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The dissertation titled **"Amicable Means for International Dispute Settlement: Prospects & Challenges"** prepared by **Kamruzzaman Polash** ID **2018-3-66-001** submitted to Dr. Nabaat Tasnima Mahbub, Assistant Professor, Department of Law, for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

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Declaration

I hereby declare that the thesis titled ***"Amicable Means for International Dispute Settlement: Prospects & Challenges"*** was entirely prepared by me under the supervision of Dr. Nabaat Tasnima Mahbub, Assistant Professor, Department of Law, East West University, for my graduation requirement. Moreover, I declare that the content of the dissertation has never been used in any evaluation. The contents of all sources are correctly recognized in the references, and other people's and institutions' work have been appropriately cited.

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Kamruzzaman Polash

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Abbreviations

UN: United Nations

ICJ: International Court of Justice

PCIJ: Permanent Court of International Justice

UNSC: United Nations Security Council

CSTO: Collective Security Treaty Organization

PCA: Permanent Court of Arbitration

USA: United States of America

NATO: North Atlantic Treaty Organization

ITLOS: International tribunal for the law of the sea

UNCITRAL: United Nations Commission on International Trade Law

UNCLOS: United Nations Convention on the law of the sea

Abstract

From the very beginning of civilization man used to live together `and maintain a bond among them. But for the time being, they have started to fight with one another out of disputes. As a result of it, we can remember the devastating scenario that happened in World War I and World War II. Lots of people had lost their lives in these two most devastating battles. They thought that only the solution to disputes lay in the war. However, after ages especially after World War II people started to feel the importance of peace and tranquility and as a result, they started formulating various treaties and agreements am, on them in order to maintain peace and tranquility. Through these initiatives league of nations has been created. Apart from this, there are many agreements and treaties relating to the peaceful settlement of disputes. Civilized people do not want to face the devastating war. Nowadays states are not eager to file a complaint in the ICJ in a peaceful manner. They have started to follow the worst way which will lead them to war, which will not be a blessing for the international community at all. They are illegally interfering in another matter without no reason. That's the main cause of the disputes. So, many international jurists want a peaceful sole function of the international tribunal to resolve all disputes amicably among the states. Moreover, none of the states should be given more power than the others. All states should be regarded as the same as all. Finally, establishment of a supreme authority for monitoring the disputes so that it can take effective measures to resolve them amicably.

Chapter 1

Introduction

1.1 Background of the Study:

From the very beginning of civilization international law has been used to maintain global Peace, Security, and tranquility among the international communities. In order to maintain peace, and security with tranquility among the international communities in 1919 and 1945 respectively League of Nations and United Nations (UN) has been introduced. Mainly UN has been established after World War II with a view to preventing the clashes between the states peacefully. UN adopted on 25 June 1945 and got effected on 24 October 1945 with 51 International bodies.

The term Amicable Means viz. Pacific means has been introduced by one of the most significant conventions held in 1899 officially called the Hague Convention,1899. This convention was revised by the 2nd Hague Convention which was held in 1907.

Later on, different articles of the UN Charter also effectively introduced the various types of Pacific Means to settle the disputes that arise Internationally.

1.2 Research Question:

To what extent the Amicable Means have been successful in a peaceful settlement of disputes in International Law?

1.3 Research Justification:

World War I commonly known as Great War started on 2 July 1914 and ended on 11 November 1918 when German was found guilty and had to provide 132 billion gold marks as a reparation. Moreover, it lost its all colonies including part of East Germany and Alsace- Lorrain.

There great number of soldiers died. It is about 4,538,315 were killed among them Germany had lost 1,773,700 of its people including a soldier and Russia 1,700,000[1].These two nations had faced the most devastating condition during this Great War. Same Scenario we can find out on the eve of World War II. By this war, the era of Europe had come to end. On the contrary, the USA and the Soviet Union had become superpower countries. The trend of nuclear weapons had started with this war. Where on 29 August 1949 Soviet Union had introduced its nuclear weapons.[2]It is been said that by World War II the age of nuclear had started.

Moreover, there was a significant death rate in this war. Among the axis countries, Germany had lost about 4.2 million people including soldiers, and where Japan had lost about 1.97 million people including a soldier[3].However, recently the war between the superpower axis Russia and Ukraine which intends to be a member of the North Atlantic Treaty Organization (NATO) has created a cascade effect in Food, Energy, Finance, and Trade. According to Food and Agriculture Organization of United Nations (FAO) published its recent third food price index on 8th April 2022.[4]

FAO found that only for the effect of the war between Mighty Russia and Ukraine the prices of current food increases about 34% before. Prices of mineral oil have increased by around 60% whereas prices of gas and fertilizer increased by double that before.[5]

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[1] Kaiser Wilhelm, 'THE CAUSES AND CONSEQUENCES OF THE GREAT WAR: THE WAR THAT CHANGED THE WORLD FOREVER' (2005)

<https://www.uwgb.edu/UWGBCMS/media/Lifelong-Learning-Institute/files/Course%20Handouts/THE-CAUSES-AND-CONSEQUENCES-OF-THE-GREAT-WAR.pdf > accessed 28June 2022

[2] CTBTO , 'RDS-1' TEST ON 29 AUGUST 1949, SEMIPALATINSK: THE SOVIET UNIONS' FIRST NUCLEAR TEST' (2009)

< https://www.ctbto.org/specials/testing-times/29-august-1949-first-soviet-nuclear-test > accessed 28 June 2022

[3] John Graham Royde-Smith, 'Costs of the war Killed, wounded, prisoners, or missing' (1965)

< https://www.britannica.com/event/World-War-II/Costs-of-the-war > accessed on 29 June 2022

[4] United Nations, 'Global Impact of war in Ukraine on Food, Energy, and Finance System'(2022)

< https://news.un.org/pages/wp-content/uploads/2022/04/UN-GCRG-Brief-1.pdf > accessed 29 June, 2022

[5] United Nations, 'Global Impact of war in Ukraine on Food, Energy, and Finance System' (2022)

< https://news.un.org/pages/wp-content/uploads/2022/04/UN-GCRG-Brief-1.pdf > accessed 30 June, 2022

So, the consequences of the war in never fruitful for anybody. Instead of war, we can find a better solution through the Peaceful settlement of disputes mutually. Observing the above-mentioned consequences, we can say that to avoid such destruction there is no remedy other than a Mutual Peaceful dispute settlement. In this dissertation, we will see various ways to settle the dispute peacefully in international law.

1.4 Research Methodology:

In order to find the answer to the research, I will follow the qualitative research approach. To reach the conclusion of this dissertation we will go through several domestic and international journals, articles, newspapers, blogs, and international instruments like the UN charter and different conventions relating to our research topic.

We will conduct this dissertation in a qualitative approach by using international instruments like the UN charter, remarkable cases from international court of justice and different conventions as primary source. As we earlier mentioned that we will be using books, journals, articles, newspapers, blogs. Therefore, we will use these instruments as a secondary source in order to complete our research.

1.5 Literature Review:

International law has been regarded as an instrument of peace throughout the world. There are two ways of settlement of disputes. these are diplomatic and another is an adjudicative process. However, the states are not willing to resolve their problem amicably. The instruments of amicable disputes are only available if the contending parties to the dispute consent to this obligation. So here without the consent and application for justice of the parties, neither the diplomatic organization nor the adjudicative body can provide any relief to them.[6]

[6] *ShawM.N; International law (6th edition, Cambridge, 2008) p (1010-1014)*

The writers Abdualla Mohamed Hamza and Miomir Todorovic quoted that the major difficulties in settlement of disputes internationally in a diplomatic way are that the parties are not under any binding legal obligation to do this or accept the proposal made by the diplomatic body. Thus, the writer expresses his concern regarding this issue. The parties to the disputes are only eager to accept the judicial decision given by the adjudicative body which is a matter of concern. They are not willing to settle their disputes in a short form through negotiation. Which may occur a serious breach of peace and tranquility. He also distinguishes the institutional means of dispute settlement amicably where the United Nations plays an active role to resolve the disputes. Moreover, other good offices and negotiations are also notable. But it is a matter of concern that states are not willing to deal with their problem in institutional authority. As he stated that international law creates an obligation over a state. But unless the parties have given acceptance over the decision taken by the institutional body, then that will not be effective. Diplomatic or institutional remedy refers to a remedy that is friendly as there is no win and lose situation but matters are decided on the basis of equity. there also maintain the friendly relationship between these contended states.[7]

Another writer Ian Brownlie stated that states may contend on many issues against other states. There should be a distinguished tribunal to resolve all adjudicative matters. According to him multiple types of adjudication courts make the matter multiple in disputes and between the relation of the states as we notice in the marginalization of European courts of Human rights and Courts of human rights.[8]

1.6 Limitation of the study:

This dissertation is about to complete within stipulated words where the elaboration of some other methods and mechanisms of the disputes settlements was not possible. In this situation, I had to be precise in my dissertation.

[7] Abduella Mohammad Hamza and Miomir Todorovic, 'Peaceful Settlement of Disputes'(2017) Vol 6(1)
[8] Ian Brownlie, 'The Peaceful Settlement of International Disputes in Practice' (1995) Vol 7(1)

There are other effective measures to settle the dispute in Amicable means. However, there is also treaty relating the peaceful settlement of disputes in international law. Which is American Treaty on Pacific Settlement 1948 also known as Pact of Bogota. Some of them are not in this research due to lack of time and word limitations.

1.7 Chapter Outline:

I have divided my research Paper into 5 chapters. **Chapter-I** is about the introductory part of the research. **Chapter II** will be about dispute settlement in international law with some conventions and kinds of pacific means of dispute settlement. Chapters **III and IV** will enlighten respectively about the International Court of Justice (ICJ), Good office, and Mediation with reliefs given in the UN charter and case precedents. In **chapter V**, there will be findings of the research paper with prospects and challenges relating to the application of pacific means in the settlement of disputes in international law. Also, there will be a conclusion of this paper with recommendations and concluding remark.

Chapter 2

Disputes Settlement in International Law

2.1 Introduction:

In this chapter, I am going to describe the remedy and process available for dispute settlement in international law. First of all, we will know about the historical background of the dispute settlement of international law from ancient times to modern times. Whether it is effective in international law or not. There will be discussing UN Charter which is regarded the most important mechanism. We will also see some conventions which were adopted in order to promote pacific means in dispute settlement in international law. Moreover, we will look over the mechanism of amicable means relating to the dispute settlement of international law and their role in this regard.

2.2 Historical Background:

From the very beginning, the focus of international law is on the establishment of peace and security among the international communities. Where there is a disagreement between two or more international communities it is called a dispute which is part of a conflict. Here international law plays an important role in resolving the dispute. Generally, dispute settlement refers to the process of settling a dispute between states by reforming an agreement.[9]

There are two kinds of settlement in international law which are Amicable (Pacific) means and Coercive means of settlement. International law mostly focused on the Peaceful settlement of disputes as the world had faced two devastating world wars. As a result of these wars League of nations,1919 and the United Nations,1945 had been introduced.[10]

[9] The creation of the League of Nations, 'The consequences of the ending of the First World War' (2016) < https://d-nb.info/1191666328/34> accessed on 30 august 2022

[10] The creation of the League of Nations, 'The consequences of the ending of the First World War' (2016) < https://d-nb.info/1191666328/34> accessed on 30 august 2022

In the middle age, there was no recognized arbitral procedure to settle the dispute. There was an only way to settle the dispute is Papacy, a kind of religious means regulated by religious Popes. this type of religious settlement system was based on the custom and religious beliefs of the respective area. Though this was not approved as an undisputed system of settlement of contention among the states in the international community. However, these attempts were successful to resolve the disputes.[11]

After some time, they had faced problems in resolving the disputes in the matter of Political. For sake of justice in 1794, a treaty has been adopted officially called "The Jay Treaty, 1794" aiming to settle disputes through Arbitration. This treaty appointed a commission to regulate the Arbitration process fairly. This commission during its operation had settled notable disputes intentionally and warded approximately $11,000,000 Dollars in favor of claimants.[12]

International law is now aiming to settle the dispute peacefully instead of coercive in nature. To attain the precepted goal stated were adopted multilateral treaties among them. The most important of them is the Hague Convention for Peace, 1899, and the 2nd Hague convention for Peace, 1907 which is the revised version of the first convention[13]. This is the only convention that introduces peaceful means of settlement in international law.[14]

After World War II a multilateral treaty named, the American Treaty of Peaceful settlement,1948 also known as the Pact of Bogota was adopted by the United States of America (USA) at Ninth International Conference in Columbia. Where 8 (eight) countries signed and ratified the treaty without any reservation.[15]

2.3 United Nations (UN) Charter:

[11] Jackson H. Ralston, 'A Brief History of International Disputes' (1926) Vol 88(8)

[12] Jackson H. Ralston, 'A Brief History of International Disputes'(1926) Vol 88(8)

[13] Abduella Mohammad Hamza and Miomir Todorovic, 'Peaceful Settlement of Disputes' (2017) Vo 6(1)

[14] Abduella Mohammad Hamza and Miomir Todorovic, 'Peaceful Settlement of Disputes' (2017) Vol 6(1)

[15] American Treaty of Peaceful settlement,1948 (adopted 30 April 1948 entered into force 13 may 1948)

The United Nations has 6(six) organs and the UN charter is the founding material of these six organs where the rules and regulations of the organs have been laid down. It was signed on 26 June, however, came into effect on 24 October 1945[16].
In this Charter where Chapter IV Articles (9-22); Chapter V Articles (23-32); Chapter IX Articles (61-72); Chapter XII Articles 75-85); Chapter XIV Articles (92-96); Chapter XI Articles (97-101) respectively deals with United Nations General Assembly (UNGA), United Nations Security Council (UNSC), The Economic and Social Council, The Trusteeship Council, International Court of Justice (ICJ) and The Secretariat.[17]

Chapter VI and Articles (33-38) laid down rules and regulations regarding dispute settlement in the Pacific method. In this chapter Article 33 of the charter enumerates the types of amicable settlement of disputes which are negotiation, mediation, arbitration and judicial settlement through ICJ. Moreover, the UNSC calls on the contending parties to fulfill the aim of this article. Where Article 34 of the charter states about the investigation made by the UNSC.[18]

Article 35 of this charter, says about the process of seeking the attention of the UNSC relating to any disputes about who is a member of the UN and who is not a member of the UN. Moreover, in article 36 it has been stated how UNSC deals with the disputes brought before it by giving recommendations and considering them.[19]

Article 37 gives the remedy when the relief given by article 33 default and further recommendation and finally article 38 says about the new relief given by the UNSC when all the remedy given by article (33-37) has been dried out.[20]

2.4 Conventions:

2.4.1 1st Hague Convention for Peace (18 May- 29 July1899):

[16] UN Charter
[17] UN Charter, Articles (9-22); Articles (23-32); Articles (61-72); Articles 75-85); Articles (92-96); Articles (97-101)
[18] UN Charter, article 33,34
[19] UN Charter, article 36
[20] UN Charter, article 37

Alexander II coalesced a Military commission internationally where a declaration has been adopted named The Saint Peterburg Declaration in 1868. That was the first ever formal declaration prohibiting the use of certain weapons in war.

Later in the eve of 1898 Nicholas, grandson of Alexander II proposed a conference commonly known as the 1st Hague Convention for Peace where twenty-six (26) states met in order to agree with the following terms and conditions irrespectively:

i. Applicable to a pacific settlement of disputes.
ii. Conventions for the adaption of principles in maritime warfare.
iii. Convention according to laws and customs of war and inland.
iv. Agreement relating to prohibiting the use of bullets.
v. Agreement relating prohibiting the discharge of interpolations and explosives from balloons.
vi. Agreement relating prohibiting the discharge of interpolations with a view to throwing poisonous gas.

With this convention, the Permanent Court of Arbitration (PCA) had begun its journey. PCA was established in 1907 and officially started its functions in 1902. In this convention, the machinery of the PCA was provided which enables the Permanent Court of Arbitration (PCA) to run its functions and settle disputes[21].

PCA has extended its area in arbitration where it regulates its function through PCA arbitration rules 2012 the newest one. Moreover, since 1982 the PCA has also played a notable role in the dispute regarding the sea through the United Nations Convention on the law of the sea (UNCLOS).[22]

2.4.2 2nd Hague Convention for Peace, 1907 (15 June–18 October 1907):

After the 1st Hague Convention for Peace was held in 1899, this convention plays a significant role to settle the dispute amicably arising internationally. By participating forty-three states and presided by Queen Wilhelmina of the Netherlands improved the declarations adopted in

[21] Nobuo Hayashi, 'The Role and Importance of the Hague Conferences: A Historical Perspective Conference on Disarmament, Informal Plenary' (2017)
[22]Permanent court of Arbitration, United Nations Convention on the law of the sea < https://pca-cpa.org/en/services/arbitration-services/unclos/> accessed on 30 august 2022

1899 and drafted a new thirteen convention on this declaration namely- Laws and customs relating to maritime war.

i. Convention for the pacific settlement of international disputes.
ii. Convention on the limitation on troops for recovery of agreed debt also known as Drago-Porter convention.
iii. Convention relating to the hostilities.
iv. Conventions relating to laws and customs of war in the land
v. Convention relating to the rights and duties of neutral persons or power during the war on land.
vi. Convention relating the rights and duties of neutral persons or power during the war in naval.
vii. Convention relating the rights of a merchant ship or innocent passage during the war in the sea.
viii. Convention relating the use of automatic submarine contact mine.
ix. Convention relating the bombardment by naval force during the war.
x. Convention to adopt suitable principles of maritime warfare from Geneva Convention 1906.
xi. Convention relating the rights of capture in marine war.
xii. Convention to the establishment of international Compensatory court.
xiii. Convention relating to the rights of an enemy merchant ship.

Although the 1899 and 1907 two conventions had achieved nothing significant, however, they were successfully able to sketch a productive way to settle the dispute and impose limitation on using deadly weapons during war.[23]

2.4.3 Manila Declaration, 1982:

Manila Declaration 1982 for peaceful settlement of international disputes between states was adopted by a resolution by United Nations General Assembly (UNGA) on 15 November 1982

[23]Nobuo Hayashi, 'The Role and Importance of the Hague Conferences: A Historical Perspective Conference on Disarmament, Informal Plenary' (2017) Vol 4(1)

held in Manila, Philippines. By this declaration, another form of settlement has been highlighted which includes Arbitration, Good office, and Mediation.

This Declaration provides a bypass to resolve the disputes between the nations amicably. This declaration creates a way of communication between the persons to persons or aggrieved to resolve their contentions to get a beneficial outcome for all. It was adopted aiming to settle the point of difference and to gain benefit personally or collectively. This means there is no win and loss position. Parties are agreed to take a decision when they are satisfied with the settlement.
This declaration is divided into two parts. **Part I** enumerates, Identification of applicability of principles and rules, and where **Part II** states, Role of the UN and its organs.

In Chapter I there are principles and rules which help the country to conclude to settle the disputes peacefully along with maintaining friendly relationships with other countries in good faith. In this declaration, good faith is given more emphasis by repeated five times in the text likely Part I para 1,5, and 11; Part II para 2 and 6. However, free choice is also emphasized in the text stated in Part I para 3.

Part I paragraph 5 concerned with modes of settlement likely mediation, good office, conciliation, and arbitration to settle the dispute peacefully by their own choice seeking good faith and cooperation.

In part II role and responsibilities of the Un and its organs have been defined and by which means the UN can play an effective role to implemented such measures. To implement the provisions laid down in [part I of this text, the other organs of the UN (ICJ, UNSC, UNGA) plays an important role. This declaration also widened the power of the UN General Assembly (UNGA) the seek a peaceful solution.[24]

2.4.4 Declaration on Prevention and Removal of Dispute, 1988:

Declaration on the Prevention and Removal of Disputes was adopted by the UN General Assembly on 5 December 1988 via resolution 43/51. Generally, the topic of removal of disputes

[24] Emmanuel Roucounas, 'MANILA DECLARATION ON THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES' (2008) vol 6(1)
1982 MANILA DECLARATION ON THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES, (adopted on 15 December 1980, entered into force on 10 December 1981)
Abduella Mohammad Hamza and Miomir Todorovic, 'Peaceful Settlement of Disputes' (January-February, 2017)

which can affect the tranquilities, peace, and security of the international community was raised in 1983, when UN General Assembly formed a special committee to work on it. As far the instruction from the United Nations General Assembly (UNGA) the special committee submitted the draft bearing headline "**Declaration on Prevention and Removal of Dispute, 1988"** which its forty-third session of the United Nations General Assembly (UNGA) become the declaration by making steps of:

i. Removal of disputes or contention may affect the peace and security of the international community.
ii. Following and making consistent with the provision of the UN Charter, so that the organization can implement the purposes of the text effectively.
iii. Requesting the UN Secretary-General to inform the concerning body or agency to adopt this declaration with a view to the establishment of peace among the international community collectively.
iv. Requesting to make this declaration well known and to fully implement to peaceful settlement of disputes.

In this declaration the United Nations General Assembly (UNGA), United Nations Security Council (UNSC), and The Secretary General of the United Nations were given widespread power to implement the declaration, as nations can avoid disputes and peace and security be ensured. It also declares that; it is only formulated to maintain friendly relations and cooperation among the states. Moreover, it is not aimed to deter the self-determination or freedom of people but rather to maintain peace.[25]

2.5 Types of Amicable Means:

2.5.1 International Court of Justice (ICJ):

[25] Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, (adopted on 5 December 1988, entered into force on 9 December 1988)

League of Nations Permanent Court of International Justice (PCIJ) has been replaced by The International Court of Justice (ICJ); a significant organ of the United Nations (UN). After the war invasion of Poland in 1939 PCIJ had been facing huge trouble in its proceedings. In 1940 the court relocated to Geneva from Hague.

In 1942 the state secretary of the USA with the consultation of the foreign secretary of the United Kingdom (UK) announced that they should think about the re-establishment of the international court and also with extended power than before. A special committee had been constituted and published its recommendation in 1944 on 10 February likely:

i. The provisions of the new international court will be the permanent court of International Justice (PCIJ) oriented.
ii. The new international court shall entertain an advisory jurisdiction.
iii. The acknowledgment of the jurisdiction of this new international court should not be mandatory.
iv. Moreover, the new international court shall have no jurisdiction to deal with political issues.

In the UN Charter Chapter XIV articles (92-96) enunciates the International Court of Justice (ICJ).

The first successful case of the International Court of Justice (ICJ) was held on 22nd May 1947 between the United Kingdom and Albania also known as the Corfu channel case.There are five chapters in the statute of the International Court of Justice (ICJ). **Chapter I** is about the organization of the court; **chapter II** Competence of the court; **chapter III** procedure; **chapter IV** Advisory opinion; **chapter V** is about Amendment[26].

To file a case in the Permanent Court of Justice parties are required to be agree in the following likely:

i. Any two or more states
ii. A state and international body

[26] STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, history of ICJ
D, M, 'A Hand book on International Court of Justice' (1st edn, triangle 1964) p (1055-1080)
GRANT GILMORE, 'THE INTERNATIONAL COURT OF JUSTICE' (Yale Law Journal, 1977) Vol 87(903)
The International Court of Justice (ICJ)

iii. Two or more than two international body
iv. A state and a private person
v. An international body and a private person.[27]

2.5.2 Arbitration:

In the meeting of 1st Hague Conference for Peace 1899 where adopted a convention relating the "Amicable dispute settlement in international Law". By this convention a global institute for settle the dispute amicably has been founded, which is commonly known as "The Permanent Court of Arbitration (PCA)" consisting a number of jury appointed by each country adopted the convention. That was regarded as a remarkable adoption at that time, as this is not only a mode of arbitration but also a progressive method of mediation and good office for resolving the disputes peacefully internationally.

Moreover, a bureau was created by this convention which is located at the Hague dealing with registry or secretariat. None the less it gives rules and principles relating how to govern an arbitration. The PCA started its journey in 1902 though it established in 1900. In 1907 when the 2nd Hague conference for Peace also known as revised conference was held it improved the rules and principles of arbitrations proceedings.

The judges were empowered to represent the various judicial remarks along with assurance of wholeness in arbitral process. The court found its sitting at the Hague and entertained the cases represented to it arising out of treaty or special agreement. In the 1st Hague conference, the arbitration process had been made as a non-obligatory process. But in 1907 at the 2nd Hague conference the convention made a fundamental change in the 1st Hague convention and made the arbitration process as an obligatory method.

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[27] Permanent Court of Justice, requisite to file a case
< https://pca-cpa.org/en/home/ >
D, M, 'A Hand book on International Court of Justice' (1st edn, triangle 1964) p (1055-1080)
The International Court of Justice (ICJ), requisite to file a
case<https://www.researchgate.net/publication/337474223_ALL_ABOUT_INTERNATIONAL_COURT_OF_JUSTICE_ICJ/link/5dda27c492851c1fedacaacb/download > accessed 30 July 2022
Jackson H. Ralston, 'A Brief History of International Disputes' (Sage Inc. 1926) Vol 88(8)

In 1930 the PCA wad entitled to resolve the disputes between the state and a private person. By following this method, it was remarkably able to resolve a huge number of commercial disputes peacefully internationally. In 1962 PCA had started to adopted set of rule likely arbitration to settle the disputes peacefully between parties where one of the parties is state. This adoption had inspired to adopt another agreement likely "International Centre for Settlement of Investment Disputes (ICSID)".[28]

The new era of the PCA was said to be established in 1976 where "United Nations Commission on International Trade Law" (UNCITRAL) started to adopt rules to settle the commercial disputes. To apply this rule to be settled through arbitration parties to apply for arbitrator to the general secretary of the PCA if there were no agreed arbitrators in the agreement of the parties[29]. PCA has extended its area in arbitration where it regulates its function through PCA arbitration rules 2012 the newest one. Moreover, since 1982 the PCA has also played a notable role in the dispute regarding the sea through the United Nations Convention on the law of the sea (UNCLOS).[30]

Nonetheless, another form of the tribunal of Arbitration is the international tribunal for the law of the sea (ITLOS). Where the dispute relating to the boundary of sea existing between two or more states has been resolved mutually in a peaceful manner. The tribunal has its contentious jurisdiction over the matter where there are any disputes or disagreements on the issue of law. By following certain proceedings states can file a proceeding against another before this tribunal. These are the following:

1. Make an application before the court in its official language and if not made in the official language, then has to be translated into the official language.
2. The tribunal authority shall dispatch the document of the complainant given to them to the respondent to get informed and to take necessary preparation.
3. There shall be a representative of the state.

[28] International Centre for Settlement of Investment Disputes, Commercial disputes <https://icsid.worldbank.org/> accessed 30 august 2022
[29] United Nations Commission on International Trade Law, UNCITRAL < https://uncitral.un.org/> accessed on 30 august 2022
[30] Permanent court of Arbitration, UNCLOS < https://pca-cpa.org/en/services/arbitration-services/unclos/> accessed on 30 august 2022

4. Information relating to the competence of the jurisdiction of this tribunal to resolve this dispute must be answered by the complainant and until made the such statement the tribunal shall remain postponed.[31]

This tribunal also has advisory jurisdiction over the disputed matter. Advisory jurisdiction only is given at the request of the seabed authority. After making such an advisory opinion the president and registrar general shall sign over it and then it shall send to the secretary general of the seabed authority.[32]

Through this tribunal, a landmark achievement has been gained by the people's republic of Bangladesh in the year 2012 against Myanmar relating to the boundary of the sea. In the case of 14 march 2012 the tribunal delivered its judgment by signing it. This judgment was regarded as a groundbreaking judgment as there has been made a neutral situation where no parties were lost rather both claimed that they had won in the tribunal.[33]

2.5.3 Mediation and Good Office:

Under Article 33(1) of the United Nations Charter, the terms Mediation has been defined. It has been narrated that, where any contending party in a dispute which may endanger the peace and tranquility of the international community then the parties shall first seek relief to resolve the dispute by mediation. Though the term Good Office had not been defined in the Charter, it also plays an important role in settling disputes peacefully among the international community. Some international jurist distinguishes between the term mediation and good office. However, the majority of the jurists deny differentiating between these two amicable means. They argued that only because the method of communication cannot differentiate the mediation and good office. as

[31] International tribunal for the law of the sea (ITLOS), contentious jurisdiction
<https://www.itlos.org/en/main/jurisdiction/contentious-cases/proceedings-before-the-tribunal/> accessed on 1st September 2022

[32] International tribunal for the law of the sea (ITLOS), advisory jurisdiction
< https://www.itlos.org/en/main/jurisdiction/advisory-proceedings/>
The seabed authority, council members
< https://www.isa.org.jm/authority/council/members > accessed on 1st September 2022

[33] Balaram, Ravi A, 'Case Study: The Myanmar and Bangladesh Maritime Boundary Dispute in the Bay of Bengal and Its Implications for South China Sea Claims' (2012) Vol 11(3)

good offices are made by the active participation of a third state representative on the other hand mediation is made by the passive assistance of the third state.[34]

The term Mediation is nothing but facilitation of the process of negotiation. There must be a third party a mediator appointed by the contesting party, who will give a decision based on the contention and the decision of the acceptance is up to the contesting parties. This process is unlike the judicial process, as there is no win and lose situation and through mediation, the relationship is maintained. In article 4 of the convention for the pacific settlement of the disputes of 1907, the term has been also defined. The most important thing in the mediation is that the outcome must be based on self-determination, viz the decision must be voluntarily taken by the contenting parties and if the decision is coercive then that will not amount the mediation and the mediator will be liable for breach of obligation. The mediator cannot force the party to choose any decision but may help to reach any decision relating to the satisfaction of the parties. The party also helps the mediator by attending the meeting and giving the information.[35]

The term good office is slightly different from mediation. Where the third party settles the disputes between the parties in his presence and its mandatory but in the good office the third party makes initiatives to arrange a meeting between the contenting states to settle the disputes peacefully. The procedure of good office has started gaining popularity among the international community as a method of most peaceful and fast settlement of disputes.[36]

2.6 Conclusion:

Finally, in this chapter, we can find out the historical background of dispute settlement in international law and how it worked in past. we were also able to find out the UN charter relating the Peaceful dispute settlement and some significant conventions in which the peaceful dispute settlement was discussed and laid down rules and principles. Moreover, we also see some mechanisms of dispute settlement peacefully and how they work effectively. In the next chapter,

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[34] *M. N shaw, 'The settlement of disputes by peaceful means' (6th edn;Cambridge 2008) p(1018-1019).*

[35] *M. N shaw, 'The settlement of disputes by peaceful means' (6th edn;Cambridge 2008) p(1018-1019).*

[36] *M. N shaw, 'The settlement of disputes by peaceful means' (6th edn;Cambridge 2008) p(1018-1019).*

Sompong Sucharitkul , 'Good Offices as a Peaceful Means of Settling Regional Differences' (1968) Vol11 (17)

we will learn how these mechanisms work and give the relief and governing provisions with some leading successful cases.

Chapter 3

International Court of Justice

3.1 Introduction:

As we have already got an impression about the ICJ and its functions, now we will see how it gives relief to the contesting parties and some other renowned case laws. However, we will also see the provisions relating to ICJ laid down in the Un charter. Moreover, we will also see the provisions in giving the judgment of the ICJ relating to the disputes.

3.2 Reliefs:

3.2.1 UN Charter:

In the UN Charter Chapter XIV articles (92-96) enunciates the International Court of Justice (ICJ). **Articles 92** is about the supremacy of the International Court of Justice among the organs of the United Nations; **Articles 93** is about the parties of the ICJ *ipso facto* and by recommendations of the United Nations Security Council; **Articles 94** is about the undertaking of judgment by the ICJ and the rights of an opposite party if one of them does not comply with the decision given by the ICJ. **Articles 95** is about the operation of another way via special agreement and **Articles 96** is about the advisory opinion (AO) from the ICJ requested by the Secretary general or The Register of the ICJ.[37]

In Article 22 of the statute of the ICJ, it has been stated that the ICJ will conduct its session on Hague permanently, and whenever the court wants it can change its setting. In the continuation of its function, there will be no presiding power of the Secretary-General except the President and Register of the ICJ.

[37] United Nations Charter, (adopted on 14 August 1941, entered into force on 26 June 1945)

Article 3 of the statute of ICJ expresses the number of judges of the court which shall be 15(fifteen) elected for 9(nine) years by the United Nations Security Council and United Nations General Assembly.

Another function is operated by the ICJ which is the advisory jurisdiction that begins with a written statement from the Secretary-General or the register of the ICJ. Upon the written request from the concerning authority, the court itself requests the scholars to give an opinion on this matter according to Customs and Treaty. Then the court adopts some or whole rules from the comments and gives them to the concerning authority.[38]However, the advisory opinion is not binding at all, it contains a high weight of legal value as it is given by the high authority of the legal institution. This is used as a preventive instrument by the concerning authority through ICJ to keep the peace in the international community.[39]

3.2.2 Cases:

3.2.2.1 the United Kingdom of Great Britain and Northern Ireland Vs Albania:

The first successful case of the International Court of Justice (ICJ) was held on 22nd May 1947 between **the United Kingdom of Great Britain and Albania** also known as (***the Corfu channel case***)[40].

On 22nd October 1946 two cruisers and two destroyers entered the Corfu channel lane. The channel which was used by the British voyage was in the area of Albania waters and remarked as safe. There were mines in the water area of Albania and about forty-five British officers along with sailors had lost their lives with forty-two injury cases. In the hearing, the court voted for compensation with 11 against 5 dissenting votes and found Albania responsible for this death and injury and ordered Albania to pay €844000 as compensation.

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[38] *Alina Kaczorowska, 'International Law' (Fourth edn, Routledge 2010) p: 512*

[39] ICDR, 'INTERNATIONAL DISPUTE RESOLUTION PROCEDURES'
< https://www.adr.org/sites/default/files/ICDR_Rules_1.pdf>
Sompong Sucharitkul , 'Good Offices as a Peaceful Means of Settling Regional Differences' (1968) Vol 11(17)

[40] (1947) ICJ Rep 1

The chamber of judges considers the question of whether there was enough time for Albania to warn against these voyages and could save these lives.[41]

3.2.2.2 Legal Consequences of the Construction of a Wall in the Occupied Palestine Territory:

In **Legal Consequences of the Construction of a Wall in the Occupied Palestine Territory**[42] case, the International Court of Justice issued its advisory opinion by applying its power laid down in Article 65 of the Statute in the contention between the Palestine and Israel in the matter of construction of the wall.

In the case of Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the wall by Israel was not according to the Green line route rather they tried to illegally try to annex the places of Palestine. It was presumed that 14.5% of the West Bank will be annexed by this barrier which was a total violation of international law. The main reason for the annexation of those land was to capture the natural resources as annexed land includes a huge amount of resources.

According to the UN, Humanitarian Affairs about 750,000 Palestinians will be the victim of it as more than 50% west Bank will be annexed by this barrier. Moreover, Israel tried to give economic and social suffocation to them respectively.

The court found it also violative and also the construction of this kind of barrier will result in a great hamper on the freedom of movement of the inhabitants of Palestine. Which is a clear violation of Article 14 of ICCPR where freedom of movement has been guaranteed. The court also found the violation of the right to work, health, and education. However, in terms of annexation, the court found that the annexation is a clear violation of Article 49 which was cited in the Fourth Geneva convention also in paragraph 120 of the Security Council resolution.

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[41] *Eirik Bjorge and Cameron Miles, 'Landmark Cases in Public International Law' (1st edn, OXFORD AND PORTLAND, 2017) p:370*
The United Kingdom of Great Britain and Northern Ireland Vs Albania also known as (the Corfu channel case). (1947) ICJ rep 1
[42] *(2004) ICJ Rep 131*

In defense, Israel stated that they had the right to give a barrier to protect their citizen from terrorists. Moreover, they argued that ICJ is not the appropriate medium to resolve this issue.They are also the country to ratify the CRC. By constructing the wall Israel made a clear violation of any rights in the CRC.

However, in dissent opinion one of the justices tried to give the effect of this annexation by paying some compensation as Israel stated that, they had the right to give a barrier to protect their citizen from terrorists.[43]

3.2.2.3 Military and Paramilitary Activities in and against Nicaragua:

In the **Military and Paramilitary Activities in and against Nicaragua[44]** case, ICJ had announced a ground-breaking judgment in favor of Nicaragua by ignoring the arguments of the mighty USA and establishing disputing issues.

The dispute between Nicaragua and USA is about the breach of customary international law based on

(I)Prohibition of the threat

(II) the principle non-intervention

(III) using collective self-defense

ICJ found that, the USA has started to breach its customary international law and started to intervene in other's internal affairs and also started to intervene in other's exercises on peaceful maritime commerce. Which signifies the total violation of the treaty signed at Managua on 21st January 1956.

ICJ also found that the US military had breached the humanitarian law as Nicaragua alleged that its citizens were brutally killed, and wounded by the military of the USA.

Then the court again reestablished 3 main elements of this groundbreaking judgment

i)The sovereignty

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[43] *Eirik Bjorge and Cameron Miles, 'Landmark Cases in Public International Law' (1st edn, OXFORD AND PORTLAND, 2017) pp: 539*

Legal Consequences of the Construction of a Wall in the Occupied Palestine Territory(2004) (Israel wall advisory opinion), ICJ rep 131

Malcolm N shaw, 'The settlement of disputes by peaceful means' (6th edn;cambridge) p;1012

[44] *(1986) ICJ Rep 70.*

II)Free exercise of affairs within the territory without intervention

III)Prohibition of using excessive power than necessity

This decision yet in the 21st century is followed by the country and also become one of the mandatory parts of international law. Some of the experts stated that, the first denial of the suit by the USA and later consent in the trial proves disobedience to the law and which determines that their intention was *prima facie* malafied.[45]

3.2 Conclusion:

Since the establishment of the ICJ, it has been doing a significant job being an organ of the United Nations. It's been settling international disputes peacefully and spreading peace among the international community. Moreover, the rate of war or coercive means has been curtailed only for an active role of ICJ in resolving disputes. In the next chapter, we will see another important mechanism of resolving disputes peacefully by the active participation of the contesting parties.

[45]*Eirik Bjorge and Cameron Miles, 'Landmark Cases in Public International Law' (1st edn, OXFORD AND PORTLAND, 2017) p 349*

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. the United States of America (Nicaragua v. United States of America) (1986) ICJ Rep 70

Chapter 4

Mediation and Good Office

4.1 Introduction:

In this chapter, we will see how these mechanisms work in resolving disputes peacefully. In addition, where the provisions laid down for dealing with this mechanism with some significant cases and results.

4.2 Relief:

4.2.1 UN Charter:

Under article 33(1) of the United Nations Charter the terms Mediation have been defined though, the term Good Office had not been defined in the Charter. In article 4 of the convention for the pacific settlement of the disputes of 1907, the term has been also defined. "In ***Schooner Vs Mcfaddon***[46] case it was held that, The term Good Office denotes the diplomatic process and sometimes judicial usage for settlement of disputes"[47].

4.2.2 Incidents:

4.2.2.1 Mediation:

4.2.2.1.1 Tashkent Agreement (1966):

The trend of peaceful settlement of disputes through Mediation can be said started via the significant Tashkent Declaration between the government of Pakistan and the government of India in 1966. In this declaration on behalf of Pakistan the president signed and participated on the other hand on behalf of India the Prime minister did. During this mediation, the Prime minister of the Soviet Union played an important role to reach in a peaceful agreement between Pakistan and India. In this agreement both agreed to the following:

[46] (1812) 11 US 116
[47] Schooner Vs Mcfaddon (1812) 11 US 116

1. Keep friendly relations between both country
2. Returning all armed personnel from the border side.
3. No one will interfere with other internal affairs.
4. No one will defame another; and
5. Both will maintain friendly diplomatic relations indeed.[48]

4.2.2.1.2 Algeria agreement between Iran and Iraq (1975):

As Iran and Iraq had been supporting two rival parties in a boundary dispute. Through this agreement, Iran and Iraq maintained peaceful diplomatic relations between them. In making it Algeria plays a mediator role. Through this agreement, they both agreed to continue their relationship with good faith, and in order, to keep with inviolability, they will strictly follow and respect their internal territorial integrity. Moreover, if any dispute arises then they had agreed to resolve this through further mediation between the representative of the country.[49]

4.2.2.2 Good office:

4.2.2.2.1 THAILAND and CAMBODIA: NEW YORK AGREEMENTS 1960:

THAILAND and CAMBODIA: NEW YORK AGREEMENTS 1960 also known as the border dispute is regarded as one of the significant good offices held by the Secretary General of the United Nations with help of the Ambassador of Norway in the Headquarters of the United Nations. The Negotiation was conducted through the active participation of Thai and Cambodian representatives. Finally, the good office concluded by agreeing on four agreements signed by the representative.

1. Suppression of rebel activities on border
2. Production of common law criminals
3. Suppression of unlawful acts in the border area

[48] UN PeaceMaker, 'Tashkent Agreement 1966' (adopted 10 January 1966, entered into force 22 March 1966)
[49] Algeria Declaration 1975, 'TREATY CONCERNING THE STATE FRONTIER AND NEIGHBOURLY RELATIONS BETWEEN IRAN AND IRAQ' (adopted 13 June 1975, entered into force 21 December 1975)

4. Cessation of Radio attack.[50]

4.2.2.2.2 India and Pakistan: Kashmir Unrest:

In 1950 according to the direction and request by the United Nations Security Council General Mc Naughton took the initiative to resolve the disputes between the forever competitor Pakistan and India. At the next meeting held by United Nations, the UNSC appointed sir Owen Dixon to negotiate between the contesting parties. Finally, in UNSC reached an opinion to settle the dispute peacefully instead of war. The UNSC adopted an agreement on the proposals of Graham:

1. Party shall sign in the agreement of cessation of fire
2. The party shall demilitarize instantly after taking this agreement to make Jammu Kashmir neutral.
3. Calls upon from the parties with the help of the UNSC the outstanding disputes shall be resolved between the countries.[51]

4.3 Conclusion:

We have already been gratified with the result of the good office which we have observed in the above cases. There might be violence but by the grace of good office, it turned into a good and peaceful settlement. Later will see what are the prospects and challenges in applying those mechanisms to settle the disputes peacefully.

[50] Sompong Sucharitkul , 'Good Offices as a Peaceful Means of Settling Regional Differences' (1968) Vol 11(17) Ilmo. Sr. Dr. D. Otto F. von Feigenblatt,'EXPLORING THE RELATIONSHIP BETWEEN PROSPECT THEORY AND INTERNATIONAL CONFLICT: THE THAI-CAMBODIAN BORDER DISPUTE AS A CASE STUDY' (2012) Vol 53(1) NICOLE JENNE, 'The Thai–Cambodian Border Dispute: An Agency-centered Perspective on the Management of Interstate Conflict' (2017) Vol 39 (2)

[51] UN Security Council, The India-Pakistan question (1948) <https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/en/sc/repertoire/46-51/Chapter%208/46-51_08-16-The%20India-Pakistan%20question.pdf> accessed 12 August 2022

Chapter 5

Conclusion

5.1 Findings:

5.1.1 Prospects:

Expectancy for peaceful settlement of international disputes is much more significant and most reliable in this era. As it is the best way to deal with the other nation and cut off the disputes mutually and amicably. We are now in the era of the 21st century, so we should restrain from entering violence with other countries.

Through the Peaceful settlement, we are now resolving very important issues without engaging in the war thus we are not facing any devastating situation. War is a curse for the nations who are engaged and also for the others who are in a neutral position.

In the above, we have observed that in a very crucial situation through the mediation or good office or with the intervention of the ICJ the disputes were resolved within a short time with maintaining great communication between the contesting country. As we can look at the situation of the case between Great Britain and Albania. There was great mischief but with the help of the ICJ, all victims got compensated. Nonetheless, there in the case between the Palestine and Israel the ICJ gave its advisory decision to ensure justice in favor of Palestine as Israel was dominating and violating the rights of peoples conferred by International Law.

Moreover, one of the significant negotiations held between the forever contesting party of India and Pakistan. Even they also negotiated their problem through negotiation instead of choosing coercive means or war. It took around one and half years to settle the disputes between India and Pakistan relating to the border disputes in Kashmir. Which was finally done peacefully without any violence. So, it can be said that the visibility of the amicable means is magnificent.

5.1.2 Challenges:

Till now we see the visibility of the amicable means of resolving disputes. However, one may ask, why should not all countries in all situations apply for a Peaceful settlement instead of war?

The answer to the question is not so far easy. The mighty power countries are now fully equipped with automated nuclear weapons and many things. They are abiding by the amicable negotiation till it does not cause harm to their interest. If they once find that, the negotiations or the decision of the legal court is going against their interest then they are not going to make a solution through negation. They try to maintain their interest through force. Or coercive means.

First of all, the negotiation made by the mediator or the good office held by a third party has no binding effect. Contesting states have no legal obligation to obey the decision made in this meeting. In addition, in the dispute between Cambodia and Thailand, they were also denied the decision given by the negotiation. Thus, time and hard work have gone in vain only because of the legal effectiveness of the good office. Nonetheless, they are not owing to obey the decision given by the ICJ which has a binding effect.

As an example, we can see that, in the case of Nicaragua, the ICJ found the USA guilty of the provocation. Then the USA was told to pay compensation to the affected state. However, the USA applying its power vetoed the decision and deny the justice given in favor of Nicaragua.

Not only that, but currently the USA based NATO is taking initiative to spreads its area of command through the annexation of the state as a member of it. Which is another reason for unrest in the current situation between Russia and Ukraine. That may lead to another war in the future, specialists intend[52].In this matter, NATO is not only guilty of the annexation, but mighty Russia also had been exercising unlawful interference through Collective Security Treaty Organization (CSTO) treaty. During the protest in Kazakstan made by its citizen, Russia deployed Army forces for sake of CSTO.[53]

In addition, there no visible measures are taken by the UNSC for making provisions for the usage of nuclear weapons. The ownership of nuclear weapons is another bar to making a peaceful settlement.

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[53] 'Russian troops move to put down violent uprising in Kazakhstan' (BBC News, 5 January 2022) <https://www.cbc.ca/news/world/kazakhstan-troops-clash-shots-1.6305727> accessed on 18 August 2022
'Kazakhstan: Why are there riots and why are Russian troops there'? (BBC News,10 January 2022) <https://www.bbc.com/news/explainers-59894266> accessed on 18 August 2022
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'Russia Sends Troops to Kazakhstan to Help Quell Uprising' (The New York Times, 6 January 2022) < https://www.nytimes.com/live/2022/01/06/world/kazakhstan-protests > accessed 18 August 2022

5.2 Recommendations:

War is a curse for all and not the only solution to resolve disputes. To make friendly communication and settle the disputes amicably, there must take some steps by the concerning authority as follows:

I. The power of veto should be withdrawn. As we already observed that by the sake of veto power the USA denied the obligation given the ICJ in the case between Nicaragua. There is no clear provision for the veto. In **Article 27 of the UN Charter**, there is a provision of decision making by affirmation vote given by all irrespective of the five permanent members of UNSC, which must be changed on a majority basis.

II. There should be a provision that regarding any disputes the contesting states must consult with the UNSC first for negotiation to settlement before seeking remedy in the adjudicative authority and making contrary of the rule shall be subject to punishment.

III. Constituting a central supreme authority to maintain balance of Peaceful settlement. The parties who are the member or not shall seek remedy there for settlement and this central authority shall act as an institutional body along with adjudicative body.

IV. The principle of non-interference should strictly be followed by all states irrespectively. The supreme authority shall monitor this and will contribute to setting off this dispute.

V. Decisions taken through negotiations should be given binding effect for all state irrespectively to avoid unexpected coercion among the contending states.

Once for all, we have witnessed that, a dispute can be settled peacefully without being violence, which would cause a threat to the peace and security of the international community. Prominent American philosopher George Santayana quoted, *"Only the dead have seen the end of war"*. This quote briefs how terrifying war is. So, we should follow always peaceful means in resolving disputes, because ***"Peace is possible***".

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