



Master Programme in European and
International Law

winter term 2004

Public International Law (VAK 06-009)

Dr. Andree Kirchner, LL.M.

Dispute Settlement

Dispute

“A specific disagreement concerning a matter of fact, law or policy in which a claim or assertion of one party is met with refusal, counter-claim or denial by another”.

wt 2004

www.andreekirchner.de

2

Dispute Settlement

International Dispute

“Whenever such a disagreement involves governments, institutions, juristic persons (corporations) or private individuals in different parts of the world”.

wt 2004

www.andreekirchner.de

3

Dispute Settlement

Article 2 (3) UN Charter

“All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”.

wt 2004

www.andreekirchner.de

4

Dispute Settlement

Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States

UN GA Res. 2625 (XXV)

“States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice”.

wt 2004

www.andreekirchner.de

5

Dispute Settlement

Means of dispute settlement [Art. 33 (1) UN Charter]

- “Diplomatic” means
- Legal means

wt 2004

www.andreekirchner.de

6

Dispute Settlement

"Diplomatic" mean

- Negotiation
- "Good Offices"
- Mediation
- Inquiry
- Conciliation

Cf. Hague Convention for the Pacific Settlement of International Disputes, 18 October 1907

wt 2004

www.andreekirchner.de

7

Dispute Settlement

Negotiation

- Principle means of handling all international disputes
- NO formal procedure, flexible
- Might be time-consuming and without success

wt 2004

www.andreekirchner.de

8

Dispute Settlement

Consultation

- Supplies useful information at the most appropriate time (before anything has been done)
- Example: 'Interim Reciprocal Information and Consultation System' (1990) between British and Argentine forces in the South Western Atlantic

wt 2004

www.andreekirchner.de

9

Dispute Settlement

Negotiation

Negotiations between states are usually conducted through:

- Foreign offices
- Diplomatic representatives
- Competent authorities

wt 2004

www.andreekirchner.de

10

Dispute Settlement

Description of a Negotiation

Negotiation is plainly impossible if the parties to a dispute refuse to have any dealings with each other.

⇒ If without success, the situation might enter a new and more dangerous phase

wt 2004

www.andreekirchner.de

11

Dispute Settlement

"Good offices"

Providing parties to an international dispute with an additional channel of communication (NO activities from the third party).

wt 2004

www.andreekirchner.de

12

Dispute Settlement

Mediation

- Active Role of a third party (mediator)
- Mediator's proposals NOT binding
- Mediator strictly neutral

wt 2004

www.andreekirchner.de

13

Dispute Settlement

Description of a Mediation

- If both parties regard themselves as relatively strong and their aims are truly incompatible, then mediation will generally fail
- A strong mediator may influence the parties' behaviour

wt 2004

www.andreekirchner.de

14

Dispute Settlement

Enquiry

"fact-finding" (no legal evaluation)

When a disagreement between states on some issue of fact, law or policy is serious enough to give rise to an international dispute, their views on the matter in question may be difficult or impossible to reconcile.

wt 2004

www.andreekirchner.de

15

Dispute Settlement

Conciliation

[Art. 1 of the Regulations on the Procedure of International Conciliation, 1961)

"A method for the settlement of international disputes of any nature according to which a Commission set up the Parties, either on a permanent basis or an ad hoc basis to deal with a dispute, proceeds to the impartial examination of the dispute and attempts to define the terms of a settlement susceptible of being accepted by them or of affording the Parties, with a view to its settlement, such aid as they may have requested."

wt 2004

www.andreekirchner.de

16

Dispute Settlement

Description of a Conciliation

- Non-binding suggestion for solution
- Cf. Art. 4 of the European Convention for the Peaceful Settlement of Disputes (1957)
- Favoured procedure in agreements concerned with international trade (cf. UNCITRAL Conciliation Rules)

wt 2004

www.andreekirchner.de

17

Dispute Settlement

Legal means

- Arbitration
- Judicial

wt 2004

www.andreekirchner.de

18

Dispute Settlement

Arbitration I

“Requires the parties themselves to set up the machinery to handle a dispute, or series of disputes between them”.

wt 2004

www.andreekirchner.de

19

Dispute Settlement

Arbitration II

- Mixed commission
- Sovereign arbitrator
- Specially qualified individual
- An arbitral award is binding, but not necessarily final

wt 2004

www.andreekirchner.de

20

Dispute Settlement

Judicial settlement

- International Court of Justice
- International Criminal Courts
- International Courts

wt 2004

www.andreekirchner.de

21

Dispute Settlement

International Court of Justice

- Successor of the Permanent International Court of Justice (1920-1945)
- Principle judicial organ of the UN (Art. 92 UN Charter)

wt 2004

www.andreekirchner.de

22

Dispute Settlement

Description of the ICJ

- Only states may be parties in cases before the Court (Art. 34 ICJ Statute)
- Provisional measures to protect rights (Art. 41 ICJ Statute)
- Advisory opinions on any legal question (Art. 65-68 ICJ Statute)
- Legally binding judgement (Art. 59, 60 ICJ Statute)

wt 2004

www.andreekirchner.de

23

Dispute Settlement

International Criminal Law

- International Criminal Court (ICC)
- International Criminal Tribunal for the Former Yugoslavia (ICTY)
- International Criminal Tribunal for Rwanda (ICTR)

wt 2004

www.andreekirchner.de

24

Dispute Settlement

International Courts

- European Court for Human Rights (Strasbourg)
- European Court of Justice (Luxemburg)
- EFTA Court of Justice (Geneva)
- Inter-American Court for Human Rights (San José)
- International Tribunal for the Law of the Sea (Hamburg)

wt 2004

www.andreekirchner.de

25



Public International Law (VAK 06-009)

Dr. Andree Kirchner, LL.M. (Stockholm)

Further reading:

A. Cassese, International Law, 2001, pp. 296-374

Further information:

<https://elearning.uni-bremen.de>