

LECTURE FOUR

CONFLICTS WITHIN INTERNATIONAL LAW

- Substantive Rules of International Law :
- The settlement of Disputes :
- Limitation of Force :
- Classification of laws of force.

There are two peculiar features of International Law :

- 1). The Phenomenon of Auto Interpretation : If there is a dispute as to the interpretation of a law under International Customary Law there is no guaranteed way of settlement in the absence of an authoritative third party. There is no compulsory system of International adjudication. Jurisprudence depends on the consent of the state.
- 2) There is no obligation to resort to any specific means of settlement of disputes in International Law.

See in particular *The Eastern Carelia Case*. E.C.I.J. 1923. Green p106 and contrast the adjudications in international law in relation to Unorganised & Organised International society. Unorganised International Law refers to the period predating the creation of International institutions for the settlement of International Law i.e. pre League of Nations and the U.N. etc.

Ways peaceful settlement of disputes can be brought about

- 1) Third party settlement on terms dictated by a non - party to the dispute arbitration : judicial settlement.
- 2) By persuading the disputing parties to meet and agree on terms themselves Good Offices : Mediation : Conciliation. Good Offices are offered when a third party tries to persuade the disputing parties to settle themselves. Mediation is where a 3rd party takes part in the negotiations eg The Dashkent Agreement mediated by the Soviet P.M.

Disputant states often resent outside interference or at least the strongest party tends to as can be seen by Serbia's indifference to the UN except when it uses force whilst the Bosnian's claim to want UN help to reach a settlement. Under The Hague Convention it was provided for specific settlements of International disputes between 1899 - 1907 and it was regarded as desirable that the powers to a dispute should be offered good offices and mediation which would not to be regarded as an unfriendly act by virtue of Articles 2 & 3.

Conciliation is according to Oppenheim the process of settling a dispute by referring it to a commission of persons whose task is to elucidate facts, make a report and proposals for a settlement. The proposals would not have the binding character of an award or judgement. See *The Dogger Bank Dispute* between the U.K. v Russia 1904. During the Russo / Japanese war the Russians shot up a British fishing vessel fearing it contained Japanese spies. This can only be accounted for by an irrational national paranoia in Russia.

Peace Commissions : 1914.

Permanent Conciliatory Commission : The Macardo Treaties : 1925.

These were not successful. Now Art 284 U.N.C.L.O.S. 1982 provides for conciliation for disputes over continental boundaries where parties not prepared to accept I.C.J. binding judgments. Their outcomes are merely recommendations.

The implications in all these methods is that on times disputes require a cooling off period which is provided by following the procedures of The League of Nations and The U.N. etc. which whilst they do not actually

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resolve anything enable the sting to be taken out of events so that ultimately common sense can prevail in as much as most nations ultimately need to be able to conduct business in a world community.

The League System.

- Art 12 Members agree to submit disputes likely to lead to rupture either to arbitration or P.C.I.J. or to an inquiry by the League Council ie conciliation and parties agreed not to go to war for three months after judgment or award on the report. There was no prohibition to wage war after three months.
- Art 13 Disputes generally suitable for arbitration (now Art 36 I.C.J.) : states agree to carry out the judgment in good faith : not to go to war against a party who has complied. If not complied with Council should propose what measures should be taken.
- Art 15 Referral to League Council : attempts to effect a settlement and prepare a report. If the Council is unsuccessful it makes a report and recommendations deemed just & proper. If report unanimous - not binding on the parties - but the members agreed not to go to war with any party agreeing with the recommendations. If a majority report the league members reserved the right to take such action as they considered necessary to maintain right and justice. A fragile restraint on war !
- Art 16 League sanctions if a neighbour should go to war in disregard of his covenants under 12 - 13 & 15. Left to each member to determine whether sanctions has arisen. The council could recommend co-ordination of such sanctions but had no binding power and no provision for further sanctions.

The U.N. Charter.

Chapter 6 : Settlement of disputes.

- XXIV Places on security council the Primary Responsibility for maintenance of peace and security and acts on behalf of U.N. members in this respect.
- XXV Members of the U.N. accept to carry out DECISIONS of the U.N.
- Does this only apply to DECISIONS under Chapter 7 : or is there a wider application ? The U.K. felt that it only applied to Chapter 7 : See Namibia Advisory Opinion of U.N. 1971 I.C.J. 52 - 53. View : Every security council statement must be scrutinised regarding decisions under the U.N. : Namibia advice : Held : Binding under Art XXV. The Court has so advised : Compare the difference between binding decisions and mere opinions.

Compare the relative power difference under Chapter 6 (Specific settlement) and action regarding peace and aggression under Chapter 7.

Chapter 6. Development of a principle of the U.N.

- 2(3) All members shall settle International disputes by peaceful means : not to endanger International peace and security : clear obligation : but no means specified.
- 33(1) Parties to any dispute : Covers traditional means of settlement : No method specified : Method is optional.
- 33(2) Security council can call on parties to settle a dispute : A recommendation But not how to settle.
- 36 The Security Council can investigate disputes to see if they threaten peace via the Secretary General of the U.N. Compare the situation where there is an actual dispute and merely a tense situation.
- 35 Any member can bring a dispute to the attention of the Security Council or the General Assembly.

Non members can also bring a dispute to which it is involved to the Security Council or the General Assembly if it agrees to be bound.

The General Assembly findings are covered by Articles 12 & 13. What is the scope of General Assembly regarding specific dispute settlement ?

- 11(1) General assembly is to consider the principles of disarmament and may make recommendations.
- 11(2) General assembly may discuss questions threatening peace and except as under Art 12 may make representations to the states or Security Council. Such action shall be referred to the General Assembly.

PUBLIC INTERNATIONAL LAW

The Expenses Cases (Of the U.N.) regarding Art 17(2) in respect of the budget. General Assembly is to consider budget and the expenses apportioned by the General assembly to each nation.

Peace keeping forces in Egypt and Congo. Expenses were equally apportioned between all states. France & U.S.S.R. were unwilling to pay. The General assembly had exceeded its authority they claimed and therefore they were not liable. They claimed that only the Security Council could mount a peace keeping force The dispute was referred to the I.C.J. 1962 : pp162 - 165. (especially 164 - 165)

" .. by art 17..... coercive or enforcement action" ie General assembly has powers to organise peace force but not an enforcement which is reserved for the security council. A peace keeping force requires consent and a request from the belligerent parties.

36(1) Security council may recommend proceedings - methods of enforcement.

36(3) and make recommendations but legal disputes go to I.C.J. Recommendations are merely persuasive and not binding.

37 In the event of a failure to settle there may be a reference to the security council. If the dispute endangers peace there is a choice of action under art 36. This is fairly meaningless in the face of mere recommendations or to recommend terms of settlement which they deem appropriate.

36(2) If a recommendation is agreed to be binding it can be otherwise as in the Corfu Channel Case between the U.K. & Romania. there is no ruling and a settlement is otherwise made which is obiter and not binding.