Video Transcript

International Dispute Settlement and the International Court of Justice – Gleider Henández

Welcome to our micro-lecture on Chapter 12 of *International Law* which concerns the various means of dispute settlement, with a specific focus on the International Court of Justice, which is the principal judicial organ of the United Nations.

Now, prior to the signature of the charter of the United Nations in 1945, recourse to force was an acceptable last resort in settling disputes between states. In short, it meant that states could declare war on one another and, besides a few treaties here and there, that wasn't systematically regulated. So with the prohibition force in the charter, the international legal project saw a bit of an advance in that it finally regarded the prohibition of force having been achieved, as it were, and the number of peaceful modes of dispute settlement began to become more formalised and began to be accepted between states as the only way, ideally, of resolving disputes between them.

The UN Charter enjoined states in Article 2(3) to resort to peaceful dispute settlement. It's a positive obligation on states; they ought not to wage war on one another. And in Article 33 of the Charter, a number of modes are open to states and we're going to be going through those in this chapter in turn. Now, the first mode is the most unstructured of all; it's called negotiation. And negotiation means in plain English what it does for international lawyers, a rather rare instance. But negotiation, simply put, involves states engaging in meaningful dialogue with one another in order to end the dispute. Negotiations can be informal or formal; they can be highly ritualised, or secret. The point is to engage in dialogue with one another to resolve the dispute, and states do this often in concert with other modes of dispute settlement and it is the most frequent way in which states engage with one another.

Next, in terms of an increasing, sort of, formalisation of it, we would find mediation, where an impartial third party is brought in to help states engage in dialogue with one another. It takes negotiations a step further because there's the presence of the third party there who might help to cool down tempers, or to try to isolate the disputes on which agreement can be found. Examples of that often include the UN Secretary-General, or the head of state from a former country, coming in to mediate. And mediation often leads to a legal form of settlement, for example, through the form of a treaty.

Next we have something called ‘inquiry’. And this is most useful in situations where the facts are the major dispute between states. So what is done is very often there's something called a ‘commission of inquiry’, through which a mechanism of finding facts impartially is agreed, and states agree that finding a fact will bind them, or form the basis for future negotiations. And in many cases, these commissions of inquiry have been indispensable to resolving a dispute and have created the foundations for peace to be built between states without recourse to war.

And finally, we start moving more and more to legal modes of inquiry through a process of conciliation. Where conciliators take a far more active role than mediators, they do much more than just establish dialogue, they seek to establish possible—and propose—solutions. That although they don't bind the parties, they may very much form the structure for the solution to any dispute. So a conciliator can correspond and liaise with each party on their own, can try to get them to the table on certain things, can set the agenda. And the conciliation commissions, although not used as much as they used to be, remain very much part of the web of options, or the menu of options, available to states facing disputes.

We then move into the more legal forms of settlement, and the reason we call them “more legal” is because they are more specifically formalised and their outcomes are binding. The first is arbitration. Arbitration is a mode of dispute settlement through which states decide that they will agree with the decision of the arbitrator and they will implement that decision as binding. Now, states control an arbitral process; they can set the procedure; they can set the composition of the arbitral tribunal; they can set the applicable law, et cetera, et cetera. But once the award is issued, they are bound. And arbitration has a very long pedigree within international law. It's been used for centuries, and it's even had a renaissance in recent decades, where it's been used increasingly by states as a more flexible, supple method of dispute settlement than adjudication because of the control of parties.

And that brings me to adjudication, which means what it does in plain English, adjudication is resort to a court that applies settled rules of law that exists independently of a dispute, whereas an arbitral tribunal will come into existence and be disbanded at the moment that a dispute is resolved. An international court may be may be sitting there for decades with periodic elections to its bench. And the prime example of that is the International Court of Justice, which is the principal judicial organ of the UN. We'll explore the court in more depth in the actual textbook, but suffice to say, the court exercises two functions: one is

dispute settlement or contentious, it resolves disputes between states on the basis of law; the second one is advisory; it gives opinions to various organs of the United Nations in order for them to understand the legal consequences of policy choices they're making. And through those functions it exercises a very important role.

Thank you.