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INTER - STATE DISPUTES SUBJECT TO ARBITRATION: A COMPREHENSIVE ANALYSIS

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Abstract

*The resolution of disputes between sovereign states has evolved considerably over centuries, with arbitration emerging as one of the most significant peaceful mechanisms for addressing international conflicts. This paper examines the nature, scope, and practice of inter-state arbitration, exploring its historical development, legal framework, procedural aspects, and contemporary challenges. Through analysis of landmark cases and treaties, this research demonstrates how arbitration serves as a vital alternative to both diplomatic negotiation and judicial settlement, offering states a flexible, consensual means of resolving disputes while preserving international peace and security.*¹

1. INTRODUCTION

The international community has long grappled with the fundamental challenge of resolving disputes between sovereign states without resorting to armed conflict. Throughout history, nations have developed various mechanisms for peaceful dispute resolution, including negotiation, mediation, conciliation, judicial settlement, and arbitration. Among these methods, arbitration occupies a unique position, combining elements of both diplomatic and legal approaches while respecting state sovereignty and consent.²

Inter-state arbitration refers to the process by which sovereign states voluntarily submit their disputes to one or more arbitrators, who render a binding decision based on international law or other agreed-upon principles. Unlike adjudication before the International Court of Justice, which follows rigid procedural rules and institutional structures, arbitration offers parties greater flexibility in selecting arbitrators, determining applicable law, and shaping procedural

¹ J.G. Merrills, *International Dispute Settlement*, 6th ed. (Cambridge: Cambridge University Press, 2017), 1- 30; Malcolm N. Shaw, *International Law*, 8th ed. (Cambridge: Cambridge University Press, 2017), 1027-1089.

² Charter of the United Nations, art. 33(1); See generally Merrills, *International Dispute Settlement*, 16-30

rules³. This flexibility has made arbitration an attractive option for states seeking to resolve complex territorial, boundary, maritime, investment, and treaty interpretation disputes⁴.

It contributes to the progressive development of international law, strengthens the rule of law in international relations, and provides states with a credible alternative to unilateral action or military confrontation.

2. HISTORICAL DEVELOPMENT OF INTER-STATE ARBITRATION

2.1 Ancient and Medieval Precedents

The concept of third-party dispute resolution between political entities predates the modern state system. Ancient Greek city-states frequently submitted their disagreements to arbitration, with neutral cities or respected individuals serving as arbitrators. Similarly, various treaties from the Roman period contained arbitration clauses, demonstrating early recognition that disputes could be resolved through neutral third parties rather than warfare.⁵

During the medieval period, the Catholic Church often served as an arbitrator between European kingdoms. Papal arbitration enjoyed considerable legitimacy, as the Pope's spiritual authority transcended temporal political boundaries. Several significant territorial disputes were submitted to papal arbitration, though effectiveness varied depending on political circumstances and parties' willingness to accept unfavourable decisions.⁶

2.2 The Jay Treaty and Modern Arbitration

The modern era of interstate arbitration is generally traced to the Jay Treaty of 1794 between the United States and Great Britain. This treaty established three separate arbitration commissions to resolve outstanding issues from the American Revolutionary War and other bilateral disputes. While not all commissions succeeded equally, the Jay Treaty demonstrated that arbitration could function as a practical mechanism for resolving concrete disputes

³ Convention for the Pacific Settlement of International Disputes, art. 37, October 18, 1907, 36 Stat. 2199; Alan Redfern, Martin Hunter, Nigel Blackaby and Constantine Partasides, *Redfern and Hunter on International Arbitration*, 6th ed. (Oxford: Oxford University Press, 2015), 1-15.

⁴ Statute of the International Court of Justice, arts. 34-65, annexed to Charter of the United Nations; Hugh Thirlway, *The Law and Procedure of the International Court of Justice* (Oxford: Oxford University Press, 2013), 45-89; John Collier and Vaughan Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures* (Oxford: Oxford University Press, 1999), 87-102.

⁵ Jackson H. Ralston, *International Arbitration from Athens to Locarno* (Stanford: Stanford University Press, 1929), 153-189; Shaw, *International Law*, 1027-1035.

⁶ Ralston, *International Arbitration from Athens to Locarno*, 190-234; Kenneth S. Carlston, *The Process of International Arbitration* (New York: Columbia University Press, 1946), 15-28.

between major powers.⁷

The Alabama Claims arbitration of 1872, which resolved Civil War-related disputes between the United States and Britain, marked another milestone. The tribunal not only resolved the immediate dispute but also contributed to developing principles of neutral obligations during wartime, demonstrating arbitration's potential to advance international law.

2.3 The Hague Conventions and Institutionalisation

The Hague Peace Conferences of 1899 and 1907 represented watershed moments in the institutionalisation of international arbitration. The 1899 Convention for the Pacific Settlement of International Disputes established the Permanent Court of Arbitration. Rather than a standing court with permanent judges, the PCA created an administrative framework and a panel of potential arbitrators from which disputing states could select individuals to hear their particular case⁸.

The Hague Conventions elaborated detailed procedures for arbitration, including rules on tribunal composition, applicable law, and procedural fairness. While this optimism would be severely tested by the World Wars, the institutional infrastructure created at The Hague endured and continued to facilitate arbitrations throughout the twentieth century.

2.4 Twentieth Century Developments

After World War II, the United Nations Charter referenced various dispute resolution methods, including arbitration, in Chapter VI on Pacific Settlement of Disputes. The establishment of the International Court of Justice as the UN's principal judicial organ provided an alternative forum, yet arbitration retained distinct advantages in specific contexts.

The latter half of the twentieth century witnessed a proliferation of bilateral and multilateral treaties containing arbitration clauses. The law of the sea, investment protection, trade relations, and environmental protection emerged as particularly active areas for arbitration. The Permanent Court of Arbitration experienced renewed relevance, administering numerous high-profile cases and expanding beyond state-to-state disputes.

⁷ Treaty of Amity, Commerce and Navigation (Jay Treaty), November 19, 1794, U.S.-Gr. Brit., 8 Stat. 116; See A.M. Stuyt, *Survey of International Arbitrations 1794-1989*, 3rd ed. (Dordrecht: Martinus Nijhoff Publishers, 1990), 3-15.

⁸ Permanent Court of Arbitration, "Basic Documents: Texts Governing the Resolution of International Disputes" (The Hague: PCA, 2017), 1-45; C.F. Amerasinghe, *International Arbitral Jurisdiction* (Leiden: Martinus Nijhoff Publishers, 2011), 45-67.

3. LEGAL FRAMEWORK FOR INTER-STATE ARBITRATION

3.1 Consent as the Foundation

The most fundamental principle of inter-state arbitration is consent. As manifestations of sovereignty, states cannot be compelled to submit disputes to arbitration without their agreement. Consent may be expressed in various forms: a special agreement (compromise) created specifically to submit an existing dispute to arbitration, an arbitration clause within a treaty covering future disputes arising under that treaty, or general arbitration treaties committing parties to arbitrate broad categories of disputes⁹.

The requirement of consent distinguishes arbitration from the International Court of Justice's compulsory jurisdiction, though even ICJ jurisdiction ultimately rests on state consent. In arbitration, however, parties exercise greater control over the process, including selection of arbitrators, determination of procedural rules, and sometimes even the applicable law.

Disputes occasionally arise over whether an arbitration agreement covers a particular controversy. These issues may require resolution either by the tribunal through a competence-competence doctrine allowing tribunals to rule on their own jurisdiction or through diplomatic channels.¹⁰

3.2 The Hague Conventions

The 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes constitute the primary multilateral framework for inter-state arbitration. These conventions established the Permanent Court of Arbitration and set forth detailed provisions governing arbitration procedure.

The conventions addressed numerous procedural matters: methods for appointing arbitrators, procedures for challenging arbitrators, rules governing written and oral proceedings, evidentiary standards, deliberation procedures, and requirements for reasoned awards. The framework they established has proven sufficiently flexible to accommodate changing international circumstances while providing institutional stability.¹¹

⁹ Redfern and Hunter, *International Arbitration*, 45-78; J.L. Simpson and Hazel Fox, *International Arbitration: Law and Practice* (London: Stevens & Sons, 1959), 35-52.

¹⁰ Jan Paulsson, "Arbitration Without Privity," *ICSID Review* 10, no. 2 (1995): 232-257; Amerasinghe, *International Arbitral Jurisdiction*, 89-115.

¹¹ Elihu Lauterpacht, "The Development of the Law of International Arbitral Procedure," *Collected Courses of the Hague Academy of International Law* 233 (1992): 125-234, at 145-167.

3.4 Bilateral and Multilateral Treaties

Beyond general frameworks, specific treaties often contain arbitration clauses or establish specialised arbitration regimes. Investment treaties frequently include investor-state arbitration provisions.

Trade agreements may establish arbitration mechanisms for disputes over treaty interpretation or compliance. Environmental treaties sometimes include arbitration provisions for disputes concerning implementation.¹²

Maritime boundary treaties have proven particularly amenable to arbitration, with numerous bilateral agreements establishing procedures for delimiting exclusive economic zones and continental shelves¹³.

These specialised regimes often incorporate technical experts alongside legal arbitrators, recognising that boundary disputes involve both legal interpretation and scientific assessment.

3.5 Customary International Law

While treaties provide the primary legal foundation for arbitration, customary international law also contributes certain principles. The obligation to settle disputes peacefully supports arbitration's legitimacy¹⁴. The principle of good faith applies to arbitration proceedings, requiring parties to participate honestly and cooperate with tribunals.

The doctrine of *res judicata* prevents relitigation of matters already decided by arbitration.¹⁵ Customary law principles regarding state responsibility establish that states must implement awards in good faith and that failure to comply constitutes an internationally wrongful act. These customary principles supplement treaty provisions and fill gaps in arbitration agreements.

¹² Christoph H. Schreuer, *The ICSID Convention: A Commentary*, 2nd ed. (Cambridge: Cambridge University Press, 2009), 1-89; Gary B. Born, *International Commercial Arbitration* (3 volumes), 2nd ed. (Alphen aan den Rijn: Kluwer Law International, 2014).

¹³ United Nations Convention on the Law of the Sea, Part XV (Settlement of Disputes), December 10, 1982, 1833 U.N.T.S. 397; Donald McRae, "The Settlement of Disputes Resulting from the Application and Interpretation of UNCLOS," in *The Law of the Sea: Progress and Prospects*, ed. David Freestone, Richard Barnes and David Ong (Oxford: Oxford University Press, 2006), 410-431

¹⁴ Shaw, *International Law*, 96-124 (discussing customary international law); Robert Jennings and Arthur Watts, eds., *Oppenheim's International Law*, 9th ed., Vol. 1 (Harlow: Longman, 1992), 25-89.

¹⁵ Redfern and Hunter, *International Arbitration*, 234-267; Oscar Schachter, "The Enforcement of International Judicial and Arbitral Decisions," *American Journal of International Law* 54, no. 1 (1960): 1-24.

4. PROCEDURAL ASPECTS OF INTERSTATE ARBITRATION

4.1 Initiating Arbitration and Tribunal Composition

Inter-state arbitration typically begins with a compromise, a special agreement between disputing parties that defines the dispute, establishes the tribunal's composition and jurisdiction, and determines applicable law and procedure. The Permanent Court of Arbitration provides administrative support for initiating cases.

Arbitral tribunals typically consist of three or five members. The parties usually each appoint one arbitrator, with these party-appointed arbitrators then selecting a president to complete the tribunal. If parties cannot agree on arbitrators, the compromise or applicable arbitration rules typically provide a default appointment mechanism. The President of the International Court of Justice frequently serves as the appointing authority.¹⁶

4.2 Applicable Law and Procedural Rules

Arbitral tribunals must determine what law applies to disputes before them. The compromise typically specifies applicable law, often directing tribunals to decide "in accordance with international law" or "according to law and equity."¹⁷ International law encompasses treaty law, customary international law, general principles of law, and, as subsidiary means, judicial decisions and scholarly writings.¹⁸

Procedural rules govern how arbitrations proceed, including schedules for written submissions, opportunities for oral hearings, and evidentiary standards.[32] Parties may adopt existing procedural rules or craft bespoke rules for their particular case. Flexibility in procedure constitutes one of arbitration's main advantages over more rigid judicial proceedings.

4.3 Awards and Their Effects

After considering submissions and deliberating, tribunals issue awards resolving the disputes before them. Awards must be reasoned, explaining the tribunal's factual findings, legal conclusions, and the basis for its decision. Awards are binding on the parties under the principle of *pacta sunt servanda*. However, unlike domestic arbitration, there is no international enforcement mechanism comparable to domestic courts.¹⁹

Awards benefit from a presumption of validity and finality. Limited grounds exist for

¹⁶ Convention for the Pacific Settlement of International Disputes (1907), arts. 45-47.

¹⁷ Vienna Convention on the Law of Treaties, arts. 31-33, May 23, 1969, 1155 U.N.T.S. 331; Shaw, *International Law*, 932-968.

¹⁸ Statute of the International Court of Justice, art. 38(1).

¹⁹ Vienna Convention on the Law of Treaties, art. 26 (*pacta sunt servanda*); Shaw, *International Law*, 900- 932.

challenging awards, typically involving fundamental procedural irregularities such as excess of jurisdiction, corruption, or serious departures from fundamental procedural fairness. After an award is issued, parties may request award interpretation or, in exceptional circumstances, revision based on the discovery of decisive facts unknown when the award was rendered.²⁰

5. TYPES OF DISPUTES AND NOTABLE CASES

5.1 Territorial and Boundary Disputes

Territorial and boundary disputes constitute one of the most common categories of inter-state arbitration. The Island of Palmas arbitration between the Netherlands and the United States, decided in 1928, established foundational principles regarding territorial sovereignty. The arbitrator's award emphasised the importance of effective and continuous exercise of state authority, establishing precedents that continue influencing territorial disputes.²¹

The Eritrea-Ethiopia Boundary Commission, established in 2000 following armed conflict, exemplified arbitration's role in post-conflict boundary delimitation. The commission delimited a colonial-era boundary, applying principles of treaty interpretation. While implementation proved challenging due to political obstacles, the commission's work provided an authoritative legal determination of boundary location.²²

5.2 Maritime Delimitation

Maritime boundary disputes have increasingly been submitted to arbitration, particularly following the 1982 UN Convention on the Law of the Sea²³. The arbitration between Barbados and Trinidad and Tobago, concluded in 2006, applied UNCLOS provisions to delimit their maritime boundary. The tribunal employed the equidistance/relevant circumstances method, illustrating how arbitration can resolve complex maritime disputes involving overlapping claims.²⁴

The South China Sea arbitration, initiated by the Philippines against China in 2013, represented a high-profile and controversial case. China refused to participate, challenging the tribunal's

²⁰ Convention for the Pacific Settlement of International Disputes (1907), arts. 82-84.

²¹ Island of Palmas Case (Netherlands v. United States), 2 R.I.A.A. 829 (Perm. Ct. Arb. 1928); Shaw, *International Law*, 490-512.

²² Eritrea-Ethiopia Boundary Commission, Decision Regarding Delimitation of the Border, 41 I.L.M. 1057 (2002).

²³] United Nations Convention on the Law of the Sea, arts. 74-83; McRae, "Settlement of UNCLOS Disputes," 410-431.

²⁴ Case Concerning the Delimitation of the Maritime Boundary between Barbados and Trinidad and Tobago, 27 R.I.A.A. 147 (Perm. Ct. Arb. 2006).

jurisdiction. Nevertheless, the tribunal proceeded, finding jurisdiction under UNCLOS provisions. The tribunal's 2016 award addressed questions concerning historic rights and maritime features' legal status. While China rejected the award, the case demonstrated arbitration's potential to clarify legal issues even when one party refuses participation.²⁵

5.3 Treaty Interpretation and State Responsibility

Many arbitrations concern the interpretation and application of bilateral or multilateral treaties. Treaty interpretation follows established rules, primarily those codified in the Vienna Convention on the Law of Treaties. The Abyei arbitration between Sudan and the Sudan People's Liberation Movement, decided in 2009, concerned the interpretation of a previous commission's report delimiting a disputed region. The tribunal applied treaty interpretation principles, demonstrating arbitration's usefulness for resolving interpretive disputes.²⁶

The Rainbow Warrior arbitration between New Zealand and France, decided in 1990, addressed France's responsibility for the agents' bombing of a Greenpeace vessel. The tribunal found France responsible and ordered compensation, demonstrating arbitration's capacity to address internationally wrongful acts and subsequent non-compliance with dispute resolution commitments.²⁷

6. CONTEMPORARY CHALLENGES AND CRITICISMS

6.1 Compliance and Enforcement

A fundamental challenge facing inter-state arbitration concerns award implementation. Unlike domestic arbitration, where courts can enforce awards, international arbitration lacks an effective enforcement mechanism. Compliance depends on states' commitment to international law, domestic political factors, and the diplomatic consequences of non-compliance.

High-profile non-compliance cases damage arbitration's reputation and discourage resort to arbitration by states fearing their victory might prove pyrrhic²⁸. The South China Sea arbitration, where China rejected the tribunal's award, exemplifies this problem. While some scholars argue that even unimplemented awards clarify legal positions, pragmatic observers

²⁵ The South China Sea Arbitration (Philippines v. China), PCA Case No. 2013-19, Award (Perm. Ct. Arb. 2016); See Stefan Talmon, "The Security Council as World Legislature," *American Journal of International Law* 99, no. 1 (2005): 175-193.

²⁶ Government of Sudan v. Sudan People's Liberation Movement/Army (Abyei Arbitration), PCA Case, Final Award (Perm. Ct. Arb. 2009).

²⁷ Rainbow Warrior Affair (New Zealand v. France), 20 R.I.A.A. 217 (1990).

²⁸ Richard B. Bilder, "International Dispute Settlement and the Role of International Adjudication," *Emory Law Journal* 46, no. 2 (1997): 527-565.

note that non-compliance undercuts arbitration's core purpose.

6.2 Jurisdictional and Procedural Disputes

Many arbitrations encounter challenges concerning jurisdiction and procedure. States may dispute whether arbitration agreements cover particular controversies or whether tribunals have exceeded their mandates. The challenge of one party refusing to participate entirely raises difficult questions about balancing respect for party autonomy against the need for effective dispute resolution.

Procedural equality between parties of vastly different resources and legal capacity presents another concern. Developing states may lack expertise and financial resources to present cases as effectively as developed states. This imbalance raises questions about arbitration's fairness and accessibility.

6.3 Legitimacy and Transparency

Arbitration has faced criticism concerning legitimacy and transparency. Arbitrators are selected by parties rather than representing diverse geographical and legal traditions. Critics argue this creates potential for bias, though defenders note that party appointment ensures expertise and parties' confidence in arbitrators' competence.

Transparency concerns arise from traditional arbitration confidentiality. However, practice is evolving, with many recent arbitrations involving public hearings and published awards. Questions about arbitration's impact on third states also arise, as arbitral awards may establish precedents affecting non-parties' interests.

6.4 Fragmentation and Inconsistency

The proliferation of arbitration tribunals has generated concerns about fragmentation and inconsistent interpretation of international law. Unlike domestic legal systems with hierarchical court structures, international arbitration lacks authoritative mechanisms for harmonising divergent approaches. Different tribunals may interpret similar provisions differently, creating uncertainty.

Some scholars advocate for establishing appellate mechanisms or consolidation procedures to address fragmentation. Others argue that diverse approaches reflect international law's dynamism and that supposed inconsistencies often involve distinguishable factual situations.

6.5 Political Sensitivity

Certain disputes are considered too politically sensitive for arbitration, raising questions about arbitrable disputes' scope. States may argue that disputes involve vital national interests that make arbitration inappropriate. Tribunals must navigate these complexities, sometimes declining jurisdiction over purely political aspects while addressing justiciable legal questions. Furthermore, arbitration's binary win-lose structure may not suit all disputes. Some conflicts require negotiated compromises addressing parties' underlying interests rather than legal rights determinations. Distinguishing which disputes benefit from arbitration versus alternative methods proves difficult.

7. CONCLUSION

Inter-state arbitration occupies a central position in the international dispute resolution system, offering states a flexible, consensual mechanism for resolving conflicts peacefully.[56] Its historical development from ancient precedents through modern institutionalisation reflects growing acceptance of third-party adjudication and the rule of law in international relations.

The procedural flexibility that makes arbitration attractive also creates challenges concerning consistency, legitimacy, and enforcement. Notable cases demonstrate arbitration's capacity to resolve complex disputes while contributing to international law's progressive development. However, contemporary challenges, particularly regarding compliance and politically sensitive disputes, temper optimism about arbitration's potential.

Looking forward, arbitration's role will likely continue evolving. Increasing transparency, improved procedural rules, and enhanced institutional support may address some current criticisms. New areas of international concern, particularly environmental protection and cyber activities, may generate novel arbitration opportunities.

Ultimately, interstate arbitration's success depends on states' commitment to peaceful dispute resolution and the rule of law. No procedural mechanism can function without parties' good faith participation and willingness to accept adverse outcomes. Strengthening this political commitment represents arbitration's greatest challenge and most important opportunity. As the international community confronts increasingly complex transnational challenges requiring cooperative solutions, effective dispute resolution mechanisms become ever more essential.

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3. Charter of the United Nations, June 26, 1945, 59 Stat. 1031.
4. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.
5. United Nations Convention on the Law of the Sea, December 10, 1982, 1833 U.N.T.S. 397.
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