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Role in International Law International Dispute Settlement

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Abstract:
The role of international law in resolving disputes International disputes include, first, international law does not merely require that a peaceful solution, but also gave the broadest freedom to the state-states to implement or utilize the existing dispute settlement mechanism, both contained in the UN Charter , treaty or an international convention which states that dispute have bound themselves, the second International law empowers the parties to choose a way of solving the dispute, in the sense that international law is not absolute, meaning that the role and application of international law in resolving the dispute is not a a major thing. To resolve the dispute and achieve a satisfactory or fair as possible the conflicting parties do not need to apply international law. International law realized that other means chosen by the parties, such as negotiation, mediation, conciliation, and others is the recommended way first.

Keywords: *International Law, Dispute Resolution*

1. Introduction

International relations are held interstate, state and the individual, or country dnegan International organizations are not always well maintained. Often the relationship arising from the dispute between them. Disputes can originate from a variety of sources of potential disputes. A potential source of disputes between countries can be borders, natural resources, environmental degradation, trade, and others. If such case it happens, international law plays no small role in the settlement.

Remedies against International law has become important enough concern in the international community since the beginning of the 20th century. These efforts are aimed at creating a better interstate relations based on the principles of international peace and security. The role played by international law in the settlement of disputes International is giving way how the disputing parties resolve disputes according to international law. In the early development of international law recognize two ways, namely the completion of settlement in peace and war (military).

How the war to settle the dispute is the way that has been recognized and practiced for a long time. The war has also been used by countries to enforce their rights and their understanding of the rules of international law. Even wars have also been used as one manifestation of a sovereign state action.

Even scholars aware of the practices of countries that still use violence to resolve disputes or wars today, conversely peaceful means have not been seen as the rules followed in the life or the relationship between countries. In a later development, with the growing military power and the development of weapons technology of mass destruction, the international community increasingly aware of the magnitude of the hazards of war, so they try to keep this way be eliminated or at least restricted in use. A dispute is not a dispute under the law Interansional if the settlement does not have an effect on relations between the two sides.

There are two kinds of International disputes that legal disputes and political disputes. Known legal dispute when the dispute can or may be submitted and resolved by the International Court.

International disputes theoretically in principle always be resolved by the International Court. No matter how difficult a dispute where there are no settings, an International court can decide that seem to rely on the principle of appropriateness and feasibility.

In essence there are a lot of disputes that can be submitted and will most likely be resolved by the International Court, but for one or two countries are reluctant to hand it over to the court, the court becomes not authorized trial. In this case the legal basis for the court to exercise its jurisdiction is agreement between the parties to the dispute.

2. Role of International Law: Hague Conference in 1899 and 1907

Today International law has a major role in resolving disputes and International. In principle, international law seeks to inter-state relations established through bonds of friendship and does not expect any disputes. International law provides the basic principles to the countries in dispute to resolve disputes. International law provides a free choice to the parties on how, procedures and measures taken to resolve disputes seyogianyanya. Modern international law solely for advocating peaceful settlement, whether dispute the nature of interstate or countries with other international legal subjects. International law does not recommend at all manner of violence or war.

Development of international law in regulating the ways of peaceful resolution of disputes was first formally organized since the convening of the Hague Peace Conference (the Hague Peace Conference) on the Pacific Settlent of International Disputes of 1907.
Hague Peace Conference this important initiative stems from the Russian Tsar Nicholas II In the Year 1898. He suggested the need for organized a conference that aims to reduce the number of weapons or at least discuss the possibility of ending the progressive development of weaponry.
Hague Peace Conference of 1899 and 1907 has two important meanings, namely:
a. Conferences provide an important contribution to the law of war (international humanitarian law now)
b. Conferences provide an important contribution to the rules of peaceful resolution of disputes between countries.
Based on the two conventions The Hague regarding this international dispute settlement, the states (members) make every effort to resolve international disputes peacefully. For this purpose, along keadan still permit or allow, the parties agreed to submit their dispute to the good offices, mediation, or a commission of inquiry to resolve their disputes (diplomatic).
Events diplomatic means have failed, the submission of disputes to arbitration newly allowed. Under Article 38 of the Hague Convention, 1907, submission of the dispute to arbitration because nature does not force the submission to the agency will be done when the situation allows.
The results of the conference above do not provide an obligation to the participating countries to resolve disputes through peaceful means. According to Ion Diaconu results are rekomendat if mere convention.
Progress, then follow with the ratification of international treaties following:
1. The convention for the pasicif covenant of the league of nations 1919
2. The statue of the permanent court of international justice (Statute of the Permanent International Court of Justice) 1921
3. The general treaty for the renunciation of war in 1928
4. The general act for the pacific settlement of international Disputes 1928
5. The United Nations Charter and the Statute of the International Court of Justice (1945)
6. Declaration of Bandung (Bandung Declaration) in 1955, which among other things, states, of all Disputes Settlement by peaceful means such as negotiations as well as other peaceful means of the parties, own choice iin conformity with the United Nations Charter.
7. The Declaration of the United Nations on Principles of International law concerning with the Charter of the United Nations dated October 24, 1970
8. The Manila Declaration on the Peaceful Settlement of Disputes between states, 15 November 1982.
Manila Declaration or the Manila Declaration is the result of the initiative and efforts of the UN General Assembly in using peaceful means of dispute resolution. Manila declaration states in part:
1. It is the obligation of States to the dispute to find a way in good faith, and the spirit of cooperation, resolve international disputes as quickly as possible and as fairly as possible.
2. States shall also take into consideration the important role played by the General Assembly, Security Council, International Court of Justice and the UN General Sekretartis in resolving a dispute.
3. The Declaration also stated their various ways to dimaninkan by the organs of the UN to help the parties reach a settlement of their dispute.
In 1988, the General Assembly decided to add to the Manila Declaration with other declarations, namely the 1988 Declaration on the Prevention and Removal of Disputes and Disputes and Situations roomates May Threaten International Peace and Security and on the Role of the United Nations in This Field. This Declaration establishes special measures must be taken to prevent the Security Council of any dispute to be a threat to the peace and promote the use of peaceful resolution of disputes.
An important development in international law is the stipulation years 1990-1999 as the UN Decade of International Law by the General Assembly in 1989. In a statement, the General Assembly reiterated that the main goal of the decade of international law is to promote ways or methods of resolving disputes between countries, including submission of disputes and respect for the ICJ.
Today the international law has set minimum obligations on all countries (members of the UN) to settle international disputes peacefully. This provision expressly especially in chapters 1, 2 and 33 of the Charter.
According to Levy nature of these obligations has become a universal international law. That obligation requires that countries should resolve disputes by peaceful means in such a manner that international peace and international condemnation and justice are not endangered.
Although it is already universal, this obligation does not mean absolutely binding on the state. State is the only subject of international law that has full sovereignty. He is the subject of international law par excellence.
Because it is a country although subject to the obligation of peaceful settlement of disputes, he still has full authority to determine ways or methods of dispute settlement. That obligation remains subject to the agreement (consensus) of the country concerned. Permanent International Court of Justice in a dispute Status of Eastern Carelia (1923) states:
"It will well established in international law that no state can, without its consent, be compelled to submit its Disputes with other states either to mediation or to arbitration or to any other kind of pacific settlement."

3. Dispute Resolution in the UN Charter

One objective of the establishment of the United Nations is to maintain international peace and security. This is evident in 1ayat Article 1 of the UN Charter:

"To maintain international peace and security, and to that end, to take effective collective measures for the prevention and removal of threats to the peace, and to bring about by peaceful means, and in comformity with the principles of justice and international law, adjustment or settlement of international Disputes or situations roomates MIGHT lead to a breach of peace ".

From the article is a function of the world body and its member states, which is to jointly create and encourage the settlement of international disputes. Particularly to its member countries. Article 2 (3) charter provides further settings in order to implement and achieve these goals. This article obliges all member states to pursue ways of peaceful resolution of disputes. Article 2, paragraph (3) of this very important states: "All members shall settle international Disputes by peacefull means in such a manner that international peace and security are not endangered.

Other obligations contained in the Charter contained in Article 2 (4). This article asserts that in international relations, all countries should refrain from the use of violent means is a threat and use of weapons against another country or in ways that do not conform with the objectives of the United Nations. Article 2 (4) asserts: "All members shall refrain in their international relations from the threat or use of force againts the territorial integrity or political independence of any state or in any manner inconsistent with the purpose of the United Nations".

What should be emphasized of the two obligations set out in the second paragraph above, namely the obligation to refrain from using the means of violence or threat of violence. Both of these obligations must be seen to stand alone.

The UN Charter does not require the obligation of States under Article 2 paragraph (3) to refrain from use of force or threat of force as required in Article 2 (4). In other words, the obligation contained in paragraph (3) is not the result or consequence of the obligation contained in paragraph (4).

Instead charter establishes the obligation of the members to resolve disputes by peaceful means as a rule stand-alone and as a rule base (fundamental) of the UN. Hence the obligations of Article 2 paragraph (3) shall not be regarded as an obligation that is passive. Such obligations are fulfilled when the countries concerned restrain himself not to use violence or threats of violence.

Article 2 (3), as expressed in the provisions requiring states to participate actively and in good faith resolve their disputes peacefully in such a manner that international peace and security and justice are not endangered.

Especially with regard to the principle of the prohibition of the use of violent means or that are not peaceful, though written in the UN Charter, but in its development then no longer solely binding on UN member states. According to the Commission of international law, the principle of prohibition or the use of violence as expressed in the charter is already a common international law whose application is already universal.

The obligation to resolve the dispute peacefully is further explained by the Article 33 of the UN Charter. This Article states: "The parties to a persengketaaan that seems the dispute would endanger international peace and security, should first of all seek a solution by negotiation (negotiation), inquiry, mediation, conciliation, arbitration, court, handed it to organizations or regional bodies, or some other means of peaceful settlement of their choosing.

4. Principles of Peaceful Settlement

The principles of the International dispute resolution, among others:

4.1. The Principle of Good Faith (Good Faith)

The principle of good faith can be regarded as a fundamental principle and most central in resolving disputes between nations. This principle requires and obliges the good faith of the parties in resolving disputes. No wonder if this principle is listed as the first principle (early) contained in Manila Declaration (Section I Paragraph)

In the Treaty of Amity and Cooperation in Southeast Asia (Bali Concord 1976), the requirements of good faith as well placed as the main requirement of Article 13Bali Concord states: The high contracting parties shall have the determination and good faith to Prevent Disputes Arising from.

In the resolution of the dispute, this principle is reflected in two stages. The first principle of good faith required to prevent disputes that can affect the good relations antarnegara. Kedua, these principles are required to be present when the parties to resolve disputes through means of dispute resolution that is known in international law, namely negotiation, mediation, conciliation, arbitration, court or other means selected by the parties. In this regard, Section I Paragraph 5 Manila Declaration requires the principle of good faith in an effort to reach a resolution of disputes in a timely fashion (faster).

4.2. Prohibition of the Use of Force Principle in Dispute Resolution

This principle is also very central and important. This principle prohibits the parties to resolve disputes using weapons (violence). This principle is contained inter alia in Article 13 and the Preamble to the Bali Concord 4 the Manila Declaration.

Article 13 confirms the Bali Concord include:

In CACE of Disputes Directly on matters affecting them, they shall refrain from the threat or use of forece and shall at all times settle such Disputes among Themselves friendly through negotiations.

In various other international treaties, this principle appears in Article 5 Pact of the League of Arab States in 1945 (Pact of the League of Arab States), Articles 1 and 2 of the Inter-American Treaty of Reciprocal Assistance (1947) and others.

4.3. The Principle of Freedom to choose Ways Settlement

Another important principle is the principle by which the parties have complete freedom to define and choose how or the mechanics of how the dispute resolved (Principle of Free Choice of Means).

This principle contained in Article 33 paragraph (1) of the UN Charter and Section 1 Paragraph 3 and 10 to the Manila Declaration and Paragraph 5 of the Friendly Relations Declaration. The legal instruments confirms that the submission of disputes and dispute resolution procedures or ways of resolving disputes should be based free will of the parties. This freedom applies both to disputes that have occurred or dispute to come.

4.4. Principles of Freedom of Choice Will Be Applied Against Law Dispute Principal

The next fundamental principle which is very important is the principle of the freedom of the parties to decide for themselves what laws will be applied when the dispute resolved by the judiciary. Freedom of the parties to determine this law, including the freedom to choose a fit and proper (ex aequo e bono). The latter is the source for the court to decide the dispute based on the principle of fairness, decency, or appropriateness.

In disputes between countries, it is unusual for an international tribunal, such as the International Court to apply international law, although the application of international law is not explicitly stated by the parties. In the Special Agreement between Indonesia and Malaysia regarding the submission of Sipadan-Ligitan dispute to the International Court, the parties stated:

The principles and rules of international law applicable to the dispute shall be Recognized Reviews those in the provisions of article 38 of the Statute of the Court ... (Article 4 Special Agreement).

4.5. The Principle of Agreement the Disputing Parties (consensus)

The principle of agreement between the parties is a fundamental principle in international dispute resolution. This principle is the basis for the implementation of the principle of the 3rd and 4th. Principles 3 and 4 will only be carried out or be realized when there is an agreement of the parties.

On the contrary the principle of freedom of 3 and 4 would not be running if the agreement only two of either party or no agreement at all on both sides.

4.6. Principle Exhaustin of Local Remedies

This principle is contained in Section 1 Paragraph 10 the Manila Declaration. According to this principle, before the parties submit the dispute to an international court dispute resolution measures provided or granted by the country's national laws must first be taken (xhausted). In the dispute over the Interhandel (1959). International Court of Justice affirmed: "Before resort may be had to an international court, the state where the violations occored should have an opportunity to redress it by its own means, within the framework of its own domestic legal system".

4.7. Principles of International Law on Sovereignty Independence and Integrity Region Countries

Manila Declaration to include this principle in Section 1 Paragraph 1. This principle requires states to the conflict to continue to abide by and implement its international obligations relating to each other based on fundamental principles of territorial integrity of states.

In addition to the seven principles above, the Legal Affairs Office of the United Nations sets out principles only other character in these principles, namely:

a. Principle larangna well intervention to the problem of domestic or foreign parties
b. The principle of equal rights and self-determination
c. The principle of sovereign equality of states
d. The principle of independence and international law is merely a further incarnation of the principle of the 7th namely the principles of international law concerning the sovereignty, independence, and territorial integrity of states.

5. Through the UN International Dispute Resolution

In fostering peace and international security, the United Nations has four treatment groups, respectively actions are interrelated and the implementation of which requires the support of all UN member states to be realized. The fourth group of these actions are as follows:

5.1. Preventie Diplomacy

Preventie Diplomacy is an action to prevent the emergence of a dispute between the parties, prevent the spread of a dispute, or limit the expansion of a dispute. This can be done by UN Secretary General, Security Council, General Assembly or Regional Organisations cooperating with the UN. For example the efforts made by UN Secretary General Kofi Annan in preventing the US-Iraq conflict into open dispute about Iraq's reluctance to allow UNSCOM examine allegations of biological weapons or mass destruction hidden in Iraq.

5.2. Making Peace

Peace making is the act of bringing the parties to the dispute to agree with each other, especially through peaceful means as contained in Chapter VI of the UN Charter. The purpose of the UN in this case is between the task of preventing conflicts and keep the peace. Between these two tasks there is a duty to try to bring the disputing parties to the agreement by peaceful means. Duties and role here,

the Security Council only memberkan recommendations or proposals regarding the manner or method of settlement right after consider nature of the dispute.

5.3. Peace Keeping

Peace-keeping is an act to direct UN presence in peacekeeping by agreement of the parties concerned. The UN usually send military personnel, United Nations police and civilian personnel. Despite the military nature, but they are not combatants or armed forces (army).

This method is a technique adopted to prevent conflict and to build peace. Peace keeping is the "discovery" of the UN. Since it was first established. Peace Keeping has created significant stability in conflict areas. From 1945 to 1992 the United Nations has established 26 peace keeping operations. Until January 1992, the UN has deployed 528,000 military personnel, police and civilians. They have devoted their lives under the UN flag. About 800 of this amount came from 43 countries have been killed in their duties.

5.4. Peace Building

Peace building is action to identify and support structures in place to strengthen peace in order to prevent a conflict that has reconciled turns back into conflict. Peace building born after the conflict. This can be a concrete cooperation projects that link two or more countries favorable among them. It thus does not only contribute to the economic and social development, but also foster trust which is a fundamental condition for peace.

5.5. Peace Enforcement

In addition to these four Latin American scholars, Eduardo Jimenez de Arechaga, introduces another term, namely Peace Enforcement (peace enforcement). What is meant by this term is the authority of the Security Council by the Charter to determine the existence of an act which constitutes a threat to peace or the existence of an act of aggression. In the face of this situation under Article 41 of the Charter, the Board is authorized to decide the application of economic sanctions, political or military.

Examples of application of these sanctions, the Security Council's decision of November 4, 1977. This decision was wearing an arms embargo against South Afriika under Chapter VII of the Charter in connection with the country's policy occupying Namibia (UNSC Res. 418/1971)

As contained in Article 33 paragraph 1 of the Charter which states that the parties to the dispute "shall, first of all, seek a resolution by negotiation" ... (must first resolve disputes by negotiation ..), implied that the submission of the dispute to the organ or UN agencies simply "reserve" and not the main way to resolve a dispute.

However, that provision is not interpreted should that when the dispute was born, neither party may refer the dispute directly to the United Nations before all means of dispute resolution that is already running. Practice shows that the main organs of the UN can directly handle a dispute if the UN considers that a dispute had threatened international peace and security.

The main organs of the United Nations under Chapter III (Article 7, paragraph 1) of the UN Charter consists of the General Assembly, Security Council, ECOSOC, the Transitional Council. International Court of Justice and the Secretariat. These organs play an important role in implementing the objectives and principles of the United Nations, particularly in maintaining international peace and security. For this purpose, these organs play a role in seeking a peaceful settlement of international disputes in accordance with the principles of justice and international law.

6. Ways Settlement

Submission of the dispute to imuatnya setting bodies or regional settings (based on Article 33 of the Charter). Intended to provide an alternative to the parties to the dispute amicably menyelesaiakn. Therefore the submission of disputes such as this depends on the agreement of the parties to resolve the dispute.

Usually the charge of dispute resolution agreement within the regional organization is not much different from the dispute settlement arrangements in Article 33 of the Charter, especially regarding various alternative means of dispute resolution that may be utilized by the parties. The means of dispute resolution adopting common are negotiation, mediation, investigation and conciliation, as well as the deployment of security forces.

6.1. Negotiations

One of the roles or caran that can be done by a regional organization that is encouraging the parties to reach an agreement through negotiated settlements. For example in 1961, NATO facilitate the relationship between the UK and Iceland maintained with regard to the dispute between the two countries on the status of the fishery 12-mile path iceland.

6.2. Good Offices

egional international organizations that provide services both in efforts to resolve the dispute is the OAU (Organization of African Unity). In the border dispute between Algeria and Morocco in 1963, the OAU establish an ad hoc committee. The Commission held meetings with the parties. In this function the commission finally managed to push the agreement of the parties to resolve sengketanaya. In this case the parties finally agreed to withdraw its troops each from the conflict areas to restore the prisoners and to restore diplomatic relations.

6.3. Mediation

The role of mediation, it appears for example in the dispute between Tanzania and Uganda in 1972. In the dispute, Tanzania invaded Uganda. Uganda responded with some bombed the villages around the border with Tanzania. With the help of the OAU, the President of Somalia intervened as a mediator. This intervention succeeded in persuading the two countries to a ceasefire, negotiate and withdraw their respective troops and is willing to respect the sovereignty of each. Ultimately ties back to normal.

6.4. Fact Finding and Conciliation

A regional organization can also be a double role, both as a fact-finding and conciliator at the same time. One classic example is the dispute between Bolivia-Paraguay border of the two countries. To investigate the dispute, a commission called the Chaco Commission established by the Conference of American States (the conference of American States) in 1929. The task of the commission, among others for facts on disputes and performs the function of conciliation. The Commission managed to bring the two countries reached an agreement and end to its dispute settlement.

6.5. Peacekeeping Operations

Regional international organizations sometimes can also establish a Peace Keeping Operation in order to prevent a widespread conflict and / or grant settlement on the dispute. One example is the CIS (Commonwealth Independent States). Formed in 1991. The CIS member states members of the former province of the Soviet Union has been instrumental in rolling out important operations such as these. For example CIS has sent troops to several former conflict areas of the Soviet Union, one of which Georgia, which experienced a civil war. The deployment is successfully creating gencanan weapons and peace in May 1994 in the territory of Georgia.

7. Conclusion

International disputes theoretically in principle always be settled by an international court. No matter how difficult a dispute where there are no settings, an international court can decide that seem to rely on the principle of appropriateness and feasibility (ex aequo et bono). In essence, many settled by an international court, but because one or two countries are reluctant to hand it over to the court, the court becomes not authorized trial. In this case the legal basis for the court to exercise its jurisdiction is agreement between the parties to the dispute. The support of the entire international community to jointly resolve an international dispute is a fundamental factor is decisive.

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