



# OVERVIEW OF INTERNATIONAL DISPUTE SETTLEMENT MECHANISM: ICJ, WIPO & WTO

**PAYAL PANDEY**

*Department of law, School of Law, Galgotias University, India*

**FARIA RAHMAN**

*Department of Law, School of Law, Galgotias University, India*

## **ABSTRACT<sup>1</sup>**

This Research paper is an attempt to reflect the overview of international dispute settlement mechanism i.e. International court of justice, world intellectual property organization and world trade organization. This research paper has broadly explained about the methods used by the ICJ, WIPO and WTO to settle the international disputes of its member's state. The ICJ which is an international court and which is often called as world court is an organ of united nation. The member states of the ICJ settle their dispute as per the UN charter and ICJ statue. World intellectual property organization which is also a specialized agency of the United Nations is also working to protect the intellectual property rights of the states through its WIPO arbitration and mediation center. World trade organization works as a regulator of trade between the two nations and settle the international dispute between the members states by dispute settlement board. In this research paper, we will be discussing about the measure used by these organization to settle the disputes between their member's states.

**KEYWORDS:** INTERNATIONAL DISPUTE, UNITED NATION, ICJ, WIPO AND WTO

## **CHAPTER: INTRODUCTION**

Dispute is defined as the disagreement between the two parties, nations and states. The process of resolving disputes between two parties either in or out of the court is known as dispute resolution. Dispute Resolution enables parties to settle down the negotiation terms in between them without intervention. A more valuable definition of Dispute is a bone of contention between two states or two nations. Two parties can disagree on the terms of law as each party has its own legal obligations and wants to settle down dispute on their law clauses or interest which brings the role of international organizations like World Trade Organization, World Intellectual Property Organization, and International Court of Justice also The charter of UN plays a vital role in dispute settlement peacefully between states. According to Article 2 of clause 3 says that all state members will settle down disputes peacefully in order to maintain the MOUs of international peace and security and justice signed by the members. The charter does not include means of resolving disputes, it allows states or partners to choose their own way of settlement. Article 33 of International peace and security defines many

ways of settlement such as enquiry, Mediation, Conciliation, arbitration, negotiation and judicial approach. This peace clause of redefined in Manila declaration of the UN general assembly in 1982 Resolution 37/10.<sup>2</sup>

Disputes emerge when peace terms, business deals and MOUs signed between two parties, states or countries become null and void. International Disputes contains many issues like demography, religion, business, ambiguous MOUs, natural habitat etc.

The proposed research work is a Doctrinal and Non-Empirical Research. Hence, this research work is purely based on the resources from libraries, archives and online databases and various e-learning resources

## CHAPTER II: ROLE OF INTERNATIONAL COURT JUSTICE<sup>3</sup>

ICJ is also called as the world court. It's one of the six principal organs of United Nations. It is situated in The Hague, Netherlands while rest of the organs of UNs are in New York USA. Currently it has 193 members. It was established back in 1945 but before that ICJ was known as the successor of the permanent court of Justice which was established back in 1920 by the League of Nations. All the members of the UN are party to the ICJ statute. ICJ settles down the international disputes between states and gives advisory opinions on international legal issues.

ICJ is comprised of 15 judges elected by the General Assembly and the Security Council for the 9 years. Its working languages are English and French. Asdulqawi Yusuf is the current president and elected in February 2018 and Xue Hanqin is the vice president of ICJ.

### Structure of ICJ<sup>4</sup>

- The court is made up of 15 members who are elected for 9 years by the General Assembly and the Security Council. Both these organs elect these members on separate voting structure.
- A candidate must secure an absolute majority in votes in both bodies.
- One third of the court are elected in every three years and these judges can be reelected again.
- It's an administrative organ and registered under United Nations.
- All these judges are elected from these regions
  1. Three from Africa
  2. Two from America and Caribbean
  3. Three from Asia
  4. Five from Western Europe and Other states
  5. Two from Eastern Europe.
- Judges are not under the purview of government. They are independent judges and their sole duty is to make a solemn declaration in open court so that they will use their powers independently and conscientiously.
- No member of the court can be dismissed unless in the unanimous decision of the other members of the court.

<sup>2</sup> Peace place library, settlement of international dispute <https://www.peacepalacelibrary.nl/research-guides/settlement-of-international-disputes/settlement-of-international-disputes/> (last visited on 15-7-2020)

<sup>3</sup> ASHOK K JAIN, INTERNATIONAL LAW, EDITION 7, PAGE 126

<sup>4</sup> DR. H.O. AGARWAL, INERNATIONAL LAW & HUMAN RIGHTS, PAGE 508

## Functioning and Jurisdiction of ICJ

- ICJ deals as an advisor for the State members of United Nations.
- States have no representatives in the court. They communicate with the registrar through their ministry of foreign affairs or the ambassadors.
- The judgment is final, binding on the parties to a case and without appeal.
- ICJ performs duties as permanent court but may arrange ad hoc courts at the request of the parties for the specific cases.
- Advisory proceedings before the court are bounded to only rest five organs of the United Nations.

## Limitations of ICJ

- It has no jurisdiction for war accused crimes against humanity.
- The jurisdiction of ICJ is totally different than International Tribunal for the law of Seas.
- The ICJ jurisdiction works on consent not forced jurisdiction.
- It hears dispute members only if it is requested by one of the states, it cannot hear it by its own.
- It's not an appeal court for any tribunal.

## KULBHUSAN JADAV CASE

Kulbhusan Jadav was arrested in March 2016 by Pakistani security forces in Baluchistan. He was sentenced to death by Pakistani military court back in April 2017 for the charges of Espionage and terrorism. India has always mentioned that he is not a spy but a retired Navy officer and Pakistan must provide counsellor to him as his case pertains to the abduction from the Baluchistan. In May 2018 ICJ has stayed his death sentence after India put a petition before the United Nations to seek justice for him. Our Ex- foreign Minister Sushma Swaraj took this matter in limelight and urged a bail for him in ICJ as Pakistan violated the MOUs of Vienna convention. Pakistan is still keeping the custody of the Indian national kulbhusan Jadav without any consular access and it is declared unlawful. Harish Salve the representative of Mr. Jadav in ICJ said Pakistan is using Jadav as a propaganda tool without even following the due proper procedure.

## CHAPTER III: ROLE OF WIPO<sup>5</sup>

**WIPO –World Intellectual Property Organization**, It was formed on 14 July 1967 and came into operations in early 1970s, it is headquartered in Geneva Switzerland. It's one of the 15 subsidiaries organization working under United Nations. It current Director General is **Francis Gurry**. Currently it has 193 members.

**OBJECTIVE:** - To promote the Intellectual property across the world with the cooperation of countries and organizations.

### Working Procedures:-

WIPO publish annual world intellectual property indicators every year covers the main areas of Intellectual property. It complies the data from the World Bank, UNESCO and national regional banks.

WIPO economic and Statistic division gathers data on economies of different countries and publish it in the form of statistics. It also tells about the Intellectual rights and policies effect on economy.

WIPO created Wiponet, a global network which connects around 300 intellectual rights offices throughout the countries. It provides a secured communication among all connected parties.

### Solutions provided by WIPO-

- Patents
- Trademarks
- Industrial designs
- Geographical indication
- Dispute resolution
- Domain names
- Data and digital assets

### .What WIPO provides:-

- A policy forum formed for the balanced international IP rules all over the world.
- Global services to protect IP across the borders and resolving disputes.
- A world reference source for IP Info.
- Capacity building and cooperation program for all countries so that they can use IP services to boost economic, social and cultural development.
- Best technical infrastructure to connect all IPs and share knowledge.

Recently WIPO director Francis Gurry identifies the measures it requires for the changing trajectory of trade and innovation and how will it impact the global intellectual property framework. Francis Gurry taking his sights on the

<sup>5</sup> WORLD INTELLECTUAL PROPERTY HANDBOOK, [https://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo\\_pub\\_489.pdf](https://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf) (LAST VISIT ON 16-7-2020)

recent 25 best economies of the world, he said the India is done pretty well in 2019 after climbing at 52 from 81 in WIPO global innovation index.

## WIPO ARBITRATION AND MEDIATION CENTER

WIPO work in Alternative Dispute Resolution between the states and companies, through the WIPO arbitration and mediation center. It was established in 1993.

WIPO resolve the dispute among the states and company through

- Mediation
- Arbitration
- Expedited Arbitration

The party may want can combine the 2 methods together i.e mediation and arbitration. They can first opt for medication and if still no happy can go for arbitration too. This ADR service they can opt anywhere. Where the WIPO has made agency for it and the decision will be like an international award.

## CHAPTER IV: ROLE OF WORLD TRADE CENTRE (WTO)<sup>6</sup>

World trade organization works as a regulator of trade between the two nations. It was established in 1995. Currently it has 164 members. It is headquartered in GENEVA Switzerland. WTO's official languages are English, French and Spanish. Its current director general is Roberto Azevedo.

**Establishment:** WTO commenced operations from 1<sup>st</sup> January 1995. It came under operation after the Marrakesh Agreement signed by 123 members and replaced General agreement on Tariffs and Trade (GATT) which commenced in back 1948.

### Structure:

- WTO has seven members who are appointed by dispute settlement board for four year term.
- Same members can be reappointed.
- A member must be qualified in the knowledge of Law, trade and international relations.
- It also has a chairman among the seven members who can be extended for a further period of one year.

<sup>6</sup> WORLD TRADE ORGANIZATION, DISPUTE SETTLEMENT [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm) (LAST VISIT ON 16-7-2020)

### **Dispute Settlement in WTO:**

1. Dispute settlement board is the major organ to look after disputes.
2. DSB makes panels of expert who accept or reject depends on the appeal.
3. It ensures the country is complying with the international trade regulations and implementing it properly.
4. It has two stages:
  - The first stage: it is called as the consultation and remains up to 60 days. Here countries can talk to themselves and resolve the dispute by themselves. If they do so, WTO director can act as a mediator.
  - The second stage: In this stage if consultation fails, a panel is made by the DSB in up to 45 days and conclude in next 180 days.
5. DSB can reject the findings of the panel if the report is not based on international agreements.
6. The Final decision is adopted within 30 days by DSB.

## **CHAPTER V: CONCLUSION**

Internal dispute arise when clauses are violated on term of peace, trade, land and habitat in between the two states, countries, parties and nations. The best solution for dispute settlement are the peaceful means in which it is recommended by many international organization is to settle down the dispute by the parties themselves instead of going for legal procedure.

Organizations like WTO and WIPO fully intervene when their members breach any clause that violates an agreement and dispute issues are informed by any of the members to these organizations. They ensure that members compliance with international legal obligations and implement them properly.

ICJ is the only organization that intervenes when dispute is directly recommended in United Nations by any of the members. ICJ doesn't deal in criminal activities against humanity and confirms only interventions when other courts not satisfy judgments. ICJ confirms the implementations of the treaties and agreements among all the UNs members. The major limitations are that many countries do not approach these international courts and organizations. Countries approach appointed ambassadors who administrators further procedure. Countries want to negotiate on the terms of their legal obligations in case of dispute so they go for direct compensation procedure and neglect mediators.

## REFERENCES

- ICJ official website :

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjttuvh0tTqAhVH6XMBHfcA4oQFjAVegQIDxAB&url=https%3A%2F%2Fwww.icj.org%2Fen&usg=AOvVaw1VAIYkjsyatalWEXPSEo-v>

- ICJ Wikipedia: [https://en.wikipedia.org/wiki/International\\_Court\\_of\\_Justice](https://en.wikipedia.org/wiki/International_Court_of_Justice)

- WIPO official website  
<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwj4mufm0tTqAhXeILcAHW1WDAIQFjAAegQIARAC&url=https%3A%2F%2Fwww.wipo.int%2F&usg=AOvVaw1MU2M1ofxeBk9AHjV96VBe>

- WIPO Wikipedia: [https://en.wikipedia.org/wiki/World\\_Intellectual\\_Property\\_Organization](https://en.wikipedia.org/wiki/World_Intellectual_Property_Organization)

- WTO official website:

[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjKi7y70tTqAhUv7HMBHbkSD\\_0QFjAAegQICRAB&url=https%3A%2F%2Fwww.wto.org%2F&usg=AOvVaw2a5NB5hmU0bgU4DWFryCDN](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjKi7y70tTqAhUv7HMBHbkSD_0QFjAAegQICRAB&url=https%3A%2F%2Fwww.wto.org%2F&usg=AOvVaw2a5NB5hmU0bgU4DWFryCDN)

- WTO Wikipedia [https://en.wikipedia.org/wiki/World\\_Trade\\_Organization](https://en.wikipedia.org/wiki/World_Trade_Organization)

- V K AHUJA, LAW RELATING TO INTELLECTUAL PROPERTY RIGHTS, THIRD EDITION

- DR, H.O. AGARWAL, INTERNATIONAL LAW AND HUMAN RIGHTS, 22<sup>ND</sup> EDITION

- A K JAIN, INTERNATIONAL LAW, 11<sup>TH</sup> EDITION