IJFANS INTERNATIONAL JOURNAL OF FOOD AND NUTRITIONAL SCIENCES
ISSN PRINT 2319 1775 Online 2320 7876
, Journal Volume 11, Iss 10, 2022

A CRITICAL STUDY OF LAWS AND PRACTICES WITH RESPECT TO SETTLEMENT OF INTERNATIONAL TRADE DISPUTES

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Abstract

The world is heading towards globalization, and in this world of ours, international agreements—whether multilateral, plurilateral, or in other forms—become increasingly significant. The World Trade Organisation (WTO) has established a global regulatory framework for the resolution of disputes of goods. However, an analysis of the dispute mechanism and a close examination of different arbitral rulings show that the decision-making process is inconsistent. The goal of the research is to comprehend the WTO Mechanism for resolving disputes from both real-world experiences and its procedural characteristics. In order to achieve this, the researcher's focus has been on global trade organization, which resulted from the Uruguay Round of multilateral trade negotiations. The agreement pertaining to this includes newline articles such as Article XVI with List of Annex, particularly Annex 2, which is connected to newline. Knowledge of the guidelines and processes regulating dispute resolution. The studies address the process and application of dispute resolution in the emerging field of international trade. It discusses the use of dispute settlement mechanisms and examines recent cases that involve both random and selective selection.

One of the main reasons the International Trade Organisation (ITO) was unable to serve as the vehicle for global trade liberalization was because the GATT served as the fundamental agreement for the ITO's establishment. It was never meant to be an operational organization. Its method for resolving trade disputes was therefore poorly thought out. The researcher is talking about the most cooperative ways to resolve conflicts after the WTO was established. In addition to drastically altering the GATT's topical focus, the World Trade Framework established a framework of mandatory, legally binding, and enforceable dispute resolution procedures. The Understanding of Rules and Procedures Governing the Settlement of Disputes provides the main legal underpinning for this system.

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Keywords: WTO, GATT, Adjudication, Dispute Settlement, International Trade

Introduction

It is widely acknowledged that the WTO process represents a revolutionary development in international economic relations that goes beyond simple domination. This is a great achievement, however the system as it stands is still rather neutral. Because developed countries are in a much better position than emerging ones, many impoverished countries even do not think about using international forums. This is primarily due to the unexpected benefits and high cost of participation.

International trade disputes can result from (i) contracts for the sale of goods, which can give rise to disputes about quality, price and payment, transportation and timing, and delivery conditions; (ii) distributorship and agency contracts differ in that distributors buy and sell, while commercial agents negotiate and promote the sale of goods on behalf of another party (the principal), who subsequently sells the goods to customers; and (iii) the performance of international construction. In international trade, dispute resolution is a crucial component of risk management. Small and medium-sized businesses (SMEs) are being exposed to new markets, global competitors, partners, nations, cultures, and trade practices as a result of lower obstacles. New risks are created by international opportunities. International business transactions might result in disagreements. When it comes to international commercial disputes, there are more challenges than just disagreements between organisations in the same nation. These challenges include different legal systems and traditions, several jurisdictions, distinct procedures, and frequently many languages involved. In the last 20 years, commercial conflict resolution techniques have changed significantly.

A new chapter in international economic relations has been heralded as one in which law, rather than power, may prevail thanks to the WTO's legalised dispute settlement mechanism. Even while these advancements in international law are a tremendous accomplishment, the system's structure and functioning still far from conforming to a neutral technocratic approach. Large industrialised nations are in a far better position to benefit from the legalised system that demands resources, and they have. In particular, the remedies rules in the system are set up to benefit them.

The WTO's automated and mandatory dispute resolution system is among its most notable and effective features. Enforcing adherence to a treaty is a different matter entirely from nations agreeing to it. States may only be taken before an international court or tribunal in accordance with

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international law if they have granted the court or tribunal jurisdiction. This often means that a treaty's violation cannot be contested in a third-party adjudication process, or that a disagreement can only be resolved through the legal system with the express agreement of both parties.

Objectives of the Study

• To assess where international trade dispute resolution techniques originated.

• To conceptually analyse the various approaches to trade dispute resolution.

• To examine the provisions pertaining to the settlement of international trade disputes under Indian law and assess its efficacy.

• To analyse the legal provisions dealing with international trade disputes at the inter-national and regional level.

Statement of the Problem

The issue with the dispute settlement mechanism relates to the areas of its procedures, particularly those found in Annex-II of the dispute settlement, where there are perceptions that the procedures are insufficient in certain respects and/or leave room for the board to exercise discretion and leave room for ambiguity in other situations. However, given the Awards and Decisions do not establish precedents, room exists to identify the problems and offer solutions for enacting corrective measures that would bring about clarity, legitimacy, and enforceability in a global process towards globalisation.

Importance of the Study

The study is important because it broadens our knowledge of the many strategies used to resolve trade disputes internationally. Additionally, it aids in the creation of a strong legal framework that safeguards international trade for merchants, legislators, judges, attorneys, and administrators. The study will offer an unbiased evaluation of the functions performed by the different international organisations in settling trade disputes involving emerging and least developed nations.

Research Methodology

This study's technique is entirely mixed method. The topic is examined in the context of several treaty clauses governed by the UN and WTO's DSU agreement, as well as statutory provisions and court rulings. The information was gathered by studying a variety of books, treatises, journals, periodicals, United Nations publications and periodicals, magazines, international materials, legislative glossary, treaties and conventions, etc.

Internationalization of International Trade

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The GATT was the world's leading nations' first serious attempt to establish a unified set of trade laws. Leaders of the Allied nations gathered at Breton Woods, New Hampshire, in June 1944, while the Allied forces ravaged Europe. As the Second World War was coming to a conclusion, these countries realised they had to deal with the financial and economic issues that had fueled both the war and the Great Depression.

Under the International Trade Organisation Charter, the GATT was founded as a mutual-tariff reduction agreement at the outset of its existence. Furthermore, the GATT's members never regarded it as an international organisation. The GATT was initially intended to serve as the international trade organization's legal foundation. The GATT was created in the wake of the failure of the International Trade Organisation and had a more constrained set of procedures developed from the Havana charter for the settlement of disputes between its contracting parties, according to Read, R. The two main GATT provisions that address dispute resolution are XXIII on nullification and impairment and XXII on consultation.

Ultimately, on January 1, 1995, the World Trade Organisation (WTO) was founded and put into operation. Despite being the most recent among the significant international intergovernmental organisations, it is undoubtedly among the most powerful in these days of economic globalisation. It has also been one of the most contentious and divisive global institutions. The WTO's dispute resolution process has proven to be its most effective component.

The Preamble to the WTO Agreement lays forth the policy goals that the WTO is expected to achieve. The WTO was established and its terms agreed upon by the Parties to the WTO Agreement are stated in this Preamble. Thus, increasing real income and effective demand, achieving full employment, raising living standards, and fostering trade and the production of goods and services are the ultimate objectives of the WTO.

Methods of settlement of International Trade Disputes

International trade between nations inevitably leads to disputes. The procedures used to settle disputes in international trade are typically divided into two categories. The initial broad category encompasses diplomatic or non-judicial approaches, such as inquiries, good offices, mediation, conciliation, and talks. The parties retain ultimate authority over the issue in this scenario and have the option to accept or reject the proposed settlement. The other broad group is known as judicial or legal settlement since international law serves as the foundation for the settlement.

Non-Judicial Methods of dispute settlement

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According to Article 2(3) of the United Nations Charter, it is incumbent upon all members to settle international disputes amicably, while considering the interests of global justice, security, and peace.2. It is possible to set up a tribunal that would require the parties to negotiate in good faith and outline the considerations that each party needs to make. Negotiation may also be defined as a non-binding procedure wherein the parties to a dispute communicate directly with one another and one of them approaches the other with an offer of a negotiated settlement that is predicated on an unbiased assessment of the other party's position.

The International Court of Justice declared during negotiations that "it is unnecessary to insist on the fundamental nature of this settlement method." Like its forerunner, the Permanent Court of International Justice, it noted that this resolution process is distinct from others.

Consultation and opinion-sharing will be part of the negotiation process. In essence, it has to do with the parties having a conversation about the argument in order to comprehend it. It's the process by which they choose their next course of action. To accomplish their goals, the parties can divide the disagreement into manageable chunks through negotiation. Furthermore, the need to negotiate does not always entail the need to come to a consensus; in fact, negotiation is often the beginning rather than the end of the dispute resolution process. Article 66 of the UN Charter states that alternative procedures may be used if a dispute is not settled within a year in the manner specified in Article 33.

Judicial Methods of Dispute Settlement

Conciliation

In international commercial agreements, conciliation is widely employed. If a conciliation procedure is successful, the parties will have met in front of a third party they have selected to resolve their disagreement; the settlement agreement is documented in conciliation minutes that are signed by the parties and the conciliator. This type of formalized negotiation is a means of resolving international disputes peacefully between parties, with the commission helping the parties to settle their issues.

Conciliation is listed as one of the peaceful methods of conflict resolution that member states may use in Article 33, paragraph 1 of the UN Charter. It should be noted that conciliation is mentioned as one tool that states should employ in their efforts to find a prompt and fair resolution to their international disputes in both the 1982 "Manila Declaration on Peaceful Settlement of International Disputes" and the 1970 "Declaration on Principles of International Law concerning Friendly

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Relations and Cooperation among States in accordance with the Charter of the United Nations."

Arbitration

Arbitration is a process that gives parties to a dispute a legally binding decision to settle their differences. "The determination of difference between states or between a state and a non-state entity through a decision of one or more arbitrators and an umpire or of a tribunal other than International court of justice or other permanent tribunal" is what Collier and Lowe refer to as arbitration. The Hague Conventions for the Pacific Settlement of International Disputes of 1899 and 1907 indicate that the purpose of international arbitration is to resolve disputes between states via the use of judges chosen by the parties themselves while upholding the rule of law. They further stated that using the procedure impliedly entails submitting to the tribunal's decision in good faith. The arbitrator's ruling is final and enforceable against the parties. It can be enforced against a losing party who disobeys the provisions of the arbitral ruling and is subject to judicial restructuring.

Judicial Settlement

States involved in a disagreement may choose to resolve it by taking the matter before an established international court or tribunal made up of impartial judges whose duties include resolving disputes based on international law and rendering rulings that are legally binding on the parties. This is commonly known as judicial settlement, and it is one of the methods for resolving international conflicts amicably that are outlined in Article 33 of the UN Charter. The first international court to operate globally was the Permanent Court of International Justice, which was founded in 1922 by the League of Nations Covenant. It was replaced by the International Court of Justice, which was established in 1946 and is still a significant UN authority. According to Article 36 of its statute, the International Court of Justice is able to hear cases in "any cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in the treaties and conventions in force." Both judicial settlement and arbitration look to an independent judicial body to achieve binding rulings, although they are largely ad hoc in nature and comprise judges selected based on parity by the parties to a dispute. Additionally, they determine which laws and procedural guidelines are relevant in the given situation. However, because they are permanent judicial entities whose jurisdictional authority, procedural norms, and composition are defined by the treaties that form them, international courts and tribunals are pre-

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constituted. Furthermore, judicial settlement differs from arbitration in that decisions rendered by international courts and tribunals are typically final.

Alternative dispute resolution in International and Regional level

The expansion of global trade will inevitably lead to disputes across national borders and geographical limits. Due to the fact that arbitration is favoured over court proceedings and that foreign parties are given preference in international arbitration over domestic parties in national courts, it makes sense that international arbitration would be chosen for the resolution of these disputes. This is also a result of the absence of an international court to adjudicate disputes pertaining to international commerce. "In such cases, it is generally viewed as more appropriate to use international arbitration in a convenient and impartial forum rather than the legal system to resolve any disputes that cannot be resolved through negotiation."

It is important to keep in mind that there is a growing trend of court intervention that could potentially interfere with arbitral autonomy and finality. It is necessary to balance judicial review of the arbitral process with arbitral autonomy and finality. On this point, national law varies. The UNCITRAL Model Law makes an effort to encourage coherence and consistency in this area. The aim is to provide arbitral autonomy as well as neutrality or impartiality in the arbitral process by packing the arbitral tribunal with qualified and unbiased members who offer equality between the parties and allow them every opportunity to present their case. It is not in line with the present trend to completely exclude judicial intervention; instead, the extent of judicial oversight should be minimised.

The informal nature of the arbitral process allows for a slack application of the rigid rules of proof and saves money and time, which are frequently inevitable in litigation. It is impossible to disregard the need to uphold the fundamentals of natural justice, nevertheless. For international arbitration to be effective, appropriate mechanisms for award enforcement must be in place.

Scope and Parties to International ADR

When there is interaction between individuals or several parties involved, it may be inevitable to consider the possibility of disputes arising. Modern technologies are enabling a diversification of human relationships. Involvement of at least multiple nations or national citizens is necessary for international trade and diplomacy. Trade is becoming into a worldwide phenomenon involving the participation of multiple states, their residents, or other entities. Additionally, it is becoming increasingly difficult to consider internal security and peace at this time without also maintaining

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cordial diplomatic ties with neighbouring governments and even other nations that are geographically far from one another.

International Documents and Organs Regulating ADR

ADR is becoming acknowledged as the most efficient way to resolve any kind of international dispute. Essentially, the use of peaceful dispute settlement procedures improves diplomatic and business ties. Numerous treaties have been negotiated to date, either at the UN's direction or at the instigation of other public and domestic institutions and nations, to support the ADR system's preference over other tribunals. These treaties have led to the establishment of tribunals, which are the ideal platforms for resolving both internal and international issues.

UNCITRAL Documents

The UNCITRAL was established by the General Assembly in 1966. The General Assembly acknowledged that obstacles to trade flow were caused by variations in national rules controlling international trade, and they regarded the Commission as a way for the UN to be more proactive in reducing or removing these obstacles.

The primary objective of UNCITRAL, an entity under the General Assembly of the United Nations, is to further "the progressive harmonisation and unification of the law of international trade." Since then, UNCITRAL has created a vast array of conventions, model laws, and other instruments pertaining to business law topics that affect international trade as well as the substantive law that regulates commercial transactions. UNCITRAL convenes once a year, usually in the summer and alternately in Vienna and New York.

It is crucial to briefly discuss the distinctions between UNCITRAL and WTO since, despite their differences, some people mistakenly believe that one is a component of the other. UNCITRAL is an agency within the purview of the UN General Assembly. UNCITRAL is the Office of Legal Affairs, UN Secretariat's division dealing with international trade law. On the other hand, the UN does not belong to the international World Trade Organisation (WTO). In addition, the WTO and UNCITRAL handle distinct matters. UNCITRAL deals with laws that apply to private parties in international transactions, while the WTO addresses trade policy concerns such as trade liberalisation, trade barrier reduction, unfair trade practices, and other related matters that are typically connected to public law. Therefore, "state-to-state" matters like import quotas, countervailing duties, and anti-dumping laws are outside the purview of UNCITRAL.

International Chamber of Commerce (ICC) and the International Court of Arbitration

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Promoting and supporting international trade and globalisation is the mission of the International Chamber of Commerce (ICC), a private, non-profit organisation. In the interests of prosperity, job creation, and economic expansion, it acts as an advocate for a few international companies in the global economy. Being a worldwide business organisation with member states, it contributes to the expansion of global perspectives on business issues. The ICC, among other channels, has direct contact to national governments across the globe through its national committees.

ICC has created a variety of initiatives to achieve this goal. Parties to private disputes can bring them before the ICC International Court of Arbitration (ICA) for resolution. Its business-friendly, voluntary rule-writing initiatives promote best practices in a wide range of fields, including marketing, banking, environmental management, and anti-corruption. Their policy-making and lobbying activity informs national governments, the UN system, and other international organisations about global corporate perspectives on some of the most important topics of the day.

General principles of contract law as applicable to trade in goods and service

International contract law governs economic transactions between parties from different nations unless they specifically stipulate that they will be subject to the laws of that nation. Contracts involving overseas sales are regularly governed by international law. The laws governing cross-border agreements are the subject of international contract law. A good faith and fair dealing assumption forms the foundation of this kind of contract law. Contract law in most jurisdictions is based on these ideas. Fair talks, cooperation required, and good faith contract termination are all examples of good faith. It also guarantees the non-enforcement of unfair contracts or arrangements. The 1980 UN Convention on Contracts for the International Sale of Goods governs sales contracts between parties internationally. By creating an international set of contract regulations, the convention aims to foster trade and business worldwide. Between civil law, socialist law, and common law, the convention represents a compromise.

Indian procedural laws relating to the enforcement of contractual rights and liabilities arising out of international trade and business

It is insufficient for a contract to have been successfully entered into between two countries on an international level. Following the contract's entry, rights and obligations will arise and should be fulfilled in accordance with its provisions. There won't be a disagreement if each party to the contract fulfils his or her own obligations and permits the other party to exercise its rights. However, the issue of how to uphold the rights and obligations under the contract emerges if one

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party disregards his obligations and causes hardship for the other. Generally, two things are done in such accessions. If a contract's terms are extremely explicit about their enforceability, one can first refer to it; if not, one can then invoke the nation's procedural rules if the contract is silent or unclear about its enforceability. Therefore, the enforcement of the contractual rights and obligations of international trade depends heavily on procedural regulations. In India, the Evidence Act, the IT Act, and the Civil Procedure Code will be primarily used for e-contracts. The CPC contains provisions primarily pertaining to jurisdictional matters, the case trail, and the admissibility of evidence through the employment of the Evidence Act.

Conclusions

In this world, the amount of investment, goods, and services that cross national borders has steadily increased at a rate faster than global output for over 50 years. Competition amongst nations for capital, goods, and services to export has become more intense due to the accelerated pace of globalisation. Conflicts between the nations resulted from the countries' adoption of win-lose tactics in international trade as a result of this rivalry.

Since human settlement began, disagreement has always been an essential component of social interaction. Conflicts between people escalate and pose a threat to national security, peace, and stability—the fundamental indicators of a country's development—if they are not handled appropriately and quickly addressed. Most countries' constitutions and national governments create institutions, or the judicial branch of the government, with the aim of resolving disputes in a more morally acceptable way. Hearing arguments is a fundamental duty of courts of law. Long ago, it became clear that alternative tribunals with judicial authority were required in addition to the government's judicial branch. To resolve conflicts, administrative tribunals—acronym for quasi-judicial tribunals—have been established within the executive branch of government.

Consequently, it's crucial to settle the disagreements and keep the partnership intact. Dispute Settlement Understanding has been established by the WTO in light of this. In international commerce, dispute resolution plays a crucial role in risk control. Small and medium-sized businesses (SMEs) are getting more exposure to foreign competitors and new markets as well as new partners, nations, cultures, and trade practices as a result of lower obstacles. Global opportunities bring new kinds of risks. Conflicts arise from doing business internationally. issues involving international business often entail many countries, differing legal systems and customs,

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distinct procedures, and multiple languages, which present additional challenges compared to issues between firms inside the same nation.

Making social interactions calm requires the use of dispute resolution. In order for individuals and groups to continue cooperating, dispute resolution processes aim to settle and monitor problems. Hence, it might be claimed that it is the sine qua non of social life and the safety net of the social order, without which it might be challenging for people to continue living together. ADR stands for alternative dispute resolution, which refers to a variety of approaches of settling legal conflicts. The corporate community and general public both know that it is not feasible for many people to bring lawsuits and receive justice in a timely manner.

One important way to address tensions between the political and judicial systems is to take a close look at the research and analysis around trade dispute settlement. This is especially difficult in situations like trade disputes where the political system is unable to provide the essential guidance on core concerns. In terms of framing the trade dispute discourse, the WTO Dispute Settlement Body has so far shown itself to be a key player. There are, however, shortcomings that require investigation into potential solutions outside of the WTO framework as well as enhancements to the system itself.

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