928 adopted by the league of Nations and reinvigorated by the General Assembly in 1948, the Washington Treaty of Inter – American Arbitration 1929, the American Treaty on pacific settlement of disputes 1948 and the European convention for the peaceful settlement of disputes 1957 elaborated under the auspices of the council of Europe.[70]

Normally arbitration between states is intended to be final and the award binding as final settlement of a dispute.[71] However, an Award may be nullified on ground which include:

1. Invalidity of the *Compromis* as a result of lack of Jurisdiction.[72]
2. *Excess du Pouvoir* (excess of Jurisdiction) as a result of deciding an issue that was not submitted to the tribunal,[73] or applying a law that is not authorized,[74]
3. Lack of, or inadequate, statement of reasons in which the award is based.[75]
4. Fraud and Corruption on the part of a tribunal member or the presentation of evidence
5. Essential error where this is taken to mean manifest error.[76]

f) Judicial Settlement

States parties to a dispute may seek a solution by submitting the dispute to a pre-constituted international court or tribunal composed of independent Judges whose tasks are to settle claims on the basis of international law and render decisions which are binding upon the parties. This method is generally referred to as Judicial Settlement, which constitutes one of the means of the peaceful settlement of International disputes set out in Article 33 of the charter of the United Nations.[77]

(1) **The Permanent Court of International Justice.**

The first International court of a world – wide scale was the permanent court of international justice, which was created by the covenant of the league of Nations. Article 14 of the league covenant authorised the league council to formulate plans for a permanent court of international Justice. A statute was adopted in 1920 and the court came into being in 1921 with its seat at The Hague where the permanent court of Arbitration was also situated. It decided disputes submitted to it by states and gave advisory opinions that the council or the Assembly of the league might seek.[78]

---

[70] S. C. McCaffrey, (n 29), P. 288
[71] A. Kaczorowska, (n 20), P. 352
[72] *The Western Griqualand and Diamond Deposit Case, 1871, Lapradalle et Politis, 2 Recueil des arbitrages International, P. 676*
[73] *North – East Boundaries Case* (US-Canada) 1 Moore Int. Arbitration, 199, 133 – 4.
[74] *Orinoco Steamship Co. Case* (US – Venezuela) 11, RIAA 227
[75] *Case Concerning the Arbitral Award of the King of Spain* ICJ Rep. 1960, 188, 216
[76] *Schreck Case,* 2 Moore Int. Arbitrations 1357
[77] United Nations Handbook on the Peaceful Settlement of Disputes between States. (n 41) P. 66
[78] U. O. Umozurike, (n 25) P. 193

The PCIJ was however, not an integral part of the league and a member of the league did not automatically subscribe to the statute. The court decided 29 contentious cases and gave 27 advisory opinions between 1922 and 1940. It moved to Geneva in 1940 as a result of the war and sat for the last time in October 1945. It was formally dissolved in April 1946 and was succeeded by the International Court of Justice.[79]

(2) **The International Court of Justice**

The International Court of Justice was established at the same time as the United Nation, in 1945. The court's statute[80] or constitution, is based on that of its predecessor, the permanent court of International Justice and forms an integral part of the (UN) charter. Members of the United Nation are automatically parties to the court's statute.[81] The few states that are non-members of the UN can also become parties since the statute is a distinct Treaty.[82] The court is located in The Hague, Netherlands.

The International Court of Justice is established by the UN charter as the principal judicial organ of the United Nations. Its fifteen Judges are elected concurrently by the Security Council and the General Assembly. Only state parties may be parties in cases before the court.[83] That bold statement reflects the traditional view that only states are subject of International law. International organization and even individuals and corporations may be affected by Judgements or advisory opinions of the court, but they may not be parties to the cases, as such.[84] The court has both contentious and advisory Jurisdiction. That is, it may hear adversarial cases between states or give advisory opinions at the request of a properly authorized organ or agency of the United Nations.[85] The Court's Judgement are binding on the parties. Article 94 of the UN Charter provides that: Each member of the United Nation undertakes to comply with the decision of the International Court of Justice in any case to which it is a party,[86] in case a state fails to do so, the other party may have recourse to the Security Council which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the Judgement.[87] I.C.J Judgements are final and without appeal.[88] This does not prevent the parties, or one of them, from requesting an additional Judgement from the court.[89]

g) **Regional Agencies**

Article 33 of the UN charter also made mention of 'resort to regional agencies or arrangements' among the peaceful means by which states parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and Security, shall seek a solution to a dispute. Further to their being mentioned in Article 33 of the charter, regional agencies or arrangements are dealt with in chapter viii of the charter, and more specifically, as regards peaceful settlement of disputes in Article 52 thereof.[90] The UN's Dispute Settlement Manual

---

[79] *Ibid*
[80] Statute of the International Court of Justice, 26 June 1945
[81] Art. 93 (1) of the UN Charter
[82] Art. 93 (2) of the UN charter
[83] Art. 34 of the Statute of the ICJ
[84] S.C. McCaffrey, (n 20), P. 290
[85] *Ibid*
[86] Art. 94 (1) of the UN Charter
[87] Art. (94 (2) of the UN Charter
[88] Art 60 of the Statute of the ICJ
[89] S.C McCaffrey, (n 20), P. 293
[90] United Nations Handbook on the Peaceful Settlement of Disputes between States. (n 41) p. 81

describes the resolution Mechanisms and procedures of the Arab league, the organization of American states, the organization of African Unity. (now re-constituted as African Union), the Council of Europe, the Conference on security and cooperation in Europe, (now the organizations for Security and cooperation in Europe, or OSCE), the Europeans Communities (now European Union), and the Economic Community of West African States (ECOWAS). Also mentioned are the European and American human rights systems, as well as the African charter on Human and peoples Right. If an agreement is unsuccessfully brokered by the regional body, the dispute may be referred to the Security Council.[91]

h) **Other Peaceful Means**

The list of means for the peaceful settlement of disputes contained in Article 33, paragraph 1, of the charter of the United Nation is completed by the phrase 'other peaceful means.' These words indicate that the list found in that Article is not exhaustive, but is illustrative only.[92] The UN Dispute Settlement Manual Describes three categories of measures that qualify as other peaceful means. They are:

a. Those constituting entirely novel means which are not adaptations or combinations of the familiar means of settlement.
b. Those constituting adaptation of one of the familiar means of settlement; and
c. Those constituting combinations in the work of a single organ charged with resolving the dispute of two or more of the familiar means of settlement.[93]

4. Some Reflection on the Uniqueness of Arbitration over other UN Recommended Methods of Peaceful Settlement.

On a practical level, the use of arbitration as a means of dispute settlement has contributed greatly to the peaceful resolution of disputes between states, as well as the development of International law.[94] Its contribution has been felt more readily in specific areas, such as state responsibility and maritime delimitation, but the fact that many states prefer it to ICJ settlement if a dispute cannot be settled by negotiation.[95] The prevalence of arbitral awards and procedures testifies to the success that this form of dispute settlement enjoys within the international community. It has the same advantages as settlement by the international court, in that its award are binding and made on the basis of international law, plus the added advantage that states are reassured by the fact that they can nominate arbitrators of their own choice.[96] It is flexible and so parties can choose approach that best suits them.

In arbitration proceedings, the parties may choose the arbitrators or Judges. Unlike disputes submitted to the International Court of Justice where there is a pre-constituted panel and which the composition is not subject to control by the parties to the dispute. Parties to arbitration have direct control over both the composition of the panel and its procedure. This ensures that the panel enjoys the confidence of the parties and to the force of its final award. The arbitration awards are legally binding on the parties. Since parties have more control over the process, they are usually satisfied with the outcome. Once a state has committed itself to arbitration, it is under a legal obligation to give effect to the result. In fact, despite the absence of enforcement

[91] R. Mani and R. Ponzio, (n 22) P. 7
[92] United Nations Handbook on the Peaceful Settlement of Disputes between States. (n 41) P. 98
[93] *Ibid*
[94] M. Dixon, (n 14), P. 269
[95] *Ibid*
[96] *Ibid*

machinery, the majority of arbitral awards are adhered to by states.[97] All other peaceful dispute settlement mechanisms or measures recommended in Article 33 (1) of the charter except adjudication through the International Court of Justice do not provide for any means of making its decision binding on states. The parties to them are under no legal obligation to accept the proposals of settlement suggested by them. So states often resile at will from decision arrived at painstakingly owing to their non-binding effect. Arbitration leads to a more effective use of experts in the resolution of disputes.

5. Conclusion and Recommendation

International law imposes an obligation to settle disputes by peaceful means, but unless the parties have agreed, there is no obligation to resort to any specific mechanisms.[98]

States can choose between diplomatic and judicial means. The first ones include a whole garment of procedures, with the difference among them not always clear-cut.[99] What characterizes all the diplomatic means is the lack of binding effect of the report which may be prepared at the end of the process, and the possibility to take into consideration all the relevant circumstances.[100] In the case of the arbitration, once the tribunal has made its decision that decision is binding on the parties and has to be implemented. Arbitration is more flexible and can better be adopted to the wishes of the state's parties to the dispute, in particular with regard to the choice of the arbitrators and the rules to be applied.[101] On the contrary, proceedings at the international court are certainly more rigid, time consuming and demanding. It is therefore pertinent to propose that considering the advantages of arbitration over other means of dispute settlement between states recommended in Article 33 (1), arbitration should be the preferred option of choice in the peaceful settlement of disputes between states. Hence, this paper recommend that every international Treaty should be drafted with clear provision for arbitration as a preferred dispute resolution mechanism.

[97] *Ibid*
[98] A. M. Hamza and M. Todorovic, (n 9) P. 16
[99] *Ibid*
[100] *Ibid*
[101] *Ibid*