Muhammadiyah Law Review
P-ISSN 2549-113X, E-ISSN 2580-166X
Vol. 7 No. 2 (2023), DOI: 10.24127/mlr.v7i2.2771

International Law: Existence in International Dispute Settlement Efforts as a Symbol of Peace in the International Community

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Abstract

The settlement of disputes has been a significant concern in the international community since the 20th century. In its early development, dispute resolution could be achieved either peacefully or through the use of force. However, with the growing awareness of the dangers of war and the advancement of weapon technology, the international community has increasingly recognized the importance of peaceful dispute resolution. In the dynamics of its development, international dispute resolution can be distinguished between legal and political disputes. The opinions of international law experts regarding this distinction vary. There is also a middle ground view that states every dispute has its own political and legal aspects. The development of peaceful dispute resolution has been taking place since the Hague Peace Conferences of 1899 and 1907. During these conferences, rules for peaceful dispute resolution between nations were established. International law also regulates the obligations of states to settle disputes peacefully, as stated in the UN Charter. Technological advancements and the existence of official rules from the UN have strengthened the presence of international law in maintaining international peace and security. The obligation of states to settle disputes peacefully and refrain from the use of force is a recognized principle in international law.

Keywords: International Law, Dispute Settlement, Peace.

Abstrak

Penyelesaian sengketa telah menjadi perhatian penting dalam masyarakat internasional sejak abad ke-20. Dalam perkembangan awalnya, penyelesaian sengketa dapat dilakukan secara damai maupun dengan

menggunakan kekerasan. Namun, dengan meningkatnya kesadaran akan bahaya perang dan pengembangan teknologi persenjataan, masyarakat internasional semakin menyadari pentingnya penyelesaian sengketa secara damai. Dalam dinamika perkembangannya, penyelesaian sengketa internasional dapat dibedakan menjadi sengketa hukum dan politik. Pendapat ahli hukum internasional mengenai perbedaan ini bervariasi. Terdapat juga pendapat jalan tengah yang menyatakan bahwa setiap sengketa memiliki aspek politis dan hukumnya masing-masing. Perkembangan dalam penyelesaian sengketa secara damai telah terjadi sejak Konferensi Perdamaian Den Haag pada tahun 1899 dan 1907. Pada konferensi ini, diperoleh aturan-aturan penyelesaian sengketa secara damai antarnegara. Hukum internasional juga mengatur kewajiban negara-negara untuk menyelesaikan sengketa secara damai, sebagaimana yang tercantum dalam Piagam PBB. Perkembangan teknologi dan adanya aturan resmi dari PBB telah memperkuat eksistensi hukum internasional dalam menjaga perdamaian dan keamanan internasional. Kewajiban negara-negara untuk menyelesaikan sengketa secara damai dan menahan diri dari penggunaan kekerasan merupakan prinsip yang diakui dalam hukum internasional.

Kata Kunci: Hukum Internasional, Penyelesaian Sengketa, Perdamaian

A. Pendahuluan

In the coexistence of nations and states, it is inevitable to encounter issues related to subjects of international law. International law is considered capable of addressing or providing solutions for countries experiencing conflicts based on international legal provisions. Moreover, it is known that a dispute is not considered a legal dispute under international law if its resolution does not affect the relations of the parties involved.[1] Legal sources play a crucial role in the legal system. It is important for us to understand legal sources from various perspectives, as they form the foundation for resolving issues within society. International legal sources differ from national legal sources (positive law). International law has unique characteristics, one of which is the absence of general institutions such as legislative, executive, and judicial bodies.[2]

The term "international dispute" encompasses not only conflicts between states but also includes other cases within the scope of international law regulation. This includes several specific categories of disputes between states on one side and

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[1] Huala Adolf, *Hukum Penyelesaian Sengketa Internasional* (Jakarta: Sinar Grafika, 2020), hlm. 3.

[2] Martin Dixon, *Cases and Material on International Law* (New York: Oxford University Press, 2003), hlm. 19.

individuals, corporate entities, and non-state entities on the other.[3] There are many issues that cause losses to some countries, both with significant and minor levels of losses. Examples include the Russia-Ukraine conflict, Israel-Palestine, and border disputes between neighboring countries. Additionally, Indonesia, as an archipelagic state declared in 1957, has at least two-thirds of its territory consisting of seas. This makes it crucial to focus on avoiding disputes in open waters. Indonesia has learned from experiences such as the International Court of Justice (ICJ) judgment No. 102 on December 17, 2002, regarding the sovereignty claims over Ligitan and Sipadan Islands. In the ICJ ruling, Malaysia's effective occupation presented as the critical date was prioritized, while Indonesia's legal arguments (based on conventional designation) and Malaysia's legal arguments (chain of ownership) were rejected for not providing sufficient evidence of ownership claims to the disputed islands. Following that decision, the current issue is the delimitation of waters between Indonesia and Malaysia.[4]

Since the early 20th century, efforts to resolve disputes have been a significant concern in the international community. The purpose of these efforts is to create better relations among countries based on principles and international security.[5] In its early development, international law recognized two methods of dispute resolution: peaceful settlement and war (military). The use of war to settle disputes was a well-established and commonly practiced approach. In the past, settling disputes through war was acknowledged and frequently employed. In fact, war served as a tool and instrument of foreign policy for states in ancient times. States used war to assert their rights and defend their understanding of international law rules. War was even regarded as one of the highest acts of sovereignty. In 1919, the United States Secretary of State declared that "to declare war is one of the highest acts of sovereignty."[6]

Scholars acknowledge the continued practice of some states resorting to violence or war to settle disputes up to the present time. Conversely, peaceful means have not been widely recognized as a norm followed in the life or interstate relations. Ion Diaconu, a prominent scholar from Romania, revealed that *"…in many*

[3] J. G. Starke, *Introduction to International Law* (London: Butterworths, 1989), hlm. 485.

[4] Ummi Yusnita, Penyelesaian Sengketa BatasLaut Antara Indonesia Dan Malaysia Dalam Perspektif Hukum Internasional, *Binamulia Hukum*, 7, 1, (2018), hlm. 97.

[5] Ion Diaconu, *Peaceful Settlement of Disputes between States: History and Prospect* dalam R. St. J. MacDonald and Douglas M. Johnston (ed.), *The Structure and Process of International Law: Essays in Legal Philosophy and Theory* (The Netherlands: Martinus Nijhoff Publishers, 1986), hlm. 1095

[6] Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, hlm. 2

cases recourse to violence has been and continues to be used in international relations, and the use of peaceful way and means is not yet the rule in international life…"[7]

However, over time, awareness of the dangers of using war has increased within the international community. This is due to the escalation of military power and advancements in weaponry technology that have the potential for mass destruction. Therefore, the international community strives to eliminate the use of violence or at least impose restrictions on its use.[8] On the other hand, peaceful dispute resolution is a direct consequence of Article 2(4) of the Charter of the United Nations, which prohibits member states from using force in their relations. The prohibition of the use of force and the peaceful settlement of disputes are imperative norms in international relations. Therefore, international law has developed various methods of peaceful dispute resolution and conveyed them to the world community to maintain peace, security, and harmonious international relations. Based on this, it is important to understand the existence of international law as a symbol of an "umbrella" that shelters the international community with peace and security.

B. International Legal Dispute Resolution

International disputes are indeed one aspect of international relations. This is based on the understanding that international relations between states, states with individuals, or states with international organizations often give rise to disputes among them. These international relations involve several aspects of life, including politics, social issues, and economics. According to Oscar Schachter, international relations in the economic field are...

"…Economic relation among states including, inter alia trade, finance, investment, concesion, and developmentagreement, transfer of technology, economic cooperationand economic aid"[9]

International law plays a crucial role in the resolution of international disputes by providing a framework for the disputing parties to settle their differences in accordance with international legal norms. In its development, international law recognizes two main methods of dispute resolution, namely through peaceful means and military means (war). Previously, dispute resolution through war was widely recognized and practiced. In fact, war was used as an instrument and foreign policy by states in ancient times. For example, Napoleon Bonaparte used war to conquer territories in Europe in the 19th century.[10] However, the idea of peaceful

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7 Ion Diaconu, *Peaceful Settlement of Disputes between States: History and Prospect*, hlm 1095

8 Jose Sette-Camara, *Methods of Obligatory Settlement of Dispute*, In Bedjaoui (ed.), *International Law: Achievment and Prospects* (The Netherlands: Martinus Nijhoff Publishers, 1997), hlm. 521

9 Oscar Schachter, *Sovereign Right and International Bussines, International Law ad Practice* (London: Martinus Nijhoft Publisher, 1991), hlm. 300

10 Jose Sette-Camara, *Methods of Obligatory Settlement of Dispute*, hlm. 520

dispute resolution as a priority has been around for a long time. It's just that, formally, the establishment of institutions, legal instruments, and technical developments for peaceful resolution only gained widespread recognition since the founding of the United Nations (UN) in 1945.[11] The UN and its related institutions, such as the International Court of Justice, have played a role in promoting peaceful dispute resolution, including through negotiation, mediation, arbitration, and international courts. Since then, there have been stronger efforts to avoid the use of violence and promote dispute settlement through peaceful means based on international law. Principles such as the maintenance of international peace and security, respect for state sovereignty, as well as the enforcement of law and justice serve as the foundation for fair and sustainable dispute resolution in the context of international relations.

Peaceful dispute resolution can be achieved when the parties involved agree to seek amicable solutions. There are several common ways of peaceful dispute resolution, the first being negotiation, which is the most basic and long-standing method used by humans.[12] Settlement through negotiation has become very important. Many disputes are resolved every day through negotiations, even though they may not receive significant publicity or public attention.[13] This is because through negotiation, the parties involved can oversee the dispute resolution process, and any agreements reached are based on the consent or consensus of the parties.[14]

Negotiation can be used to resolve various types of disputes, whether they are economic, political, legal, territorial, family, tribal, and so on. In fact, negotiation can be employed even when the parties have submitted their dispute to a specific judicial body.[15] However, there are several drawbacks to using negotiation as a method of dispute resolution. First, if the parties have an imbalance of power, negotiations can be unfair as the stronger party may influence the outcome. Second, the negotiation process can be time-consuming, especially if there are deep disagreements between the parties. Third, when one party is too rigid in its stance

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[11] John Merrils, Malcolm D. Evans (Ed), *The Means of Dispute Settlement in International Law* (New York: Oxford University Press, 2003), hlm. 530

[12] W. Poegel and E. Oeser, *Methods of Diplomatic Settlement* dalam M. Bedjaoui (ed.), *International Law: Achievments and Prospects* (Dordrecht: Martinus Nijhoff Publisher and UNESCO, 1991), hlm. 514

[13] F. V. Garcia-Amador, *The Changing Law of International Claims* (USA: Ocenia Publications, 1984), hlm. 518.

[14] Peter Behrens, *Alternative Methods of Dispute Settlement in International Economic Relation* dalam Ernst-Ulrich Petersmann and Gunther Jaenicke, *Adjudication of International Trade Dispute in International and National Economic Law* (Fribourg U.P, 1992) hlm. 14.

[15] Peter Behrens, *Alternative Methods of Dispute Settlement in International Economic Relation*, hlm. 159

and unwilling to compromise or change their position, negotiations can become difficult or even stalled.[16]

Second, fact-finding. Fact-finding is another method of peaceful dispute resolution apart from negotiation. In some disputes, the disagreement between the parties is related to the facts that are at the core of the issue. Therefore, ensuring the truth of the actual facts is considered important as part of the dispute resolution procedure. By conducting fact-finding, the parties can address the dispute by determining the facts that are the source of the disagreement. Second, fact-finding. Fact-finding is another method of peaceful dispute resolution apart from negotiation. In some disputes, the disagreement between the parties is related to the facts that are at the core of the issue. Therefore, ensuring the truth of the actual facts is considered important as part of the dispute resolution procedure. By conducting fact-finding, the parties can address the dispute by determining the facts that are the source of the disagreement.[17] This method is usually taken after the consultation or negotiation stages have been carried out but did not result in a resolution.[18] Using this method, the third party will try to examine the issue from various perspectives to provide explanations regarding each party's position.[19] The dispute resolution method through fact-finding is known in the practices of states and international organizations.[20] In some cases, international judicial bodies or other institutions utilize this approach to gather and analyze relevant facts in dispute resolution. The goal is to achieve a clearer understanding of the situation or events that are the source of the dispute, thereby reaching a fair resolution based on verifiable facts.

Third, Good Offices. In this method, a third party acts as a mediator or facilitator, attempting to assist the parties in resolving their dispute through negotiations. The main function of this method is to facilitate meetings between the parties, build dialogue, and encourage the negotiation process.[21] The involvement of a third party in dispute resolution can occur at the request of the parties involved or through the initiative of the third party offering their services to settle the dispute. However, an absolute requirement in both situations is the agreement of the parties to involve the third party as a mediator or facilitator.[22]

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[16] Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, hlm. 26-27

[17] Peter Behrens, *Alternative Methods of Dispute Settlement in International Economic Relation*, hlm. 19

[18] Karl josef Partsch, *Fact-Finding and Iquiry* dalam R. Bernhardt (ed.), *Encyclopedia of Public International Law Instalment* (1981), hlm. 61-62

[19] Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, hlm. 26.

[20] Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, hlm. 26.

[21] W. Poegel and E. Oeser, *Methods of Diplomatic Settlement*, hlm. 515.

[22] Peter Behrens, *Alternative Methods of Dispute Settlement in International Economic Relation*, hlm. 17.

Fourth, mediation. Mediation is one of the methods of dispute resolution involving a third party. The third party in mediation can be a country, an international organization, or individuals such as politicians, legal experts, or scientists. The third party actively participates in the negotiation process and acts as a neutral mediator.[23] As a mediator, the third party seeks to reconcile the disputing parties by providing settlement suggestions. The mediator acts as a link between the parties and helps facilitate dialogue and formulate solutions acceptable to all parties. If the proposals are not accepted, the mediator can continue their mediation function by proposing new alternatives. Therefore, one of the main functions of a mediator is to explore various possible solutions, identify areas of agreement among the parties, and make proposals that can end the dispute.[24]

Fifth, conciliation is a more formal method of dispute resolution than mediation. Conciliation involves a third party or a conciliation commission formed by the parties involved. This commission can be institutionalized or ad hoc (temporary) and functions to establish settlement terms acceptable to the parties. However, the decisions or proposals from conciliation are not binding on the parties.[25] In the conciliation process, the commissioner or conciliator will gather facts related to the dispute and compile a report containing conclusions and proposals for dispute settlement to the parties. Although these proposals are not binding, the acceptance or rejection of the proposals entirely depends on the decisions of the parties.[26]

The sixth is arbitration. The purpose of this settlement is the resolution of disputes where the dispute is voluntarily submitted to a neutral third party, and the decision issued has binding legal force. The submission of the dispute to arbitration can be done through a compromise, which is the submission of the dispute that has arisen to arbitration, or through the addition of an arbitration clause in an agreement before the dispute arises (compromise clause). The selection of arbitrators in arbitration is entirely based on the agreement of the disputing parties. Usually, the arbitrators chosen are those who have expertise in the field related to the dispute and are expected to be impartial. Arbitrators do not always have to be legal experts; what is most important is that they have a deep understanding in the relevant field, such as engineers, company executives, insurance experts, banking experts, and so on.[27] After the arbitrators are appointed, they will establish the terms of reference as their working guide. This document usually contains the main issues to be resolved,

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[23] W. Poegel and E. Oeser, *Methods of Diplomatic Settlement*, hlm. 515.

[24] W. Poegel and E. Oeser, *Methods of Diplomatic Settlement*, hlm. 515.

[25] Peter Behrens, *Alternative Methods of Dispute Settlement in International Economic Relation*, hlm. 24.

[26] Peter Behrens, *Alternative Methods of Dispute Settlement in International Economic Relation*, hlm. 23.

[27] Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, hlm. 30.

the arbitrators' authority, and the rules governing the arbitration process. The content of this document must be agreed upon by the parties involved.[28]

The seventh one is international courts. International courts are another method to resolve international disputes. The use of international courts is usually pursued when other methods of settlement fail to achieve a resolution.[29] There are two types of international courts, namely permanent courts and ad hoc courts. An example of a permanent court is the International Court of Justice (ICJ). The ICJ is the principal judicial body in the international legal system with jurisdiction to settle disputes between member states of the United Nations. The ICJ plays a role in interpreting and applying international law and provides legally binding opinions to member states. On the other hand, ad hoc courts or special courts are established to handle specific disputes or within the context of specific international organizations. Ad hoc courts are often found in the framework of international economic organizations.[30]

C. Dynamics of the Development of International Dispute Settlement

International law experts state and acknowledge that there are differing opinions regarding the distinction between legal disputes and political disputes in the context of international disputes. Although this difference is recognized, there is no clear consensus on a definitive and objective definition or classification to distinguish between the two.[31] However, the commonly accepted view is that disputes that can be adjudicated by a court are legal disputes where there are applicable rules of international law. In this regard, international courts have jurisdiction to handle such disputes. On the other hand, political disputes that are not subject to adjudication usually lack directly applicable rules of international law.[32]

In general, in some cases, actual international disputes that could be submitted to international courts are not settled through the court because one or both involved countries are unwilling to submit it to the court. In this context, the court

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[28] Peter Behrens, *Alternative Methods of Dispute Settlement in International Economic Relation*, hlm. 19.

[29] Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, hlm. 31.

[30] Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, hlm. 31.

[31] J. L. Briely, *The Law of Nation: An Introduction Law of Peace* (New York: Ocxford University Press, 1978), hlm. 23. The general approach in determining whether a dispute can be categorized as a legal dispute is when the dispute can be submitted and settled by an international court. However, this view is difficult to universally accept. Theoretically, all international disputes can be resolved by an international court, even if the dispute lacks clear regulations. In this case, the international court can decide the dispute based on principles of equity and fairness (ex aequo et bono). Further reading: Huala Adolf, *Hukum Penyelesaian Sengketa Internasional* (Jakarta: Sinar Grafika, 2004), hlm. 3

[32] J. L. Briely, *The Law of Nation: An Introduction Law of Peace, hlm. 263*

does not have jurisdiction to adjudicate the dispute unless there is an agreement between the parties in dispute. Although it is difficult to make a clear distinction between the terms "legal disputes" and "political disputes," there are three important approaches that have developed in international law.[33]

The first view presented by Wolfgang Friedmann states that the difference between political disputes and legal disputes can be seen from the conception or perception of the dispute.[34] According to Friedmann, in practice, the parties involved in disputes rarely submit them to the court, but tend to view the disputes as political issues that can be resolved through political means such as negotiation. Only when political settlement fails to produce satisfactory results, they then seek legal recourse. Another example is the island dispute between Malaysia and Indonesia, particularly regarding the ownership of Sipadan and Ligitan islands, which also reflects this view. Such disputes can be considered legal disputes because they involve claims of ownership rights over contested territories. In this case, the resolution of the dispute may involve international legal processes such as court proceedings or arbitration to determine legitimate ownership rights. Friedmann's view underscores that in practice, international disputes often involve political aspects, and attempts at resolution are first made through political channels. The use of legal channels usually becomes the last resort when political avenues fail to achieve a satisfactory resolution. However, the distinction between political disputes and legal disputes remains a subject of interpretation and understanding that can vary depending on the context and specific cases.

The second opinion, put forward by a study group led by Sir Humphrey Waldock, states that the determination of whether a dispute is classified as a legal or political dispute entirely depends on the parties involved. If the parties agree that the dispute is a legal one, then it will be considered a legal dispute. However, if the parties feel that the dispute involves issues that require a specific framework not found in international law, for example, in cases of disarmament, then the dispute will be considered a political dispute. This opinion has been published in a report that is still regarded as an important source in the study of international dispute settlement because it provides valuable perspectives on the debate surrounding the classification of legal and political disputes. However, it is essential to remember that other opinions and interpretations also exist in this discussion, and the debate about the classification of disputes remains a relevant topic in the field of

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[33] Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, hlm. 3-4.

[34] Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, hlm. 3-4. Friedman classifies disputes into four categories in the context of law. First, disputes between states that can be resolved through courts by applying existing legal rules. Second, disputes involving vital national interests. Third, disputes where the application of existing international law is sufficient to achieve justice among states with progressive advancement. Fourth, disputes related to changes in legal rights carried out through claims to alter existing law.

international law. According to this study group, the determination of whether a dispute is classified as a legal or political dispute entirely depends on the parties involved. If the parties agree that the dispute is a legal one, then it will be considered a legal dispute. However, if the parties feel that the dispute involves issues that require a specific framework not found in international law, for example, in cases of disarmament, then the dispute will be considered a political dispute. This opinion has been formulated as follows:

"the legal or political character of a dispute is ultimately determined by the objective aimed at or the position adopted by each party in the dispute. If both parties are demanding what they conceive to be their existing legal rights - as, for example, in the Corfu Channel case - the dispute is evidently legal. If both are demanding the application of standards or factors not rooted in the existing rules of international law - as, for example, in a dispute regarding disarmament - the dispute is evidently political."[35]

The third opinion, referred to as the middle ground view, represented by scholars such as de Visscher, Geamanu, Oppenheim, and Hans Kelsen, states that the separation between political and legal disputes lacks a strong scientific basis and lacks objective criteria. According to them, every dispute has its own political and legal aspects. Disputes considered legal disputes may involve high political interests of the countries involved, and conversely, disputes considered to have political characteristics may actually involve the application of principles or rules of international law.[36] This opinion emphasizes that international disputes cannot be categorically classified as legal or political disputes. Instead, political and legal aspects are often interconnected and relevant in such disputes. The application of principles of international law can be a crucial factor in resolving disputes that are considered to have political characteristics, and conversely, the political interests of countries can influence the resolution of disputes that are considered to have legal characteristics.

The development of international law in regulating peaceful dispute settlement methods formally first occurred through the organization of the Hague Peace Conference in 1899 and 1907. This conference resulted in the convention of the pacific settlement of international disputes in 1907. The Hague Peace Conference

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[35] Martin Dixon, *Textbook on International Law* (London: Blackstone, 2000), hlm. 272. Huala Adolf argues that the approach taken by the Waldock group is more appropriate. If there is a dispute between two countries, the form or type of dispute is entirely determined by the parties involved. For example, disputes related to the demarcation of territorial boundaries, violations of diplomatic privileges, disputes related to rights and obligations in trade, and so on. Such disputes certainly affect the relationship between the two countries at various levels. How the two countries perceive the dispute becomes a determining factor in categorizing it as a legal or political dispute. Further reading, Huala Adolf, Hukum Penyelesaian Sengketa Internasional (Jakarta: Sinar Grafika, 2020), hlm. 4-5

[36] Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, hlm. 7.

had two significant meanings. First, the conference made a significant contribution to the development of international humanitarian law or the law of war. Second, the conference also made an important contribution in establishing rules for peaceful dispute settlement between states.[37] The Hague Peace Conference was a crucial milestone in the development of international law and peaceful dispute settlement. The conventions and mechanisms resulting from the conference formed the foundation for more structured and law-based efforts in international dispute resolution.

Based on the conference, countries (members) strive to settle international disputes peacefully using all available means. This principle emerged from the spirit of the Hague Convention, which encouraged countries to seek peaceful ways of resolving their disputes whenever possible. If diplomatic efforts for settlement prove unsuccessful, resorting to arbitration becomes the next option. However, submission to arbitration is not compulsory. According to Article 38 of the Hague Convention, the submission of disputes to arbitration is only done if circumstances permit. In other words, countries still have the freedom to decide whether they want to submit their disputes to arbitration or choose other means of settlement.[38]

The designation of 1990-1999 as the United Nations Decade of International Law by the General Assembly in 1989 was a significant development in international law. The main objective of the UN General Assembly in declaring the 1990s as the UN International Decade was to promote methods and means of settling disputes between countries, including the submission of disputes and respect for the International Court of Justice. In this context, international law requires all countries, especially those that are UN members, to settle international disputes peacefully. This is stipulated in Articles 1, 2, and 33 of the UN Charter.[39] These articles affirm the importance of peaceful settlement of international disputes as a minimum obligation to be complied with by member states. Countries are

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[37] David J. Bederman, *The Hague Peace Conference of 1899 and 1907* dalam Mark W. Janis (ed.), *International Courts for the Twenty Fierst Century* (Dordrecht: Martinus Nijhoff Publishers, 1992), hlm. 9

[38] Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, hlm. 10.

[39] Article 1 reads *"to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace… and to bring about by peaceful means, and in comformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of peace"*. Then in chapter 2 it reads *"all members shall settle their international disputes by peaceful means in such a manner that international peace and security, are not endangered"*. And in article 33 it reads *"the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall first of all seek a solution be negaotiation, enquiry, mediation, conciliation, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice"*.

expected to use diplomatic efforts and available dispute resolution mechanisms, including submitting disputes to relevant bodies or institutions like the International Court of Justice. The designation of the United Nations Decade of International Law and the obligation for peaceful settlement of disputes in the UN Charter are significant steps in promoting international peace and security and advancing international law as a framework for resolving inter-state conflicts in a peaceful and fair manner.

According to Ley, the obligation to settle international disputes peacefully has become universal international law. This obligation emphasizes that states have a responsibility to resolve their disputes through peaceful means to maintain peace, international security, and justice.[40]

With the massive development of technology today and the existence of official rules from the UN, it shows that the existence of international law in maintaining and preserving international peace and security is becoming more robust and prominent as an umbrella for the entire international community. This is in line with the purpose of establishing the UN and the implicit meaning in Article 1 above, which states that one of the functions of the UN is to create and maintain international peace and security. This includes efforts to settle international disputes peacefully. Furthermore, Article 2(3) provides further regulations to implement and achieve these objectives, making it an obligation for all member states to pursue peaceful means of settling disputes.

Other obligations are also found in Article 2(4), which states that, in their international relations, all states must refrain from the use of force, such as the threat or use of weapons against another state, or actions that are contrary to the purposes of the UN. It is important to emphasize that the obligations in these two articles are obligations to refrain from the use of force or threat. Both obligations should be considered as standalone obligations. The principle of prohibition of the use of force or non-peaceful means, although stated in the UN Charter, is not limited to just UN member states in its application. In the discussion on the draft articles of treaty law, especially in the discussion of Article 33 paragraph 5, the International Law Commission provided comments on this principle.[41]

Based on the above rules, it is clear that there is a clear dynamic or development in the settlement of disputes with a shift based on the value of awareness of the massive technological developments. As a result, dispute

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[40] Werner Levy, *Contemporary International Law: A Concise Introduction* (Boulder: Westview, 1991), hlm. 277

[41] According to the International Law Commission, the principle of prohibition of the use of force as enshrined in the UN Charter is part of General International Law that is widely applied throughout the world. This important comment states *" The principles regarding the threat or use of force laid down in the Charter are rules of general international law which are to day of universal application"*.

resolution, especially in the international context, now prioritizes peaceful settlement. This is further reinforced by the General Assembly Resolution No. 2625(XXV) of 1970, which was later reaffirmed by General Assembly Resolution No. 40/9, General Assembly Resolution No. 44/21, and General Assembly Resolution No. A/RES/43/51 of 1988.

As a result, the Hague Convention of 1899 underwent changes during the Second Hague Peace Conference in 1907. Significant changes occurred in the investigative commission and arbitration procedures.[42] Based on Article 33 of the UN Charter and existing resolutions, the methods of peaceful dispute settlement can essentially be divided into two groups: diplomatic settlement and legal settlement. With these changes, matters related to the submission of disputes to competent bodies can be found in the last sentence of Article 33 of the UN Charter, where submission becomes an option for parties referring to judicial bodies established by various international organizations, both at the regional and global levels.

D. Result

The existence of international law plays a crucial role in the efforts of international dispute settlement. International law provides a framework and solutions for states involved in disputes based on established principles of international law. It is important to note that a dispute is not considered an international dispute unless its resolution has consequences for the involved parties. Sources of international law differ from domestic legal sources and have unique characteristics. International disputes encompass various categories, including disputes between states, as well as disputes involving individuals, corporations, and non-state entities within the realm of international law. These disputes can lead to significant losses for countries, ranging from large-scale conflicts like the Russia-Ukraine conflict and the Israel-Palestine conflict to territorial disputes between neighboring states.

Efforts to resolve disputes have received significant attention in the international community since the early 20th century. The use of peaceful dispute settlement methods has become highly important in the face of the destructive nature of armed conflicts. While historically, war was recognized as a legitimate method for settling disputes, the importance of peaceful settlement methods gradually emerged. Peaceful dispute settlement methods are directly related to the prohibition of the use of force among member states, as stated in Article 2(4) of the UN Charter.

The dynamics of dispute settlement have evolved over time, particularly with the formal recognition of the Hague Peace Conferences in 1899 and 1907. These conferences contributed to the development of rules and methods for peaceful dispute settlement. The responsibility to settle international disputes peacefully is a universal obligation for all UN member states, as stated in Articles 1, 2, and 33 of the

[42] Louis B. Sohn, *Peaceful Settlement of Disputes* dalam Mark W. Janis, op.cit., hlm. 3

UN Charter. This obligation aims to maintain international peace, security, and justice.

Though there are challenges in distinguishing between legal and political disputes, it is generally accepted that disputes brought to legal decisions are those where existing legal rules can be applied. Disputes not subject to legal decisions may involve political considerations or require non-legal standards. The classification of disputes as legal or political ultimately depends on the objectives and positions adopted by the parties involved. The development of international law and the emphasis on peaceful dispute settlement methods demonstrate the strong and enduring presence of international law in maintaining international peace and security. This is reinforced by the role of the UN and its member states in promoting and achieving peaceful dispute settlement. The prohibition of the use of force and the commitment to peaceful dispute settlement have become fundamental principles of international relations. The evolution of technology and the formal recognition of the importance of peaceful dispute settlement methods further highlight the significance of international law in resolving international disputes.

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