

THE SETTLEMENT OF TERRITORIAL DISPUTES AMONG COUNTRIES IN THE PERSPECTIVE OF INTERNATIONAL LAW AND OTHER ASPECTS

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ABSTRACT

International law is a set of international rules originated from agreements or conventions among countries that is justified as a legal norm to maintain secure relationships, friendships, and sovereignty respect among states. Adversely, acquisition of territory by disputes remains an unsolved matter in international relations until this recent era. Consequently, the theme of research required an international law's perspective on settlement of territorial disputes which is the biggest matter that generates an international relationships convulsion among states in the past and even in this recent world as well. The authors hereby divided the discussion on this research into two big parts: first, different methods of disputes resolutions in the view of International law, which subdivided into two small parts a) legal binding resolution and b) Non-legal binding resolution, and second, the trends of international law and capability of international organization on settlement of disputes recently, divided into different parts a) Choice of methods, b) Partiality and favoritism in adjudication of decision-making and c) Deficiency of UN's organs. At the end, the conclusion presented are reform plan towards an effective solution on resolution of territorial disputes. Further, this paper compiled UN views through different cases and legal comparisons towards a new perspective on how to settle territorial disputes efficiently and challenges of international law. Thus, this research is intended to be published as an accurate perspective on settlement of territorial disputes across the world, especially to countries which need it.

Keywords: disputes settlement, territorial disputes among countries, International law and other aspects, legal binding resolution, and non-legal binding resolution.

A. Introduction

Recently, settlement of territorial disputes becomes a broad subject in the perspective of international law. Unfortunately, this predicament is faced by many countries around the world. . Such trend has a significant meaning in the international society, by the fact that it is related to fundamental rights of states, sovereignty, and also international peace. Territorial disputes are major cause of wars and terrorism as states often try to assert their sovereignty over a territory through invasion. Apparently, the international organization does not encourage the use of force by a state to annex the territory of another state, set forth by United Nations Charter¹ in Article 2 (4) mentions: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". International laws have been significantly affirmed by the rules related to inviolability of sovereignty over territory. Set forth in Montevideo convention of 1933 on rights and duty of state, that every State shall have its population, governance and delimited territory with entire sovereignty, namely other States are prohibited to penetrate without permission from the territory owner.

By simple determination, there are discrete reasons why bring about proliferation of territorial litigations such as a geographic situation, culture, economic resources, and the emergence of new State whether by self-determination or by the reasons determined by customary law. Between territorial dispute and boundary, the main causes of disputes are the disagreements over the acquisition of the territory. The acquisition of territory is referred internationally on several reasons such as, the occupation of Terra nullius; prescription; cession; accretion and by conquest over the land territory especially and which can inflict the possession of the sea territory. In further case, territorial disputes have often been the result of vague and unclear language in a treaty that set up the original boundaries, which justifies the reasons why charter of United Nations warns its member to respect the mutual understanding of situations that tend to generate military conflicts and does not support the use of force by one state to annex the territory of another state. Additionally, the UN Charter also states that all Members shall refrain their international relations from the threat or use of force against the territorial integrity or political independence of any states, or in any other manner inconsistent with the Purposes of the United Nations.

¹ The international organization that has perfect rules and organs in handling most disputes in international relations and its rules bind all member states, which recently consist of 192 states. It has set forth in article 38 all methods that can be used in resolving international disputes particularly the territorial disputes.

Historically, most of the wars and crisis across the world in the past² and so far, were concerned with the possession of the territories whether land or sea. Hence the question is posed; How to process the settlement of disputes on acquisition of territory internationally? What are the legal methods in settlements? And have the previous resolutions conformed with the perspective of international law? In the fact that there have been several countries disputed on acquisition of territory in the past which were peacefully resolved. However, the territorial disputes are surprisingly unstoppable until present days, and more countries continue to claim and fight down to be the legal owner of some territory³. For that reason, the most acquisition of territory issues that could be disputed among countries and will probably be resulted in risks towards military conflicts, are strongly emphasized by UN charter, shall be peacefully settled. Hence, the title of our study is "The settlement of Territorial Disputes among Countries in the perspective of international law and Other Aspects". It underlines the necessity to grasp respectively the reasons why interstate territorial disputes are ubiquitous, and the resolution methods could be

used in accordance with purport of international law. However, other methods that have been effectively used to resolve the past cases, had represented equally the interest of the disputants, are important as well.⁴ As a result, those reasons mentioned above lead us to develop this paper in compliance with the real meaning of our topic into sections as follows:

At the beginning, we start with the explanation of the different methods of disputes resolution with its appropriateness. Commonly, as the recourse of the U.N, the international court of justice and forum towards the arbitration are mostly used in the past as legal binding resolution. Nevertheless, there are other track-ways non-legal binding to peaceful settlement of territorial disputes which have been broadly neglected, but usually employed as recourses to process onto legal resolution of dispute nowadays, such as negotiation, mediation and consultation of experts.

On other hand, critics in settlement of disputes by judicial resolution⁵ are showed up, by the fact that the proliferation of territorial disputes are not decreasingly well-managed by international organization and rules which are supposed to be an international norms, in terms of a lot

² Victor Prescott "Contribution of United Nations to solving boundary and territorial disputes, since 1945" department of geography and Environmental studies, University of Melbourne, Parkville, Victoria 3052, Australia.

³ A lot of countries are disputed recently including these 5 borders which are reported as may cause a trouble" China and India, Venezuela and Colombia, Eritrea and Djibouti, Iraqi and Syria and Cyprus", marked that territorial conflict is a dead-end disputes.

⁴ Friendly settlement of territorial disputes set forth by UN Charter are deemed necessary to settle a dispute between countries despite its non-legal force (consultation, mediation, reconciliation, etc).

⁵ Settlement of disputes through ICJ or Arbitration is legally binding. When there is a legally binding dispute settlement, then each disputing state must acknowledge the decision taken whatever it is, which occasionally induce partiality.

of countries are currently and imminent to dispute. Knowingly, that situation might be the results of deficiency of international law more particularly international UN. It might also be a form of disappointments of a country that shall win the settlement of dispute, but on the contrary lost its right because of partiality and favoritism of the decision-maker. This critical approach is evoked in order to adjust the territorial disputes resolution.

B. Research Method

In order to evoke a significance perspective and analysis on this paper, it is necessary to manage various methods of researches by consulting the international law text books like U.N Charter on settlement of territorial disputes, the rules agreed on settlement of boundaries disputes and the law of the sea whether it concerns the territorial sea disputes. The formulation and analysis on the settlement of previous facts were also applied in this research in terms of comparing the enforcement of the international rules in compliance with international customary law. In addition, it also refers to the previous documents that were internationally accepted such settlement of international territorial disputes written by author cross-outstanding universities (Cambridge University in U.K, Harvard University in USA, and so on).

As a matter of fact, this paper does not only refer to a limited settlement of territorial disputes written in some international organizations affecting the settlement of disputes, but also to determine the possible ways of resolution by observing the efficiency and its applicability.

The use of these above-mentioned methods of research does not suffice to clarify the point of this topic. It broadly calls for a depth self-analysis and perspectives in regard to the international laws, especially to advance self-critic and suggestion aim at bringing about the legal and peaceful settlement of disputes among countries. Therefore, the ideas and scope of this research are compiled through numerous international law perspectives and the author self-analysis so as to neatly show up the suitable and proper methods on territorial disputes resolution, and with an understanding to omnipresent fickleness of international laws.⁶

C. Discussion

1. *Different Methods of Disputes Resolution in the View of International Law*

In international law, the settlement of territorial disputes depends upon circumstances therewith, some states dispute in the default of clear delimitation of boundary and others also dispute to the territory land or sea where there is no clear

⁶ Throughout analyses of international cases, that some countries have been truly satisfied by adjudication from the international organization on settlement of its territorial disputes, and there are also some states which never find out a suitable resolution in the fact that there is an inconsistency of the international rules.

determination and accuracy ownership as affirmed by international law. Apart from these reasons, the construction of an artificial island becomes the biggest recent dispute, in terms of that there is no legal definition about this matter, even in the UNCLOS. Therefore, the resolution of the dispute should be flexible in accordance with what the countries on disputes are willing for.

a. Legal binding Resolution of International Territorial Disputes

Generally, it is necessary to clarify what is meant by the term "international legal dispute resolution" that is defined as a resolution refers to state practice of submitting disputes to a deliberative body that assesses the merits of rivals that state claims and issues a summary decision as to how to settle the dispute.⁷

The term International legal dispute resolution is used in a broad sense to include both arbitration bodies and international courts of litigation and non-litigation. While the two types of bodies possess certain differences, in practice arbitration panels⁷ and international courts are often function quite similarly.

1) Settlement Of Territorial Disputes At International Court Of Justice

In international law, the ownership of territory is especially significant because

the sovereignty over land or sea defines what constitutes a state. In several attempts, however, these boundaries and land disputes are subject to competing international territorial claim. Such land claims can be distinguished determinedly into nine categories: treaties, geography, economy, culture, effective control, history, *uti possidetis*, and elitism. States have to rely on nine categories to justify legal claims at international courts of justice. The most common claims are cast in terms of effective control of the disputed territory, historical right to title, *uti possidetis*, geography, treaty law, and cultural homogeneity.⁸ Adversely, territorial sea disputes are internationally referred more on UNCLOS, while international laws and international conventions bring about the convention on measurement of continental sea breadth, contiguous Zone and EEZ.

a) Territorial Claims Through Legal Justification

Cases may come before the international court of justice, an independent subsidiary organ of United Nations, by referral through agreement between two or more states, by a treaty provision committing disputes arising under the treaty to the court, or by the parties' statements of compulsory jurisdiction. In fact, under Article 38 of the statute of the international court of justice, when deciding cases in ac-

⁷ Through claims before UN organs, security council shall when it deems necessary and ICJ. The instance of arbitration court, which is often, used in international various dispute settlements.

⁸ Cultural rights in the case law of the ICJ, Cambridge University press: 24 April 2014, vol 27, pp.447-464.

cordance with international law, the court shall apply to the following sources of law:

- International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- International custom, as evidence of general practice accepted as law
- The general principle of law recognized by the civilized nations;
- Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Furthermore, if the parties agree, the court may decide a case under equity principles⁹. Territorial claims before the ICJ usually fall with one of the above four categories. Substantively, treaty claims are the easiest to assert, because the existence of a treaty is easier to prove than the existence of customary international law¹⁰, which requires evidence of state practice or the existence of general principles of law recognized by civilized nations. However, in the lack of these mentioned above the litigant can base on no legal and political claims. Hence, it is necessary to develop all details about the justifications:

Firstly, treaty law, as compared to other bases for territorial claims, the ter-

ritory justification is more legal in nature, because it is less emotionally persuasive than historical claim might be. Nevertheless, claims based on treaty are particularly persuasive at the ICJ because Article 38 of the ICJ statute obligates the court to consider the treaties. Thus, it is no surprise that treaties are binding on the parties that have ratified them. Despite the appeal of treaties as contractual agreements between parties to a territorial dispute, a particular difficulty with the ICJ's use of treaty law is the application of a certain treaty to states not party to the agreement. In the most cases, treaties are used to demonstrate the consent of other states with respect to boundaries later inherited by the litigants before the ICJ.

Secondly, geographical justifications for territorial boundaries or land are neither novel nor uncommon. Natural borders create a clear dividing line between two countries, such as mountain ranges, rivers, oceans, and other bodies of water and physical formations have perennially separated political entities; offer a buffer of security; often do not require active patrolling by border guards, and historically have been more difficult to dispute than borders less easily identifiable by a physical landmark. Natural boundaries, however, can present neighboring states with problem

⁹ System mostly used in common law countries which refers on to what is fair and reasonable (BIICL, international and comparative law).

¹⁰ Aspect of international law involving the principle of custom, considered as primary sources of international law.

of precision in demarcation¹¹, delimitation, or both. By their nature, it can be difficult to mark and natural information creating boundaries are not stable; thereby making resource allocations in the frontier region more problematic.

Thirdly, in international rules economic aspect can be as well a genuine justification of territorial claims at international court of justice. The claims assert that the territory in question is necessary to the viability or development of the state. For example, the territory may be necessary to facilitate internal and international transportation routes for goods to exploit raw materials, to cultivate land, and the alike. Economic claims also include the more novel claim that certain territory should belong to the clamant because it presents a close economic relation. State makes this claim with respect to colonies.

Fourthly, cultural justifications are based on the ethnic nation argument, which underlies any justification for drawing a border in a specific place because of common language, religion or other cultural characteristics that defines the group of people living in a particular territory. In a territorial claim based on culture, the claimant state contends that because of shared pasts. The core of the cultural claim is a

sense of belonging, but the characteristic creating this belonging varies by group and region. Language also has been used as a distinguishing characteristic that enables ruling classes to emerge to the detriment of the minority groups. It is often agonized to claim based on the doctrine of self-determination, which draws state boundaries corresponding to the distribution of national groups with the territory. Ideally, self-determinative actions would result in a more culturally homogenous state¹².

Fifthly, a claim based on effective control is one in which a group claims certain land because the group has an uncontested administration of the land and its resident population. Basing on juridical conception that effective control is a "*SINE QUA NON*" of a strong territorial claim.¹³ The status of abandonment as a precondition to effective control is highly debatable and on the other hand the land "*TERRA NULLIUS*" a territory not belonging to any particular country.¹⁴ Previously, only discovered land was *terra nullius*, term encompasses land over which no state exercises sovereign control.

Principally, when the rightful sovereign acquiesces in the control of territory by the infringing the sovereign, the requirement of abandonment is inapplicable altogether.

¹¹ Demarcation Practices, organized by OSCE borders Team in co-operation with the Lithuanian OSCE chairmanship, 31 May to 1 June 2011, Vilnius Lithuania.

¹² The U.N Charter and other international conventions allowing a state to have self-determination, fundamental rights of state, Montevideo convention in 1933.

¹³ Strict condition, likewise Israel, Gaza, and the End of its effective control in default non lawful control.

¹⁴ *Terra Nullius* in the ICJ judgments on cases concerning Ligitan/Sipadan (2002) and Pedra Branca 2008, European Journal of I.L, volume,26, issue3,08-2015, pp 709-725, and DANIEL LAVERY written book about Doctrine of *terra nullius*.

er. That is the legal doctrine of acquisition by acquiescence, means appropriation or control of territory with problem and though is unacceptable.

Sixthly, Historical claims to territory are based on historical priority¹⁵, which country was firstly possessed and occupied with duration. Although effective control means the possession, presents the strongest claim under property law, historical claims create an underlying entitlement to territory, regardless of whether a state has actual or constructive possession of the land at the time of the claim. Thus, historical claims tend to be the most common, compared to the other claims discussed here. A claim of historic right is bolstered by the passage of time; when the encroached state does not act to counter the claimant's right, it is deemed to have acquiesced in that right and is prevented from rejecting the title for lack of consent. In fact, historical claims often relate to culture claims, in the reason that the claimant possesses greater cultural importance of the territory, and it is strong when the territory in question is the claimant group's homeland because that includes both priority and duration, and expresses the ultimate case of mainland symbiosis.

Seventhly, *Uti possidetis*, a principle used to define postcolonial boundaries in

Latin America, Asia, and Africa, is a doctrine under which newly independent states inherit the pre-independence administrative boundaries set by the former colonial power.¹⁶ The doctrine posits that title to the colonial territory devolves to the local authorities and prevails over any competing claim based on occupation. Thus, *Uti possidetis* is predicated on a rejection of self-determination and assumes that internal, administrative boundaries are functionally equivalent to international boundaries.

Eighthly, Elitism claims to territory contend that a particular minority has the right or duties to control certain territories. Historically, such claims were made most frequently, often shaped them in terms of divine right to rule certain territory. The claims have become rarer over time because they run counter the democratic ideal. Nevertheless, elitist claims have a modern and public incarnation in argument for territory based on superior technological ability, a particular group claims control over a territory by virtue of having the capacity to develop the land's potential most fully.¹⁷

Finally, the last one is ideological claims; resemble claims of a special mission based in unique identification with land and having inherent exclusivity overtones. While, ideological justifications for

¹⁵ The possession of territory depends upon history of the territory, it is more related with culture of the territory where is claimed or usages as well.

¹⁶ Latin for "as you possess under law", BRIAN TAYLOR SUMMER "Territorial Disputes At the International court of justice" frontier disputes (Burkina Faso/Mali) was based on *uti possedeti in 1983, Duke law Journal, p.19(1986. ICJ.556,556-57.dec.22)*.

¹⁷ Ibid, the use of Elitism claims, territorial disputes (Libia/Chad}, 1994 I.C.J,6,12-13(feb.3).

territorial claims are more appropriately termed ideologically imperialist. The anti-colonial ideological justification, which argues that colonial borders are per se inappropriate delimiters of territory for moral or legal reasons, is definitely the antithesis of *Uti possidetis* claim.

b) Value of Jurisprudence on Resolution of Territorial Disputes in the view of International law

This part uses the forgoing categories of justifications for territorial claims for analyzing land disputes adjudicated by the international court of justice. These cases are the only land boundaries cases that the court has adjudicated. As a result, the territorial land refers on these aforementioned reasons opposing the sea that focuses on international conventions. Accordingly, it leaves out the question on how to determine those reasons through the jurisprudence.

At the beginning, it is quite necessary to define the term international jurisprudence. Simply, international jurisprudence is a court's previous decision that has been used in an ambiguity in which these nine justifications above are not compatible to solven the disputes among countries. Therefore, the court had to find out other perspectives to take as a resolution of the matter, then that decision becomes a reference for the next similar cases.

That definition is obviously required to corroborate how the court adjudicated its

decision and which countries faced the use of jurisprudence on settlement of their disputes.

➤ *Appropriateness of jurisprudence*

A lot of claims of territorial disputes were rejected at international court of justice by using these justifications above in terms of the court has stated its inconsistency. As a result, the court laid down forthright to jurisprudence as a best way to solve the dispute. Such as in the case when France and the United Kingdom submitted to the ICJ their dispute over the sovereignty of the Minquiers and Ecrehos island groups¹⁸, located in the English Channel between Jersey and the French mainland. The party made arguments based on treaty law, history, and effective control. As the result, the court rejected all arguments based on feudal land grants and fisheries agreements, all of which antedated 1648, because no specified border or islands were held by Kings of England and French respectively. Judge Basdevant, writing a separate opinion, concurred: "Suzerainty...is not sovereignty," noting the important distinction that the court implicitly made in dismissing claims based ambiguously on feudal titles.

In the absence of a valid treaty claim, the court considered the effective control arguments and found that the British government exercised sovereign jurisdiction and local administration over Minquiers

¹⁸ Summaries of judgments and orders, 17 November 1953/2.

and Ecrehos through such acts as judicial proceedings, local ordinances regarding the handling of corpses, levying taxes, licensing commercial boats, registering deeds to real property, and conducting census enumerations and customs affairs. Thus, the court awarded the territory to the United Kingdom.

Similarly, in 1998 Indonesia and Malaysia, by special agreement¹⁹, asked the ICJ, to determine, on the basis of the treaties, agreements and any other evidence furnished by the Parties, the sovereignty over the islands of Ligitan and Sipadan, of the coast of Borneo. The parties presented arguments based on treaty law, *Uti possidetis*, effective control and history. The court began its analysis with the 1891 British-Dutch convention and found that it did not address the boundary in question. Lacking a treaty law basis for its decision, the court turned first to subsequent agreements between Great Britain and the Netherlands, and then to the parties' subsequent practice, in unsuccessful attempt to understand the parties' mutual intent. Then the court considered, however, that Malaysia's regulation of the commercial collection of turtle eggs and establishment of a bird sanctuary on the islands were administratively sufficient to demonstrate effective control.

➤ *Conception of Jurisprudence in judicial decision*

The existence of a prior boundary treaty or other documentation reflecting interstate agreement as to boundaries is generally dispositive for the court. This rule often holds even when agreement is unclear or incomplete. In cases when state consent is evident, the court has started and ended its legal analysis with the agreement. When no international agreement exists, however, the next most dispositive basis for judgment is *Uti possidetis* alone because almost all colonial boundaries were codified in some kind of instrument. Consequently, the court cannot easily recourse to jurisprudence when other justifications or other legal concept are clear for settling the matters. It is usually used on the case which the court has no clear or accurate adjudication.

2) *The Use of Arbitration on Settlement of International Territorial Disputes*

a) *General Conception*

To begin with, Arbitration is defined as one of the legal methods for the out of court dispute settlements, wherein the parties to the dispute refer it to one or more persons (arbitrators, arbiters or arbitral tribunal), by whose decision they agree to be bound. Arbitration in the United States and in other countries often includes alternative

¹⁹ Jointly notified the court for bilateral agreement on controlling the islands between them, signed at Kuala Lumpur on 31 May 1998.

dispute resolution²⁰, a category that more commonly refers to mediation (a form of settlement negotiation facilitated by a neutral third party). However, it is more helpful to simply classify arbitration as a form of legal binding dispute resolution, equivalent to litigation in the courts, and entirely distinct from the various forms of non-legal binding dispute resolution, such as negotiation, mediation, or non-binding determinations by experts.

Historically, ever since Great Britain and a recently independent United States agreed to submit a border dispute to arbitration in 1794, in accordance with the Jay Treaty, international arbitration has proved a useful method for settling limited territorial disputes between nations. One of the most attractive features of arbitration is that the proceedings are generally conducted in *ad hoc* courts of arbitration that is specially designed to deal with a particular dispute. The parties can participate in defining the issue to be adjudicated, and they have the power to be used to settle the dispute. Arbitration also provides the parties with the option of holding hearings in secret. Thus, arbitration provides an appealing forum for nations that have decided to resolve their differences through peaceful means because it is much more flexible than a permanent court and allows the parties to maintain more control over the proceedings.

Arbitration has been used over several cases in the past, with lots of effectiveness, to settle limited issues of territorial sovereignty. A lot of countries were satisfied with using arbitration settlement, as the Rann of Kutch Arbitration between Pakistan and India, and the Taba Area Arbitration between Israel and Egypt²¹ to name a few.

b) Process of Arbitration in Resolution of the Conflict

Arbitration is often compared to the use of judicial settlement, both are legal means of settling disputes, and both presuppose an obligation of the parties to accept the award (in the case of arbitration) or judgment (in the case of judicial settlement). Additionally, the award or judgment is usually based on rules of international law. The most significant difference between arbitration and judicial settlement involves the reference of a dispute to a permanent courthouse composition is primarily fixed; in arbitration the parties to the dispute select the arbitrators.

When formulating an arbitration proceeding, the parties to the dispute usually define the composition of the tribunal through either an *ad hoc* agreement or by reference to a prior agreement between the parties in which they had agreed to submit future disputes to arbitration. The composition of a tribunal can vary great-

²⁰ Among the pacific settlement of international disputes set forth in art 33 of U.N. Carla S. Copeland, The Use of Arbitration to settle Territorial Disputes, 67 Fordham L.Rev.3073(1999), <https://ir.lawnet.fordham.edu/flr/vol/iss6/7>.

²¹ the use of arbitration and its efficiency, claimed area in the Rann of kutch in 04/1965.

ly, depending on the parties' wishes. The most common form of arbitral tribunal presently used is a three or five-member panel, with each party appointing an equal number of members²². The final member of the tribunal is a neutral third party. This type of tribunal usually decides disputes by majority vote. The appointment of the members of the arbitral tribunal is often contentious, particularly the selection of neutral arbitrator because only the decision of neutral arbitrator often determines the arbitration's outcome. Thus, arbitration agreements often provide if the parties cannot agree upon the neutral arbitrator, the president of international court or another disinterested party shall make the selection.

Furthermore, to establish the form of the tribunal, the compromise or treaty that refers the dispute to arbitration should include the applicable rules of procedure. Among these procedural arrangements are the location of the proceedings, how they are to be paid for, the order of pleadings, how the tribunal will obtain evidence, and the majority required for the award. Each procedural arrangement can be negotiated separately, or the parties may elect to adopt standard procedural provisions such as those followed by the international court of justice.

The compromise also incorporates the issues to be decided by the tribunal. The

parties may define the issues broadly, but more often the questions presented to the tribunal are narrowly defined. Because the tribunal is limited in its function, it must only address the controversy before it and may not delve.

c) Other Peaceful Methods in International Settlement of Territorial Disputes (Non-legal bindings)

Aside from the above legal settlements of territorial disputes in the view of international law, a lot of further methods are also acceptable to use as tool or compromise to resolve the rivalry among countries²³. These other methods could be employed by any country around the world; most particularly the countries which are not Member of international organizations assume the settlement of disputes like UN organization (ICJ) or other organs.

1) Conventional Settlement of Disputes by Disputants

To start with, it is quite important to define the meaning of convention among countries in settlement of territorial disputes. It is defined as an accord or special agreement among countries in order to settle its actual matter or future one in accordance with the equity and sovereignty of each state. It is a voluntary action by each state so as to peacefully solve the

²² see Cambridge University express, Indo-Pakistan Western boundary case tribunal, award 19 February 1968, represented by Mr. B. N. Lokur, special secretary to the government of India in the ministry of law, and member of the law commission of India.

²³ see Art 33 U.N Charter, settlement of international disputes.

rivalry that could be escalated to military conflict and crisis ever.²⁴

Generally, most countries that are not member of UN or not satisfied with international adjudication of disputes, are skewing to resolve its disputes by convention. This kind of settlement is mostly used when territory where the conflict arisen presents an interest between the countries. The country always uses this method by accord to use the territory ensemble or equitable division. Many countries in the world also tend to use such method if other resolution does not make sense on the interest of the parties.

The process of advancing into the negotiation is simpler than others because it is a manifestation of wills by each state to agree with the situation happening at that moment, meanwhile this resolution is a resume of each other's agreement as a result. In this way, the resolution is absolutely in peace. For example, the neighbors' countries convene to delimitate their boundaries with a commitment; therefore, both of them are bound to respect the convention. In addition to dispute that may occur in the future, the parties easily refer to the previous agreed convention. This case often happens to countries, either member or not member of UN or any international organization. The process of resolution,

therefore, evokes by both parties through the document which indicated the agreement, by means that the states on dispute are only required to produce such document as evidence²⁵.

2) *Negotiation*

Negotiation for settlement of international territorial disputes is similarly considered as a process of power-based dialogue intended to achieve or resolve a territorial conflict over the satisfaction of all parties. Precisely, resolution by negotiation can be accomplished with dialogue between states; it may also be done through diplomatic negotiation²⁶.

Diplomatic negotiation between the parties concerned is often considered as the most efficient method of settling international disputes and is clearly the predominant, usual, and preferred method. Indeed, negotiation is used more frequently than all other dispute resolution methods combined. Parties usually prefer negotiation to other methods for a variety of reasons: negotiation allows the parties to maintain maximum control over the outcome; and negotiated settlement is more likely to be accepted by parties; and negotiation is simpler and less costly than other methods.

²⁴ The peaceful settlement which the countries deem necessary no matter whether it is figured out of international law methods that have been used before.

²⁵ E.g: the case of Indonesia and Malaysia, special agreement between for controlling the islands, signed at Kuala Lumpur.

²⁶ The negotiation "ASEAN, the declaration on conduct, and the South China Sea", LESZEK BUSZYNSKI, *Contemporary Southeast Asia*. Vol.25, No.3 (dec.2003), pp.343-362, <https://www.jstor.org/stable/25798652>.

Even though negotiation is the method most likely used combined with other dispute resolution techniques, bilateral negotiations alone has been sufficient to resolve territorial disputes in a number of cases.

The particularity of the negotiation is that decision of resolution bounds the parties when they are agreed. They have to respect what has been negotiated, but it does not mean that they cannot refuse the decision. Each party is not bound to the decision of resolution rendered by the third party, who might be conciliator, negotiator or person concerned in resolution. Therefore, when the negotiation breaks down, the parties still have alternatives to other methods of which they prefer, such as Mediation is another commonly used method after failing on Negotiation.

3) *Mediation*

By definition, mediation is one of the peaceful settlements of international territorial disputes²⁷; it involves the participation of third party with the objective of helping parties to the dispute to come into an agreement to solution. This method together with negotiation, good office, conciliation, and inquiry, is usually grouped in the category of political or diplomatic dispute settlement methods. It is also a method which involves direct participation

of a third party, individual, or organization in resolving a controversy.

Mediation is among the simplest method of which procedure allows the parties to discuss their disputes with assistance of a trained impartial third person to reach the resolution. The disputants often agree to mediation when bilateral negotiations fail down or cannot be initiated and the parties' desire limited third party intervention. The function of mediator depends on the circumstances, it may be third state or international organization aiming to bring the parties together and facilitate their accord.²⁸ In fact, the mediator is free to assess the interests of both sides and devise whatever compromise it deems appropriate, but yet has no power to render a decision to the resolution of conflict in the case the parties are not agreed in one point of resolution. The resolution of the conflict depends upon discussing between disputants.

In addition, mediation is a more flexible resolution because the parties are not bound to respect the resolution if they deem its inconstancy and inefficiency therein²⁹. In general cases, it is the quickest and most useful when disputants are already in the way of military conflict. It may not cease the roots of the matter right away, but it could lead the disputants into peaceful and appropriate resolution.

²⁷ An amical resolution of disputes managed by both parties on disputes, there is no legal bidding on the decision but it's up to the parties to value it.

²⁸ See. Art 284.UNCLOS, conciliation, mediation .etc in territorial sea disputes, peaceful resolution chosen by the parties.

²⁹ Ibid.Paragraph.3

4) *Expert Determination*

Knowingly, a lot of methods can be utilized to solve territorial disputes in the perspective of international law. Consultation of Expert is amongst necessary methods to resolve disputes, but it is not considered to have an international legal-binding.³⁰ The conception on settling international territorial disputes carries a mission to settle all disputes around the world with other methods supposedly efficient. Consequently, it depends on the parties in conflict to ask for a suggestion from the expert.

To undergo the process two parties on conflict ask for perspective and suggestion from the expert and since the expert is private party, the remuneration of expert also depends on the agreement between them. Having the advantage of only involving the two countries and the expert in settling the dispute, the procedure is, therefore, much simpler and the expert may not be partial in his suggestion because the dispute settlement will not present his favoritism in decision-making. Meantime, the percentage resolution transparency is probably expected.

2. *Trends and Challenges of International law in Territorial Disputes Resolution Recently*

Globally, these methods are all very important, and each has its efficiency and particularity on resolution of international

territorial disputes. Conversely, sometimes those methods bring about a ubiquity convulsion interstate by the fact that Decision-Makers do not countervail the adjudication. That attempts might hazard a direct consequence into the behavior of countries, and also could inflict a regardless of the right-purport of international law.

a. Choice of Methods

In referring to many cases of territorial disputes in international law that has occurred and the ongoing settlement which never found out their solution up to recent days, a lot of critics could be drawn as the main matters towards the effective resolution.

Genuinely, the choice of methods used to settle the matter is the roots of disputes resolution. This might be the main cause why many countries are still fighting ever, for example a territorial dispute between Madagascar and France that has been triggered a long time. The dispute is that, knowingly, Madagascar is a country colonized by France that was lasted in length periods. Over time, Madagascar got its Independence in 1960, the period after the UN Charter which required every country around the world endured the colonization, shall be entirely released and should form its sovereignty necessary if the conditions awarded to be an independent

³⁰ The expert shall be a person who has basic knowledge in international territorial disputes resolution, practitioner, third party and independent.

state are fulfilled. Then pursuant to the requirements of UN, France shall totally give independency to Madagascar, especially the sovereignty of Madagascar over its territory.³¹

Lamentably, France refused to return the small Islands that are legally belonged to Madagascar. In facing this matter, the claim was launched directly towards the UN's organs, thereafter the instruction and justifications of pretending owner of territory were required, and ultimately the UN recommenders have taken its decision in favor of Madagascar. France, however, refused it; in terms of it did not want to give back the territory to Madagascar easily, and perceived this decision as an impingement to its private affairs and Madagascar. As a matter of fact, it is not privacy affairs, it is fairly a violation of Madagascar's sovereignty.³²

In critical approach, according to the main objective and restoration of the United Nations, any country violates regardless the sense and articles of the UN and impingement into sovereignty of other States are withdrawn promptly not to be a country member of the United Nations Organization. Therefore, it is so important to acknowledge beforehand the measurement to choose a method which is probably expected to settle down the disputes in favor of a party that should gain its rights.

In such case, the disputants would better choose the use of arbitration in the reason that it is more appropriate than others. Because it depends on agreement between the countries towards the resolution, which means that when the parties are intended into arbitration, then each of whom would agree with adjudication decision by arbitrators. Furthermore, the initial process of the resolution needs a deeper evaluation of situation that will probably occur. For example, arbitration has proved most productive in relative political disputes where the parties' claims to the land are based on historical arguments and documentary evidence.

The Rann of Kuch and the Taba Area arbitrations provide examples of such situations, the disputes in that arbitration were either not highly sensitive or the parties had previously decided to subordinate their interests in the territory to more profound national concerns. The parties in disputes were, therefore, willing to cooperate and participate in the resolution. This is not to say that arbitration could ever be used effectively to resolve all contentious claims to territory, but the process preceded the agreement appear that negotiation has been concluded in advance. At the same time the parties can then work together to determine the precise issue to be adjudicated and the limits on the tribunal's authority.

³¹ reference, UN charter in its preamble, convention on the law of the sea and Hague convention ,violation of sovereignty over the territory.

³² The UN General Assembly recommendation over sovereignty of Eparses Islands , disputes between Madagascar and France, resolution 3491 , 1979 December 12th .

In the past, some resolutions were failed, because of evaluation on nature of disputes and the situations of disputants were not deeper, and especially the method awarded is inappropriate with the circumstances therein.

b. Partiality and Favoritism in Adjudication of Decision-Making

In a sharp analysis, the trends in territorial resolution towards the International court of justice or arbitration present an unexpected decision that sometimes favors one party on dispute which should not be benefited in referring to legal documents. Especially, when the conflict touches the interest of decision-maker's country or a country possesses veto Rights in the UN, they absolutely teeter the settlement of matters. That is the reason why more than 150 disputes underway involve territory, mostly in Africa, Asia, and the Pacific region. The same also appears, even in Europe and America, some countries do not fully trust the legal adjudication from this way of settlement. Likewise, the border dispute between Canada and the United States was guided by arbitration resolution. And when both of them formed their arbitrators with a third-party arbitrator from the United Kingdom, the arbitrators adjudicated that the United States was the winner. Such decision has very much influenced the people of Canada who considered the arbitrators were in favor of the

United Nations. They also blamed U.K because the arbitrator third party is root of adjudication decision. Historically, the dispute had been going on between the Russian and British Empires since 1821 and was inherited by the United States as a consequence of the Alaska Purchase in 1867. It was resolved by arbitration in 1903 with a delegation that included 3 Americans, 2 Canadians, and 1 British delegate that became the swing vote. By 4 to 2 votes, the final resolution favored the American position. Canada did not get an outlet from the Yukon gold fields to the sea.³³ The disappointment and anger in Canada were directed less at the United States, and more at the British government for betraying Canadian interests in pursuit of a friendly relationship between Britain and the United States. Such kind of resolution influences many countries on territorial conflict to escape ICJ or others similar positions.

The result provides an additional dimension to patterns discovered in the literature on international dispute resolution, which show that states are biased words certain "Product Requirement Document" methods. It is obviously known, because the ICJ has rules and procedures that mimic those in civil law systems, not surprisingly civil law states have been much more likely to recognize the jurisdiction of the court than common or Islamic law states. Judges at ICJ exhibit these biases

³³ D.M.L Farr, Niko Block, February 6, 2006, Alaska Boundary Dispute.

in their case decision-making when they show favoritism towards countries that are similar to their home states. The record constitutes another source of bias that makes some methods which are not attached with the United Nations Charter much more appealing to state than other methods, which helps to account for the desire for forum shopping in the international realm. Unfortunately, several practitioners of international law have repeatedly expressed their concern regarding the increase practice of forum shopping.

The one best method for resolution of territorial disputes to be completely solved is that, by advancing mutual agreement³⁴ from both or more disputants who are involved with. Then the countries can achieve this agreement by bilateral discussion, meaning there is no third party or any international organization's suggestion interferes on the settlement. The way of achieving the resolution depends upon the two parties' agreement in order to avoid partiality and favoritism through interest of each disputant. Further, the disputants can also process their agreement to a peaceful mediation through mediators agreed by both of them, more precisely, both consent that the decision will be held is fair and impartial.

The use of Army is the last method which is shaped beyond the UN Charter,

deemed as worse and shows up regardless the United Nations Charter for country members, yet accurate in any cases according to Humanitarian law³⁵, thus as to avoid partiality of adjudication could be drawn from international organization or any methods akin to this, whether any others could shut down the relevant disputes in right manners.

c. Challenges of the UN Organs (ICJ) on Settlement of Territorial Disputes

Consequently, to suggest the existence of international organizations and others which are related on settlement of territorial disputes are lessons for us to step towards an effective organization or methods accurate on resolution of disputes. The adjustment can be drawn easily over the ineffectiveness of all methods that have been used up to now. It is not solution to confine the resolution methods only among countries member in such organization, because disputes may appear between two countries which may be the member of UN or ICJ. Beforehand, the international organs may figure out its competence on the territorial dispute Resolution. It is sometimes become the main cause of terrorism around the world on territorial dispute concerns, and increases

³⁴ The UN charter on peaceful settlement disputes, the agreement accepted by parties, whether appointed by the court or by both of them.

³⁵ Reference, Rome statute of International criminal court, *jus ad bellum*, *Jus in bello*, but not subject to claims to sovereignty over territory.

the disregards of international rules and court's decision as well.³⁶

Those deficiencies of international court of justice, for example Nicaragua cases of non-compliance should lead to better understanding of contemporary issues facing the court. As will be seen, while occasions of non-compliance with final judgments are relatively infrequent, whether before or after Nicaragua and some recent ICJ cases continue to experience compliance problems, decreased hostility towards judgments rendered by virtue of compulsory jurisdiction is perceptible. However, not all of the ICJ's pronouncements have met similar appreciation, but what is highlighted here have relatively been the weakest.

Similarly, according to the UN General Assembly's resolution of Madagascar and France rivalry on Bassas da India, Europa Island and Juan de Nova Island, Madagascar has a full right of these territories against France's impingement into its territory and pronounced its decision also in favor of Madagascar. Unsurprisingly, France rejected that decision and affirmed before the UN's organs its refusal "NON-COMPLIANCE of decision". That attempt shows up a deficiency of UN advisory opinion in facing resolution of territorial disputes between countries, although transparently known that a member violates the Charter. In fact, skewing towards

judicial decision is not a reliable resolution sometimes.

D. Closing

To sum up, an acquisition of territory by dispute has been one of the biggest challenges of international law up to now. Frequently, to escape devastating danger, crisis and violation of sovereignty that might occur in acquisition of disputed-territory among countries, bringing claims before the UN shall be deemed very necessary and common ways, by the fact that it has set forth legal methods on resolving territorial disputes by compulsory decision which comes from ICJ or Arbitration body. Similarly, disputing parties may prefer other methods which are asserted amicably, although they are not legally binding. All these methods are useful in settling dispute which fits its characteristics. In other words, having the right to choose the methods aforementioned for a dispute does not mean adopting one method without considering and regarding its consistency.

Despite all methods of resolution set out by the UN Charter, there are a lot of challenges and reform that should be surmounted particularly in settlement of territorial disputes. Obviously, the UN has been playing tremendous roles in international matters. It has struggled to resolve diverse challenges since its foundation for significance of world peace. Neverthe-

³⁶ Susan. W. Tiefembrun, comment on "The Role of The World Court in Settling International Disputes": A Recent Assessment, 20 *Loy.L.A Int'l &Comp.L. Rev.* 1 (1997).

less, it still recently bears more challenges for many reasons which call for reforms. Meanwhile, all current members of the UN ought to emphasize why a lot of disputes are left unresolved, by which is meant they ought to consolidate the rules, intensify the duties, responsibility and liability of state members, and renew the rules so as to sidestep from partiality and favoritism. The biggest issue is that the rules and the institution of UN's decision body occasionally disregard the interest of small countries and new members. Expressly, legislating new rule of law, enhancing the effectiveness of international organization as the UN, accenting value of sovereignty to each states, and obedience under the international rules in force shall be paramount attempts for all members, without any discrimination, in order to maintain full-fledged relationships, peace and march towards a new world.

Abbreviation List

- UN : United Nations
ICJ : International Court of Justice
UNCLOS : United Nation Convention on the Law Of the Sea
EEZ : Exclusive Economic Zone

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