2022

Non-Binding International Dispute Settlement

Sean D. Murphy

22 December 2022

Non-Binding International Dispute Settlement[1]

Sean D. Murphy
Manatt/Ahn Professor of International Law
George Washington University

The period of the Cold War, with its associated East-West divisions and ever-present threat of nuclear war, presented considerable obstacles to the flowering of the methods of international dispute resolution that were envisaged in Chapters VI and VII of the UN Charter. Those approaches to dispute resolution might be grouped into three categories: resolution of disputes by applying rules of international law, such as resort to arbitration or international courts; resolution of disputes through the projection of power, either in self-defence or under authorisation of the Security Council; and resolution of disputes by identifying and accommodating the interests of the disputing states (or other actors), such as through negotiation, mediation or conciliation, sometimes under the auspices of the United Nations or regional organisations.

After the Cold War, hopes arose that such approaches to dispute resolution would accelerate, and to a certain degree they did. While some of these developments occurred in direct response to the end of the Cold War, they were by no means exclusive to Cold War-era claims. New international courts and tribunals emerged alongside the International Court of Justice, and there was a significant increase in resort to arbitration, notably in the area of investor-state arbitration. Such matters are addressed in Chapter 26 of this volume. The Security Council made strides toward its envisaged role of projecting power, as demonstrated during Iraq's invasion of Kuwait in 1990-1, and has remained active thereafter in addressing threats to peace and security, as discussed in Chapters 10 and 14 of this volume.

Alongside these advances in binding dispute resolution, states have also continued to rely on and expand flexible, consent-based approaches for the resolution of disputes through techniques for identifying and accommodating the interests of the disputing states. The demise of the East-West divide opened up greater opportunities for negotiated settlements in areas such as trade in goods and services; protection of intellectual property; prevention of transboundary environmental harm; and delimitation of land and maritime boundaries. Dispute resolution through mediation or conciliation also advanced, albeit to a greater or lesser degree, just as they had within national legal systems.[2] Through initiatives such as the 1992 *An Agenda for Peace*, the United Nations sought to play a greater role in framing the means for dispute resolution and its own role in that regard, while regional and even sub-regional organisations sought to carve out a path for resolving disputes in their domain. Across these mechanisms, non-state actors such as corporations and individuals also began to participate more directly in international dispute resolution processes. Such efforts are the focus of this chapter.

---

[1] Chapter 25 from The Cambridge History of International Law, Volume XII (International Law Beyond the End of the Cold War).

[2] For alternative dispute resolution within national legal systems, see Carlos Esplugues & Silvia Barona, eds., *Global Perspectives on ADR* (Cambridge/Antwerp/Portland: Intersentia 2014).

I. Meaning of 'dispute'

A threshold question that arises with respect to dispute resolution is whether, in fact, a 'dispute' exists. Two parties to a dispute may agree on this issue but, if they do not, establishing that a dispute exists may prove important in relation to obligations that the parties have to negotiate, mediate or conciliate such a dispute, as well as to other forms of dispute settlement.[3]

Since the end of the Cold War, and with the emergence of numerous venues for dispute resolution, the question of whether a 'dispute' exists often has been litigated, allowing for the development of greater clarity than existed with earlier jurisprudence. To take just decisions rendered by the International Court of Justice, it is not sufficient simply to note that one party maintains that a dispute has arisen under a treaty, while the other denies it.[4] Indeed, according to the Court, "…the existence of a dispute is a matter of substance, and not a question of form or procedure."[5] Rather, one must ascertain whether the substantive acts or omissions complained of by the first party are capable of falling within the provisions of the treaty or other source of law at issue.

In establishing the existence of a dispute, prior negotiations or formal diplomatic protest are not necessarily required;[6] indeed, one may solely take account of statements or documents exchanged between the parties.[7] But, critically, the parties must '"hold clearly opposite views concerning the question of the performance or non-performance of certain" international obligations'.[8] For example, simply expressing opposition to the other party's view at an international conference, or casting votes different from that other party, was found not to be a sufficient basis for establishing dispute when the Marshall Islands in 2014 pursued claims against certain nuclear powers.[9] At the same time, 'the existence of a dispute may be inferred from the failure of a State to respond to a claim in circumstances where a response is called for'.[10] Where two parties are in agreement but wish a tribunal to 'bless' their agreement, that is not a 'dispute' and thus may not be within the tribunal's jurisdiction.[11]

II. Enhanced emphasis on dispute settlement through the United Nations

---

[3] Yoshifumi Tanaka, *The Peaceful Settlement of International Disputes* (Cambridge: Cambridge University Press 2018) 8-19.
[4] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)* (Provisional Measures) (2018) ICJ Rep 406, 414, para. 18.
[5] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* (Preliminary Objections) (2011) ICJ Rep 70, 84, para. 30.
[6] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)* (Preliminary Objections) (1998) ICJ Rep 275, 321-2, para. 109 (negotiations not required); *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)* (Preliminary Objections) (2016) ICJ Rep 3, 32, para. 72 (diplomatic protest not required).
[7] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (Provisional Measures) 2020 ICJ Rep 3, 12, para. 26; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (Merits) (2012) ICJ Rep 422, 443-5, paras. 50-5.
[8] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)* (Preliminary Objections) (2016) ICJ Rep 3, 26, para. 50 (citing Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, ICJ Reports 1950, p. 74).
[9] *See, e.g., Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)* (Jurisdiction and Admissibility) (2016) ICJ Rep 255 (parallel cases were brought against Pakistan and the United Kingdom).
[10] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* (Preliminary Objections) (2011) ICJ Rep 70, 84, para. 30.
[11] *Frontier Dispute (Burkina Faso v. Niger)* (Judgment) (2013) ICJ Rep 44, 71, para. 53.

When international disputes arise, the UN Charter envisages that the United Nations will play an important role in resolving them. That role intensified after the Cold War ended and the divisions within the UN Security Council and General Assembly – to a degree – eased.[12] Various strands of emphasis may be discerned from UN practice, especially in the years immediately following the end of the Cold War.

First, central to UN practice in this time period was a reaffirmation of the basic obligation of states to settle disputes by peaceful means. In December 1992, as armed conflict erupted in the Balkans, the General Assembly encouraged member states (as well as other actors) to play a more active and conscious role in the settlement of disputes through peaceful means.[13] Such statements were repeatedly made in UN instruments thereafter, such as in the 2005 'World Summit Outcome' document, where the General Assembly included a section on 'pacific settlement of disputes'[14] and 'emphasize[d] the obligation of States to settle their disputes by peaceful means'.[15]

Yet this obligation of states to settle disputes peacefully was developed even further, to a degree, so as to encompass an obligation to cooperate within the UN system to help resolve the disputes of others. Indeed, repeated references in UN practice may be found to the responsibility of member states to develop a 'cultural consensus' that the United Nations is the appropriate forum to settle disputes, and to share relevant information with the appropriate UN institutions toward dispute resolution.[16] For example, in 1997 the General Assembly noted the important role that member states play in supporting UN international peace and security efforts, with states providing assistance to the Secretary-General individually or in informal groups.[17] Among other things, such views spawned the use of informal groups dubbed as 'friends of the Secretary-General', consisting of certain member states who, on an ad hoc basis and without any formal mandate, band together due to a particular interest in resolving a dispute or conflict, so as to deploy material and diplomatic resources that support the Secretary-General's efforts.[18] More formally, such views led to the creation in 2005 of the UN Peacebuilding Commission, an intergovernmental advisory body of 31 Member States (elected from the General Assembly, the

[12] UN Charter, art. 1(1) (purposes of the United Nations includes settlement of international disputes); art. 2(3) (Members shall settle international disputes peacefully); chap. VI (pacific settlement of disputes); art. 34-8 (Security Council role); art. 35 (disputes may be brought to General Assembly or Security Council); art. 52 (settlement of disputes through regional arrangements); art. 98 (Secretary-General performs functions entrusted to him/her by the General Assembly or Security Council); art. 99 (Secretary-General may bring matters threatening peace to Security Council's attention). See generally UN Office of Legal Affairs, *Handbook on the Peaceful Settlement of Disputes between States* (New York: United Nations 1992); D.N. Hutchinson, 'The Material Scope of the Obligation Under the United Nations Charter to Take Actions to Settle International Disputes', *Australian Year Book of International Law* (1993), 1; Tanaka, *The Peaceful Settlement of International Disputes*, 73-104.

[13] UNGA Res 47/120, at 3 (18 December 1992); see T.M. Franck, 'The Secretary-General's Role in Conflict Resolution: Past, Present and Pure Conjecture,' *European Journal of International Law*, 6 (1995) 360-87.

[14] UNGA Res 60/1, 2005 World Outcome (16 September 2005).

[15] Ibid. para. 73.

[16] See UNGA Res 43/51 paras. 1, 5 (5 December 1988); Supplement to the Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations, para. 28 (25 January 1995), UN Doc A/50/60; UNGA Res 47/120, 3 (18 December 1992); UNGA Res 51/242, Supplement to an Agenda for Peace, annex I, para. 1 (15 September 1997).

[17] UNGA Res 51/242, annex I, paras. 1, 4 (15 September 1997).

[18] See, e.g., Secretariat, Mechanisms established by the General Assembly in the context of dispute prevention and settlement, para. 27 (14 April 2000) UN Doc A/AC.182/2000/INF/2.

Security Council and the Economic and Social Council) that supports peace efforts in conflict-affected countries.[19]

Moreover, the obligation of states to settle disputes peacefully was seen as entailing an acceptance of UN assistance, when appropriate. Indeed, recognizing that it is often a prerequisite for a member state to provide consent before the United Nations can act to prevent or resolve a dispute, the Secretary-General determined that Member States may need to 'creat[e] a climate of opinion, or ethos, within the international community in which the norm would be for Member States to accept an offer of United Nations good offices'.[20]

Second, the United Nations in this time period placed an increased emphasis on the need to *prevent* disputes that might lead to armed conflict. The Secretary-General's 1992 *An Agenda for Peace* not only noted the unique opportunity for the United Nations to be a forum for dispute resolution in a post-Cold War world,[21] but paid particular attention to the concept of preventive diplomacy,[22] defined as 'action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur'.[23] Other UN organs applauded this emphasis. The President of the Security Council, for example, noted that in order to operationalize the *Agenda*'s recommendations it was necessary 'to strengthen the United Nations potential for preventive diplomacy', while highlighting 'with satisfaction the increased use of fact-finding missions'.[24] A decade later, the General Assembly adopted a resolution on the 'Prevention and peaceful settlement of disputes', in which it '[e]mphasiz[ed] the importance of early warning to prevent disputes, and … the need to promote the peaceful settlement of disputes'.[25] Among other things, the General Assembly '[u]rge[d] States to make the most effective use of existing procedures and methods for the prevention and peaceful settlement of their disputes'[26] and 'to settle their disputes as early as possible'.[27] Likewise, the General Assembly in its 2005 World Summit Outcome document 'stress[ed] the importance of prevention of armed conflict in accordance with the purposes and principles of the Charter',[28] a point that both the General Assembly and the Security Council continued to make throughout this period.[29]

Third, a particular emphasis in this period was placed on the need to enhance the role of the Secretary-General (and concomitantly the UN Secretariat) with respect to dispute settlement. In January 1992, the UN Security Council met for the first time at the level of heads of state and

---

[19] See UNGA Res 60/180 (20 December 2005); UNSC Res 1645 (20 December 2005) (establishing the Commission). For subsequent resolutions expanding and refining its mandate, see UNGA Res 70/262 (2016); UNSC Res 2282 (2016); UNGA Res 75/201 (2020); UNSC Res 2558 (2020).
[20] Supplement to the Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations, para. 28 (25 January 1995), UN Doc A/50/60.
[21] UN Secretary-General, An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping, para. 15, (17 June 1992) UN Doc A/47/277-S-/2411.
[22] Ibid. para. 5. The *Agenda* also addressed peacemaking, peace-keeping and post-conflict peacebuilding.
[23] Ibid. para. 20.
[24] UNSC Pres Note, UN Doc S/25859 (28 May 1993), 3.
[25] UNGA Res 57/26, pmbl. (19 November 2002).
[26] Ibid. para. 1.
[27] Ibid. para. 2.
[28] UNGA Res 60/1, 2005 World Outcome ¶ 74 (16 September 2005).
[29] See, e.g., UNGA Res 70/262 (27 April 2016); UNSC Res 2282 (27 April 2016) (concurrent resolutions adopted reviewing the UN peacebuilding architecture).

government and, among other things, invited the Secretary-General to report on how the United Nations could strengthen and make more efficient under the UN Charter its capacity for preventive diplomacy, peacemaking and peace-keeping.[30] Shortly thereafter, in February 1992, Secretary-General Boutros Boutros-Ghali announced a major restructuring of the United Nations, designed to enhance its capacity in these areas. Among this restructuring was the establishment of a Department of Political Affairs (DPA),[31] which was 'expected to assist in the gathering and analysis of information, in alerting the relevant organs about impending crises or emergencies, and in carrying out mandates decided upon by the Security Council, the General Assembly and other competent organs'.[32] A few months later, *An Agenda for Peace* (noted above) observed that the Secretary-General can pursue preventive diplomacy 'personally or through senior staff or specialized agencies and programmes, by the Security Council or the General Assembly, and by regional organizations in cooperation with the United Nations'.[33] The Security Council seconded these efforts, when its President in 1993 urged that member states provide the Secretary-General with information on potential conflicts and that 'the Secretary-General … consider appropriate measures for strengthening the Secretariat capacity to collect and analyse information'.[34]

In January 1995, the Secretary-General issued a supplementary report to *An Agenda for Peace* so as 'to highlight selectively certain areas where unforeseen, or only partly foreseen, difficulties have arisen'.[35] In order to remedy the lack of senior personnel to serve as special representatives or envoys, and the need for more permanent small-scale field missions, the Secretary-General proposed including in the UN budget a multi-million-dollar contingency provision for such activities, and 'to make it available for all preventive and peacemaking activities, not just those related to international peace and security strictly defined'.[36] Thereafter, the General Assembly approved such budgetary expenditures, allowing the Secretariat to significantly increase its activities relating to dispute settlement.[37] After an extended period of growth in this area, the DPA was combined in 2019 with the UN Peacebuilding Support Unit so as to form the Department of Political and Peacebuilding Affairs (DPPA). At present, the DPPA is the principal support structure for various aspects of UN dispute resolution, including by means of UN special representatives, special envoys, special political missions, regional offices, resident coordinators (in countries where there is no UN mission) and related positions, all acting on behalf of the Secretary-General.

---

[30] Note by the President of the Security Council, UN Doc S/23500, 3-4 (31 January 1992), UN Yearbook 1992, 33.
[31] This department incorporated the activities of the several previous departments and offices: Office for Political and General Assembly Affairs and Secretariat Services; Office for Research and the Collection of Information; Department of Political and Security Council Affairs; Department for Special Political Questions, Regional Cooperation, Decolonization and Trusteeship; and the Department for Disarmament Affairs.
[32] Restructuring of the Secretariat of the Organization: Note by the Secretary-General, UN Doc A/46/882, paras. 5-6 (21 February 1992). The restructuring also involved the establishment of a Department of Peace-keeping Operations, as well as the consolidation of other departments and offices.
[33] UN Secretary-General, An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping, ¶ 23, UN Doc A/47/277-S-/2411 (17 June 1992).
[34] UNSC Pres Note, 3, UN Doc S/25859 (28 May 1993).
[35] Supplement to the Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations, ¶ 6 (25 January 1995), UN Doc A/50/60.
[36] Ibid. paras. 29-32.
[37] See, e.g., Secretariat, Mechanisms established by the General Assembly in the context of dispute prevention and settlement, ¶¶ 25–26 (14 Apr. 2000) UN Doc. No. A/AC.182/2000/INF/2.

Fourth, despite the emphasis on the role of the Secretary-General, in this period there was also a repeated recognition of the need for coherent and integrated approach by all UN organs for prevention and settlement of disputes. Indeed, in numerous resolutions, the General Assembly stressed that different UN organs can play complementary roles in preventing the emergence of disputes and ameliorating those that have emerged, relying on their respective institutional strengths.[38] For example, the 2002 resolution on 'Prevention and peaceful settlement of disputes' highlighted the respective roles that the Secretary-General, Security Council and General Assembly can play in identifying early warning signs that a dispute might emerge and to attempt to prevent disputes that do emerge.[39]

With respect to peacemaking, the Secretary-General in the *Agenda for Peace* recognized he alone may not be able 'to bring hostile parties to agreement by peaceful means'.[40] Consequently, the Secretary-General 'urge[d] the [Security] Council to take full advantage of the provisions of the Charter under which it may recommend appropriate procedures or methods for dispute settlement and, if all the parties to a dispute so request, make recommendations to the parties for a pacific settlement of the dispute'.[41] No doubt with this in mind, the General Assembly in the 2005 World Summit Outcome document 'further stress[ed] the importance of a coherent and integrated approach to the prevention of armed conflicts and the settlement of disputes and the need for' better coordination across the activities of different UN organs 'within their respective Charter mandates'.[42]

Finally, although the United Nations saw itself as central in the prevention and settlement of international disputes in this period, it often acknowledged the important supporting roles that regional organizations must play in settling disputes.[43] For example, the annex to the 1997 General Assembly Resolution on the Supplement to *An Agenda for Peace* noted the need to coordinate with regional organizations (and non-governmental organisations) to ensure peace and security.[44]

III. Negotiated settlement of disputes

In resolving an international dispute, two states need not engage a third party, such as the United Nations, to assist them. Indeed, the most common means for resolving disputes, which has continued in the post-Cold War period, is through bilateral or multilateral negotiations by the states concerned.[45] Having said that, the involvement of third parties through processes such as

---

[38] See, e.g., UNGA Res 43/51 (5 December 1988); UNGA Res 47/120, 3 (18 December 1992); UNGA Res 51/242, Supplement to an Agenda for Peace, paras. 11-15 (15 September 1997) annex I; UNGA Res 60/1, 2005 World Outcome, para. 76 (16 September 2005).
[39] UNGA Res 57/26, para. 3 (19 November 2002).
[40] UN Secretary-General, An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping, ¶ 34, UN Doc A/47/277-S-/2411 (17 June 1992).
[41] Ibid. para. 35.
[42] UNGA Res 60/1, 2005 World Outcome, para. 75 (16 September 2005).
[43] See UN Secretary-General, An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping, para. 23, UN Doc A/47/277-S-/2411 (17 June 1992); UNGA Res 51/242, Supplement to an Agenda for Peace, annex I, paras. 11-14 (15 September 1997).
[44] UNGA Res. 51/242, annex I, paras. 11-15 (15 September 1997).
[45] See generally Kari Hakapää, 'Negotiation', in *Max Planck Encyclopedia of Public International Law* (2013), www.opil.ouplaw.com (subscription database); Alberto L. Davérède, 'Negotiations, Secret', in *Max Planck Encyclopedia of Public International Law* (2013), www.opil.ouplaw.com (subscription database); Victor A. Kremenyuk (ed.), *International*

mediation or conciliation may be seen as a more elaborate form of negotiation, in that ultimately the states concerned must negotiate their way toward an outcome, if the dispute is to be resolved successfully. Even in the context of litigation, the dispute settler might encourage the disputing states to pursue a negotiated settlement,[46] no doubt recognising that such a settlement may be a more enduring method for pacific settlement of the dispute.

Most major multilateral treaties concluded since the end of the Cold War have contained provisions essentially inviting or requiring the parties to a dispute to pursue, in the first instance, negotiations[47] (or 'consultations'[48] or an 'exchange of views'),[49] albeit without requiring a specific outcome. Similarly, recent bilateral agreements may require the pursuit of negotiations to resolve a dispute.[50] The extent to which such provisions have helped resolve disputes without having to proceed to more elaborate forms of dispute resolution cannot be readily observed, but it would seem likely that states are motivated for reasons of political expediency and economic efficiency to resolve disputes quietly and quickly when possible. Moreover, for more advanced methods of dispute settlement, it may be necessary to demonstrate an attempt at negotiation or at least that a dispute has not or cannot be 'settled by negotiation'.[51]

In the post-Cold War period, the central role of the United Nations in providing opportunities for negotiation has been stressed.[52] In 1998, the General Assembly adopted a resolution on *Principles and Guidelines for International Negotiations*, which reaffirmed earlier principles of sovereign equality, non-intervention, and good faith fulfilment of international

---

Negotiation: Analysis, Approaches, Issues (2nd edn., San Francisco: Wiley 2002); Alain Plantey, *International Negotiation in the Twenty-First Century* (trans. Frances Meadows) (New York: Routledge-Cavendish 2007); Evangelos Raftopoulos, *International Negotiation: A Process of Relational Governance for International Common Interest* (Cambridge: Cambridge University Press 2019); Valerie Rosoux & Mark Anstey (eds.), *Negotiating Reconciliation in Peacemaking: Quandaries of Relationship Building* (Springer 2017); Brigid Starkey, Mark A. Boyer & Jonathan Wilkenfeld, *International Negotiation in a Complex World* (4th edn., Lanham, Maryland: Rowman & Littlefield 2016); I. William Zartman & Jeffrey Z. Rubin (eds.), *Power and Negotiation* (Ann Arbor, Michigan: University of Michigan Press 2000); Tanaka, *The Peaceful Settlement of International Disputes*, 29-42.

[46] See, e.g., *Passage through the Great Belt (Finland v Denmark)* (Provisional Measures) (1991) ICJ Rep 12, para. 35 (Court's statement that, 'pending a decision of the Court on the merits, any negotiation between the Parties with a view to achieving a direct and friendly settlement is to be welcomed'; thereafter, a settlement in fact was reached between the parties).

[47] See, e.g., UN Convention against Corruption, 31 October 2003, 2349 UNTS 41, art. 66(1) ('States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.'); UN Convention on Jurisdictional Immunities of States, 2 December 2004, UN Doc A/59/38, annex, art. 27(1) (same); International Convention for the Protection of All Persons from Enforced Disappearance, 23 December 2010, 2716 UNTS 3, art. 42(1) (providing that any 'Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation' may be taken to arbitration, and then to the ICJ).

[48] See, e.g., Understanding on Rules and Procedures Governing the Settlement of Disputes arts. 4(3) & 4(7), Marrakesh Agreement Establishing the World Trade Organization, annex 2, 15 April 1994, 1869 UNTS 401, 404 (obligating members who have a dispute to enter into consultations in good faith, to commence within 30 days of a member's request and concluded within 60 days of request).

[49] See, e.g., UN Convention on the Law of the Sea, 10 December 1982, 1833 UNTS 397, art. 283(1) ('When a dispute arises…the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.').

[50] For example, Romania and Ukraine agreed, in the context of their Treaty on Good Neighbourliness and Co-operation, to 'negotiate an Agreement on the delimitation of the continental shelf and the exclusive economic zones in the Black Sea'. See *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* (Judgment) (2009) ICJ Rep 61, 70, para. 18.

[51] See, e.g., *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)* (Jurisdiction and Admissibility) (2006) ICJ Rep 6, para. 91 (rejecting jurisdiction, inter alia, because '[t]he evidence has not satisfied the Court that the DRC in fact sought to commence negotiations in respect of the interpretation or application of the Convention' on Discrimination against Women).

[52] See, e.g., *In Larger Freedom: Towards Development, Security and Human Rights for All, Report of the Secretary-General*, (2005) UN Doc. A/59/2005.

obligations, but also identified further principles, such as that negotiations must be conducted in good faith, the purpose and object of negotiations must be fully compatible with the UN Charter, and states must refrain from any conduct that might undermine negotiations.[53] Moreover, increased attention has been placed on the role of actors other than just states and international organisations, at least for certain types of negotiations. For example, the High-level Panel on Threats, Challenges and Change urged the United Nations to have '[g]reater consultation with and involvement in peace processes of important voices from civil society, especially those of women, who are often neglected during negotiations'.[54]

While many international disputes in the post-Cold War era have not been resolved through negotiation, there are many negotiated settlements, though not always of enduring success. Among the most prominent are the 2015 Joint Comprehensive Plan of Action (JCPOA), by which several states and the European Union agreed with Iran on resolving a dispute relating to the latter's nuclear program,[55] or the 2020 agreements known collectively as the Abraham Accords, by which two Arab states normalised diplomatic relations with Israel after many decades of tension.[56] Yet for any given subject area of international law in the post-Cold War era, numerous negotiations of disputes, large and small, may be observed. For example, with respect to disputes over maritime boundaries, by one account there were more than sixty negotiations between states from 1994 to 2012; some of those negotiations succeeded, some did not, and others remain ongoing.[57]

IV. Mediation, good offices and inquiry for dispute resolution

Mediation is commonly understood as a means whereby a third party assists the disputing parties, with their consent, in resolving the dispute, such as through proposing solutions for the parties' consideration. The process is often confidential and is more informal that conciliation, arbitration or judicial dispute settlement.[58] By some estimates, three-quarters of peace negotiations are with the assistance of one or more mediators, perhaps a reflection of the difficulties faced when two belligerents seek to end an armed conflict.[59]

The 1992 *Agenda for Peace* drawn up by the UN Secretary-General noted that procedures like '[m]ediation and negotiation can be undertaken by an individual designated by

---

[53] UNGA Res 53/101 (8 December1998).
[54] UN Doc. A/59/565, para. 103 (2004).
[55] See Joint Comprehensive Plan of Action (14 July 2015), https://perma.cc/U7WT-9VQ7. For commentary, see Steven Hurst, 'The Iranian Nuclear Negotiations as a Two-Level Game: The Importance of Domestic Politics', *Diplomacy & Statecraft*, 27 (2016) 545; Milena Sterio, 'President Obama's Legacy: The Iran Nuclear Agreement?', *Case Western Reserve Journal of International Law*, 48 (2016) 69.
[56] See The Abraham Accords Declaration (13 August 2020), www.state.gov/the-abraham-accords/ (United Arab Emirates, Israel and United States); Declaration of Peace (15 September 2020) (Bahrain, Israel and United States)
[57] Igor V Karaman, *Dispute Resolution in the Law of the Sea* 331-36 (Leiden: Martinus Nijhoff 2012).
[58] Jacob Bercovitch (ed.), *Resolving International Conflicts: The Theory and Practice of Mediation* (London: Lynne Rienner 1996); Marieke Kleiboer, *The Multiple Realities of International Mediation* (Boulder, Colorado: Lynne Rienner 1998); Melanie C. Greenberg, John H. Barton & Margaret E. McGuinness (eds.), *Words Over War: Mediation and Arbitration to Prevent Deadly Conflict* (Lanham, Maryland: Rowman & Littlefield 2000); Jacob Bercovitch & Scott Sigmund Gartner (eds.), *International Conflict Mediation: New Approaches and Findings* (Routledge 2009); Francisco Orrego Vicuña, 'Mediation', VII *Max Planck Encyclopedia of Public International Law* (Oxford, New York: Oxford University Press 2012), 46; Sven M.G. Koopmans, *Negotiating Peace: A Guide to the Practice, Politics, and Law of International Mediation* (Oxford: Oxford University Press 2018); Tanaka, *The Peaceful Settlement of International Disputes*, 45-50.
[59] Vinceç Fisas (ed.), *2014 Yearbook on Peace Processes* 10 (2014).

the Security Council, by the General Assembly or by the Secretary-General' and that states can rely on the Secretary-General's good offices 'conducted independently of the deliberative bodies', which may prove to be more effective at times for resolving disputes.[60] Thereafter, within the DPA, a Policy and Mediation Division was created to serve as a central resource to support mediation efforts, even on very short notice. Indeed, within that division a Mediation Support Unit was established in 2007, which manages a standby team of senior mediation advisers on a wide range of issues who 'can be deployed anywhere in the world within 72 hours to provide advice on mediation and conflict prevention efforts'.[61]

Various prominent incidents of mediation occurred in the post-Cold War period. For example, former President of Finland Martti Ahtisaari served for several years as the UN mediator between Serbia and the authorities in Kosovo prior to the latter's declaration of independence in 2008, service for which (along with other assignments) he was awarded the 2008 Nobel Peace Prize.[62] Likewise, Matthew Nimetz served for years as a UN mediator of the dispute between Greece and the former Yugoslav Republic of Macedonia, leading ultimately to an agreement in 2018 that the latter would take the name 'Republic of North Macedonia'.[63] A U.S. mediation between Israel and Lebanon led in 2022 to an agreement permanently establishing their maritime boundary.[64] To provide a framework for such mediation, various international organizations in their subject areas developed specialized rules for mediation.[65] Further, in this period there was also greater attention to the development of international instruments that assist in the mediation of commercial relationships, notably the adoption of the UN Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention), which provides for the ability to enforce and invoke such agreements in resolution of commercial disputes.[66]

Mediation also featured during the post-Cold war period in the practice of regional organizations, such as the Organisation of American States (OAS).[67] For example, the OAS was active in mediating the border dispute between Belize and Guatemala,[68] which resulted in three

---

[60] UN Secretary-General, An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping, ¶ 37 (17 June 1992) UN Doc. A/47/277-S-/2411; see generally Kjell Skjelsbaek, 'The UN Secretary-General and the Mediation of International Disputes', *Journal of Peace Research* 28 (1991) 99.

[61] UN Department of Political Affairs, United Nations Conflict Prevention and Preventive Diplomacy in Action, 4; see UN Peacemaker, Standby Team of Senior Mediation Advisers, peacemaker.un.org/mediation-support/stand-by-team.

[62] See Katri Merikallio & Tapani Ruokanen, *The Mediator: A Biography of Martti Ahtisaari* (London: Hurst & Company 2015).

[63] See Matthew Nimetz, 'The Macedonian "Name" Dispute: The Macedonian Question—Resolved?', *Nationalities Papers*, 48 (2020) 205.

[64] See US Department of State Press Statement, 'Historic Breakthrough on the Israel-Lebanon Maritime Boundary' (11 October 2022), https://www.state.gov/historic-breakthrough-on-the-israel-lebanon-maritime-boundary/.

[65] See, e.g., World Intellectual Property Organization, WIPO Mediation, Arbitration, Expedited Arbitration and Expert Determination Rules and Clauses (2020), at www.wipo.int/edocs/pubdocs/en/wipo_pub_446_2020.pdf.

[66] UN Convention on International Settlement Agreements Resulting from Mediation, 20 December 2018, UN Doc A/RES/73/198, annex; see Natalie Y. Morris-Sharma, 'The Singapore Convention is Live, and Multilateralism, Alive!', *Cardozo Journal of Conflict Resolution*, 20 (2019) 1009.

[67] See, e.g., César Gaviria, Secretary General, The OAS in Transition 1994-2004, 87 (2004) (dispute settlement chapter provides an overview of OAS-led mediation of disputes in the Americas). In the African system, the Organisation of African United established a Commission of Mediation, Conciliation and Arbitration, but the African Union (AU) replaced the Commission with the African Union Court of Justice. See Constitutive Act of the African Union, art. 18, July 11, 2000, 2158 UNTS 33.

[68] For background, see OAS, 'The Fund for Peace: Peaceful Settlement of Territorial Disputes: The Role of the OAS in Mediating the Belize-Guatemala Territorial Dispute' (undated), www.oas.org/es/sap/dsdme/pubs/role_of_the_oas_belize_guatemala.pdf; see also Montserrat Gorina-Ysern, 'OAS Mediates in

agreements during 2000-5: an agreement on confidence-building measures along the border; a 2008 special agreement on submitting the dispute to the International Court of Justice after national referenda; and ultimately submission of the dispute to the ICJ in 2019.[69]

The concept of 'good offices', which is not referred to in the UN Charter, is often assimilated to that of mediation, but in principle might be seen as referring to a situation where the third party simply provides a means for two disputing parties to meet, without the third party taking an independent and substantive role in resolving the dispute.[70] An informative example in the post-Cold War period was the role played by certain officials of the government of Norway with respect to meetings in the 1990s between representatives of Israel and the Palestine Liberation Organisation. Such meetings occurred secretly in Norway without that government taking a substantive role in the discussions, eventually leading to a negotiated process for settlement of the Israeli-Palestinian conflict (the Oslo Accords). Of course, a process initially conceived of as good offices may evolve over time into one of mediation or even arbitration, as appears to have been the case for the 1999-2004 talks between the parties to the Cyprus problem. There, the UN Secretary-General's representative became substantively involved in the negotiations and, later, the Secretary-General was given authority by the parties to fill in 'gaps' where the parties could not reach agreement.[71]

Finally, the method of 'inquiry' also featured in the post-Cold War period,[72] to include fact-finding by the United Nations,[73] as well as by its specialized agencies.[74] This method also found traction in other international and regional organizations, and even in national settings in relation to international law (notably alleged violations of human rights), prompting efforts to develop guidelines for how such fact-finding bodies should operate.[75] Notably, the inquiry function developed by the Permanent Court of Arbitration can be used for disputes between states, state entities, and international organizations, as well as private parties.[76]

V. Conciliation of disputes

Belize-Guatemala Border Dispute', *ASIL Insights*, 5 (2000), asil.org/insights/volume/5/issue/20/oas-mediates-belize-guatemala-border-dispute.

[69] *Guatemala's Territorial, Insular and Maritime Claim (Guatemala v. Belize)*, ICJ (pending).

[70] See Ruth Lapidoth, 'Good Offices', in *Max Planck Encyclopedia of Public International Law* (Oxford, New York: Oxford University Press 2012), 528; Tanaka, *The Peaceful Settlement of International Disputes*, 43-45.

[71] See Report of the Secretary-General on his Mission of Good Offices, UN doc. S/2004/437 (2004); see generally Thomas M. Franck & Georg Nolte, 'The Good Offices Function of the U.N. Secretary-General' in Benedict Kingsbury & Adam Roberts (eds.), *United Nations, Divided World* (New York: Oxford University Press1993), 143; Alys Brehio, Note, 'Good Offices of the Secretary-General as Preventive Measures', *NYU Journal of International Law & Policy*, 30 (1998), 592.

[72] Tanaka, *The Peaceful Settlement of International Disputes*, 63-64 (discussing inquiries into the 2010 *Mavi Marmara* incident involving the delivery of aid to Gaza and into the 2014 downing of a Malaysian airline over the eastern part of Ukraine).

[73] See, e.g., Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, UNGA Res 46/59 (9 December 1991), annex; see generally, Mónica Pinto, 'Inquiry Procedures: United Nations Human Rights Bodies', in *Max Planck Encyclopedia of Public International Law* (2018), www.opil.ouplaw.com (subscription database).

[74] A notable example in this regard was the establishment in 1993 of the World Bank Inspection Panel. See Ibrahim F.I. Shihata, *The World Bank Inspection Panel: In Practice* (Oxford, New York: Oxford University Press 2000).

[75] See, e.g., M. Cherif Bassiouni & Christina Abraham (eds.), *Siracusa Guidelines for International, Regional and National Fact-Finding Bodies* (Cambridge, Antwerp, Portland: Intersentia 2013).

[76] See 'Fact-finding / Commissions of Inquiry', *Permanent Court of Arbitration* (undated), www.pca-cpa.org/en/services/fact-finding-commissions-of-inquiry/.

In contrast with mediation, conciliation is a more formal method of dispute settlement, typically involving a person or panel of persons charged with receiving formal submissions from the disputing parties and then issuing a report containing recommendations for resolution of the dispute. Unlike arbitration or judicial settlement, however, the report imposes no binding decision upon the disputing parties, such that if it fails to bridge the gap between them, the dispute likely continues.[77] As discussed above, there has been a discernible and robust use of negotiation and mediation in the period since the end of the Cold War; by contrast, the resort by States to conciliation has been minimal, and certainly has not lived up to the development of rules in this area.

Thus, several new multilateral agreements called for conciliation as a means of resolving agreement-related disputes, such as the 1992 UN Convention on the Law of the Sea (LOSC),[78] or the 1992 UN Framework Convention on Climate Change[79] and its associated 2015 Paris Agreement.[80] Various issues are addressed in such agreements, including the method for appointing the conciliator(s), whether the conciliator(s) are empowered to decide upon their own competence, whether the process is confidential, and the form of the final outcome. An interesting aspect of some of these contemporary rules is the possibility of 'compulsory' conciliation, whereby a state party to the relevant convention is bound to go through a conciliation process, even if it is not bound by its outcome. Thus, under the LOSC, there are certain automatic limitations to binding dispute settlement (article 297) and certain optional exceptions that a state party may invoke when adhering to the Convention (article 298). Yet where such limitations or exceptions apply, the state party nevertheless may be compelled to accept conciliation in accordance with detailed procedures spelled out in the LOSC.[81]

Likewise, various institutions crafted rules in the post-Cold War period for how an inter-state conciliation process might unfold for unspecified types of disputes, such as the Conference on Security and Co-operation in Europe (CSCE)'s 1992 Stockholm Convention,[82] the United Nations 1995 Model Rules for the Conciliation of Disputes between States,[83] or the Permanent Court of Arbitration's 1996 Optional Conciliation Rules[84]—all developments that parallel those that developed as well in the commercial sphere.[85] The Stockholm Convention created a Court of Conciliation and Arbitration, headquartered in Geneva, and provided for the typical form of conciliation whereby it is initiated by the consent of the disputing parties. Yet the CSCE also contemplated compulsory conciliation arising from a decision of the OSCE Ministerial Council

[77] See generally Sven M.G. Koopmans, *Diplomatic Dispute Settlement: The Use of Inter-State Conciliation* (The Hague: TMC Asser 2008); Jean-Pierre Cot, 'Conciliation', II *Max Planck Encyclopedia of Public International Law* (Oxford, New York: Oxford University Press 2012) 576; Tanaka, *The Peaceful Settlement of International Disputes*, 65-71.
[78] See UN Convention on the Law of the Sea, 10 Dec. 1982, 1833 UNTS 397, arts. 297-98 & annex V, section 1.
[79] UN Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107, art. 14.
[80] Paris Agreement to the United Nations Framework Convention on Climate Change, 12 Dec. 2015, TIAS No. 16-1104, art. 24.
[81] See Tullio Treves, 'Compulsory Conciliation in the U.N. Law of the Sea Convention', in Volkmar Götz, Peter Selmer & Rüdiger Wolfrum (eds.), *Liber amicorum Günther Jaenicke* (Berlin: Springer 1998).
[82] Convention on Conciliation and Arbitration Within the Conference on Security and Co-operation in Europe, 15 Dec. 1992, 1842 UNTS 151, 32 ILM 557 (1993) (Stockholm Convention).
[83] UN Model Rules for the Conciliation of Disputes between States, UNGA Res 50/50 (11 December 1995), annex.
[84] PCA Optional Conciliation Rules (1 July 1996).
[85] See, e.g., UNCITRAL Model Law on International Commercial Conciliation (2002).

or its Committee of Senior Officials, entailing a 'consensus minus two' formula. Such compulsory conciliation, however, allowed states to opt out for certain types of disputes.[86]

Yet despite the adoption of new paths and rules for conciliation, the practice in this period did not follow suit. For example, although 34 states have ratified the Stockholm Convention as of 2021, no conciliations have yet to arise before the Court.[87] A similar hesitation to pursue conciliation may be seen in the context of investor-state and state-state disputes before the International Centre for the Settlement of Investment Disputes (ISCID). Although starting in the 1990s, there was a marked increase in the number of cases brought to ICSID for dispute settlement,[88] the percentage of conciliation cases each year or in the aggregate since 1966 has never exceeded two percent.[89]

Even so, the potential for resort to such conciliation was demonstrated in 2016 when Timor-Leste pursued compulsory conciliation against Australia under the LOSC, for the purpose of settling their long-disputed maritime boundary in the Timor Sea and associated issues. Although Australia challenged the conciliation commission's competence on various grounds, such challenges were rejected.[90] Thereafter, the commission pursued a creative process of meetings, sometimes with one party, sometimes with both parties, sometimes consisting of the commission as a whole, and sometimes of just its president. Over time, the parties apparently became comfortable with the process and saw the advantages of reaching an agreement in areas that previously had alluded them.[91] Based on these discussions, the parties in 2018 concluded a Treaty on the Timor Sea Maritime Boundary which, among other things, established a sharing ratio for the natural resources in certain promising continental shelf gas fields. The process led to a final report and recommendations in 2018, which were made public, thus offering lessons learned for similar resolution of other disputes.[92]

VI. Mass claims programs

An important development in post-Cold War dispute settlement was the re-emergence of venues (often arbitral or quasi-arbitral) for addressing mass claims, meaning an extremely large number of claims that cannot efficiently be litigated in the traditional fashion, but instead are best addressed through broad categories of claims subjected to relaxed evidentiary standards. While mass claims programs were common from the end of the eighteenth century through World War

---

[86] See Christian Tomuschat, Riccardo Pisillo Mazzeschi & Daniel Thürer (eds.), *Conciliation in International Law: The OSCE Court of Conciliation and Arbitration* (Leiden, Boston: Brill/Nijhoff 2016) 238, Annex 4, para. 5(c).
[87] For more information, see www.osce.org/cca/.
[88] See ICSID, The ICSID Caseload—Statistics, Issue 2021-2, 7, chart 1, at icsid.worldbank.org/sites/default/files/Caseload%20Statistics%20Charts/The%20ICSID%20Caseload%20Statistics%202021-2%20Edition%20ENG.pdf (bar chart indicating number of ISCID cases registered by calendar year).
[89] Ibid., at 9, chart 3 (bar chart indicating type of ICSID cases registered); see Christoph H. Schreuer, Loretta Malintoppi, August Reinisch & Anthony Sinclair, *The ICSID Convention: A Commentary* (2nd edn., Cambridge: Cambridge University Press 2009) (containing a chapter on conciliation at the ICSID).
[90] See *Compulsory Conciliation Commission on the Timor Sea (Timor-Leste v. Australia)* (Decision on Competence) (2016) Permanent Court of Arbitration.
[91] See, e.g., Jianjun Gao, 'The Timor Sea Conciliation (Timor-Leste v. Australia): A Note on the Commission's Decision on Competence', *Ocean Development & International Law*, 49 (2018) 208; Dai Tamada, 'The Timor Sea Conciliation: The Unique Mechanism of Dispute Settlement', 31 *European Journal of International Law* (2020) 321.
[92] See *Compulsory Conciliation Commission on the Timor Sea (Timor-Leste v. Australia)* (Report and Recommendations) (2018), Permanent Court of Arbitration, pcacases.com/web/sendAttach/2327; see also Natalie Klein, 'The *Timor Sea Conciliation* and Lessons for Northeast Asia in Resolving Maritime Boundary Disputes, 6 *Journal of Territorial and Maritime Studies* (2019), 30.

II, they declined in popularity in the post-war period because of notorious delays in processing such claims.[93] These delays and inefficiencies have been mitigated by significant technological developments, once again making mass claims programs a practical dispute resolution option.[94]

Post-Cold War mass claims programs used various institutional frameworks: sometimes pursuant to treaties between states; at other times pursuant to other arrangements, such as a Security Council resolution; sometimes independent of national processes and yet at other times with a close connection to such processes.[95] Indeed, the impetus for such mass claims programs was often in reaction to lawsuits brought before national courts, in some instances through "strategic litigation."[96] Traditionally, only states could file claims on behalf of individuals in international mass claims programs. Yet in the post-Cold War period, no doubt influenced by the increasing centrality of the individual in the field of international law, individuals often were granted direct standing to present their claims.[97]

As a general matter, mass claims programs allow a large number of persons to receive compensation for similar claims more quickly than they would through traditional judicial avenues.[98] States or international organizations establishing mass claims programs have considerable flexibility in creating the procedural rules of the program (flexibility not typically available through judicial mechanisms).[99] Indeed, the mass claims programs in the post-Cold War era have had to consider a wide range of issues in constructing the program, such as: which comparable types of claims could be grouped together; whether fixed amount compensation should be used; what evidentiary standards would apply to the different groups of claims; what computer programs were necessary for data-matching, statistical sampling, and regression analysis; and so on. No single model existed; indeed, flexibility in relation to the underlying circumstances was perhaps the attribute that the mass claims programs all had in common.

Examples included: the Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina, which handled some 240,000 claims relating to 320,000 properties in less than nine years; the Housing and Property Claims Commission in Kosovo, which processed some 30,000 claims, mostly from refugees and internally displaced persons; the German Forced Labor Compensation Program, which focused on more than 400,000 claims by former forced laborers and other victims of Nazi Germany; the International Commission on

---

[93] See John R. Crook, 'Thoughts on Mass Claims Processes', *ASIL Proceedings of the Annual Meeting*, 99 (2005) 80-91, at 80.
[94] See Lea Brilmayer, 'Understanding "IMCCs": Compensation and Closure in the Formation and Function of International Mass Claims Commissions', *Yale J. Int'l L.* 43 (2018) 273-313, at 282.
[95] See Permanent Court of Arbitration (ed.), *Redressing Injustices Through Mass Claims Processes: Innovative Responses to Unique Challenges* (Oxford: Oxford University Press 2006); Howard M. Holtzmann & Edda Kristjánsdóttir (eds.), *International Mass Claims Processes* (Oxford: Oxford University Press 2007); Hans Van Houtte, Bart Delmartino & Iasson Yi, *Post-War Restoration of Property Rights Under International Law, Vol. 1: Institutional Features and Substantive Law* (Cambridge, New York: Cambridge University Press 2008); Hans Das & Hans Van Houtte, *Post-War Restoration of Property Rights Under International Law, Vol. 2: Procedural Aspects* (Cambridge, New York: Cambridge University Press 2008); Roger P. Alford, 'The Claims Resolution Tribunal', in Chiara Giorgetti (ed.), *The Rules, Practice, and Jurisprudence of International Courts and Tribunals* (Leiden, Boston: Brill 2012) 575; Lea Brilmayer, Chiara Giorgetti & Lorraine Charlton (eds.), *International Claims Commissions: Righting Wrongs after Conflict* (Cheltenham, UK; Northampton, Massachusetts: Edward Elgar Publishing 2017).
[96] See Burkhard Hess, 'Strategic Litigation: A New Phenomenon in Dispute Resolution', Max Planck Institute Luxembourg Research Paper (2022).
[97] See Rudolf Dolzer, 'Mixed Claims Commissions', in *Max Planck Encyclopedia of Public International Law* (2011), www.opil.ouplaw.com (subscription database).
[98] See Brilmayer et al., *Righting Wrongs After Conflict*, 71.
[99] See Ibid., at 76.

Holocaust Era Insurance Claims, which processed outstanding Holocaust-era claims against insurance companies; the Claims Resolution Tribunal for Dormant Accounts, which resolved thousands of claims against Swiss banks held by Holocaust victims or their heirs; and the Holocaust Victim Assets Program, which arose from claims against Swiss banks and other Swiss entities that collaborated with the Nazi regime, and which compensated five categories of victims or targets of Nazi persecution. While several of these mass claims programs commenced shortly after the end of a post-Cold War armed conflict, others addressed historical grievances, such as the above programs dealing with Holocaust-era claims.

Perhaps the most prominent of these mass-claims programs was the UN Compensation Commission (UNCC). The UNCC was established as a subsidiary organ of the UN Security Council in 1991 to process claims and pay compensation for losses resulting from Iraq's 1990-1 invasion and occupation of Kuwait. Given the notoriety of Iraq's conduct and the harm caused by that conduct to numerous states and their nationals, the Council concluded that Iraq 'is liable, under international law, for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait'.[100] In light of that finding, the UNCC was charged with receiving and processing claims relating to death, injury, property loss, commercial loss and environmental damage resulting from Iraq's invasion and occupation. In 2005, the Commission concluded the processing of claims and, in 2007, it finished making payments to individuals, having addressed 2,686,131 claims and awarded more than $52 billion.[101]

The first mass claims programs associated with an international criminal tribunal was established with the creation of the International Criminal Court (ICC). The ICC Trust Fund for Victims provided a reparations mechanism to victims of proven crimes within the ICC's jurisdiction.[102] For example, in 2017, the ICC Trial Chamber II in the *Katanga* case awarded individual and collective reparations to victims of crimes against humanity and war crimes in the Democratic Republic of the Congo, to be paid from or implemented through the Trust Fund.[103]

Further Reading

M. Cherif Bassiouni & Christina Abraham (eds.), *Siracusa Guidelines for International, Regional and National Fact-Finding Bodies* (Cambridge, Antwerp, Portland: Intersentia 2013).

Juan Carlos M. Beltramino, *Cómo Negociar Internacionalmente* (Buenos Aires: Abeledo-Perrot 1994).

Jacob Bercovitch & Richard Jackson, *Conflict Resolution in the 21st Century: Principles, Methods, and Approaches* (Ann Arbor, Michigan: University of Michigan Press 2009).

[100] UNSC Res 687, para. 16 (3 April 1991).
[101] See www.uncc.ch; see also Timothy J. Feighery, 'The United Nations Compensation Commission', in Giorgetti (ed.), *International Courts and Tribunals* 515; Cymie R. Payne & Peter H. Sand (eds.), *Gulf War Reparations and the UN Compensation Commission: Environmental Liability* (Oxford, New York: Oxford Unviersity Press 2011).
[102] See Rome Statute of the International Criminal Court, art. 79.
[103] *The Prosecutor v. Germain Katanaga* (Order for Reparations Pursuant to Article 75 of the Statute) (2017) ICC-01/04-01/07-3728-tENG. The order was confirmed for the most part on appeal.

Laurence Boisson de Chazournes, Marcelo G. Kohen & Jorge E. Viñuales (eds.), *Diplomatic and Judicial Means of Dispute Settlement* (Martinus Nijhoff 2013).

Ian Brownlie, 'The Peaceful Settlement of International Disputes', *Chinese Journal of International Law*, 8 (2009) 267

John Collier & Vaughan Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures* (Oxford, New York: Oxford University Press 1999).

Anthony Connerty, *A Manual of International Dispute Resolution* (London: Commonwealth Secretariat 2006).

Mario A. Corti & Peter Ziegler (eds.), *Diplomatische Negoziation* (2nd edn., Berne: Verlag Paul Haupt 1998).

Julie Dahlitz (ed.), *Peaceful Resolution of Major International Disputes* (New York, Geneva: United Nations 1999).

Issa Ben Yacine Diallo, *Introduction à l'étude et à la pratique de la négociation* (Paris: Pedone 1998).

Hélène Ruiz Fabri, Erik Franckx, Marco Benatar & Tamar Meshel, *A Bridge over Troubled Waters: Dispute Resolution in the Law of International Watercourses and the Law of the Sea* (Leiden: Koninklijke Brill 2021).

Seoung-Yong Hong & Jon M. Van Dyke (eds.), *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea* (Leiden, Boston: Martinus Nijhoff 2009).

Igor V. Karaman, *Dispute Resolution in the Law of the Sea* (Leiden, Boston: Martinus Nijhoff 2012).

Bjarni Már Magnússon, *The Continental Shelf Beyond 200 Nautical Miles: Delineation, Delimitation and Dispute Settlement* (Leiden, Boston: Brill Nijhoff 2015).

J.G. Merrills, *International Dispute Resolution* (6th edn., Cambridge: Cambridge University Press 2017).

John Merrills, 'The Means of Dispute Settlement', in Malcolm Evans (ed.), *International Law* (5th edn., Oxford: Oxford University Press 2018) 529.

P. Mweti Munya, 'The Organization of African Unity and Its Role in Regional Conflict Resolution and Dispute Settlement: A Critical Evaluation', *Boston College Third World Law Journal*, 19 (1999) 537.

Natalie Klein, *Dispute Settlement in the UN Convention on the Law of the Sea* (Cambridge: Cambridge University Press 2005).

Connie Peck, *The United Nations as a Dispute Settlement System: Improving Mechanisms for the Prevention and Resolution of Conflict* (The Hague, London, Boston: Kluwer 1996).

Alain Pellet, 'Peaceful Settlement of International Disputes,' in *Max Planck Encyclopedia of Public International Law* (2013) www.opil.ouplaw.com (subscription database).

Alain Plantey, *La négociation internationale au XXIe siècle* (Paris: CNRS Éd. 2002).

Permanent Court of Arbitration (ed.), *Redressing Injustices Through Mass Claims Processes: Innovative Responses to Unique Challenges* (Oxford: Oxford University Press 2006).

Ernst-Ulrich Petersmann, *The GATT/WTO Dispute Settlement System* (The Hague: Brill/Nijhoff 1997).

Adam Roberts & Benedict Kingsbury (eds.), *United Nations, Divided World: The UN's Roles in International Relations* (2nd edn., Oxford: Oxford University Press 1993).

Yoshifumi Tanaka, *The Peaceful Settlement of International Disputes* (Cambridge: Cambridge University Press 2018).

United Nations, *Settlement of Disputes Clauses: Note by the Secretariat of the International Law Commission*, UN Doc. A/CN.4/623 (15 March 2010).

United Nations, *Handbook on the Peaceful Settlement of Disputes between States* (New York: United Nations 1992).