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CONFLICTS IN INTERNATIONAL AGGREMENTS AND THEIR SOLUTIONS

Vines

Research Scholar, Faculty of Law, Tantia University, Sri Ganganagar

ABSTRACT

As global trade has flourished in recent decades, so have trade disputes. Trading nations have created various forums to adjudicate conflicts, but the differences were never really sorted. Some critics say dispute panels undermine national sovereignty, proponents argue they offer much-needed protections that boost confidence in global investment and prevent trade wars.

Keyword: *agreement, solution, trade, investment, stockholders, dispute, government, export*

1. WHY DO CONFLICTS ARISE

As cross-border trade and investment increased rapidly through the 1990s, individual states as well as public and private investors sought ways to adjudicate conflicts or alleged violations of trade agreements. Over time, the international trading system has developed a number of mechanisms to do this, depending on the type of dispute and the parties involved.

The authority of these supranational bodies is established by agreements such as bilateral investment treaties and free trade agreements, or by membership in an international organization such as the WTO. Parties agree to accept rulings, though enforcement authority and appeals processes vary.

2. TYPES OF DISPUTE

These bodies broadly deal with two types of disputes: state-state, in which governments challenge the trade policies of other governments, and investor-state, in which individual investors file complaints against governments.

State-State. Most state-state disputes are handled by the WTO system, the primary body governing international trade. Each of its 164 members have agreed to rules about trade policy, such as limiting tariffs and restricting subsidies. A member can bring its case to the WTO if it believes another member is violating those rules. The United States, for instance, has repeatedly brought WTO cases against China over its support for various export industries, including one in early 2017 alleging that Beijing unfairly subsidizes aluminium producers. While that case has not been decided, the Trump administration has retaliated by unilaterally imposing targeted tariffs on some individual Chinese aluminium producers as well as broader tariffs on all steel and aluminium imports to the United States in order to protect against Chinese overproduction.

Investor-State. Known as investor-state dispute settlement (ISDS) cases, these disputes typically involve foreign businesses claiming that a host government abused them by expropriating their assets, discriminating against them, or otherwise treating them unfairly. For example, a Canadian gold mining company claimed that Venezuela's nationalization of the gold industry in 2011 violated an investment treaty between the two countries. A tribunal found that while Venezuela had the legal right to nationalize private sector industries, it failed to properly compensate the company for the expropriated assets.

3. WAYS TO RESOLVE THE DISPUTE

The most common way is that of arbitration, which is called Dispute Settlement Resolution, which is run by a r rotating staff of judges, as well as a permanent staff of lawyers and administrators. The WTO appoints a panel to hear a case if the opposing parties are unable to resolve the issue through negotiations. A panel's rulings, if not overturned on appeal, are binding on the respondent country. If found guilty, it has the choice to cease the offending practice or provide compensation. If the country fails to respond, the plaintiff country can take tit-for-tat measures to offset any harm caused, such as by blocking imports or raising tariffs. Member states have filed nearly six hundred disputes since the WTO's creation in 1995, but many of these cases have been settled prior to litigation.

However, the WTO process ground to a halt in December 2019, over a dispute about the appointment of new judges to the Appellate Body, which hears appeals to

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dispute settlement decisions. The United States, frustrated by Appellate Body decisions that it viewed as exceeding its mandate, has repeatedly vetoed all proposed new judges. The conflict began under the Barack Obama administration and intensified under Trump, and has now left the body without enough judges to hear appeals, which indefinitely delays any decision made by lower panels. CFR's Jennifer Hillman, a former Appellate Body judge, says that a non-functioning Appellate Body could render the WTO dispute system powerless and threaten "to turn every future trade dispute into its own mini trade war."

A number of multilateral institutions adjudicate investor-state disputes, such as the Permanent Court of Arbitration in the Netherlands or the London Court of International Arbitration, but one of the most important is the International Centre for Settlement (ICSID). Created in 1965 as part of the World Bank, the ICSID has 163 members, all of whom have agreed to recognize the legitimacy of its arbitration system.

Unlike the WTO, the ICSID has no permanent tribunals and does not directly rule on cases. Rather, it administers the process by which disputants choose an independent, ad hoc panel of arbitrators to hear their case. The arbitrators are generally legal experts, including professors, practicing lawyers, and former judges. The specifics on the sorts of conflicts that can be referred to an ICSID panel are set out in individual trade or investment agreements.

There are some 2,500 treaties with investment dispute provisions in force around the world, and the ISCID has administered more than six hundred disputes in its half-century existence. The number of cases accelerated through the 1990s and 2000s with the proliferation of investment agreements, reaching a peak of fifty-six in 2018. About a third of the cases are settled or withdrawn before concluding; a third are dismissed in favour of the defendant; and a third favour the investor in full or in part. An investor's award generally holds the full force of domestic law in the country being sued.

Negotiation in the world of national interests meant balancing or trading the competing interests of states against one another or finding common interests that could be the basis for agreement even in the face of other conflicting interests. A search for common interests was characteristic of Cold War-era negotiations aimed at preventing military confrontations between US and the Soviet Union. For example, the negotiations to end the Cuban missile crisis and to develop confidence-building measures for avoiding accidental nuclear war were based on the common interest in reducing the risk of confrontations that might escalate to nuclear warfare. Such negotiations could proceed because it was possible to identify shared interests that cut across or partially overrode the conflicting ones.

That states and associations of states are no longer the only actors that can use techniques of influence like those of traditional diplomacy. For example, in the 1980s, even before the end of the Cold War, transnational corporations, pressured by negative publicity about their investments, and even local governments used their economic power to exert pressure against apartheid in South Africa. Small peace-oriented nongovernmental organizations (NGOs) can sometimes threaten states' interests, for example, by threatening prospects for international assistance with a bad human rights report or deciding to leave a country because humanitarian relief efforts are being thwarted.

A striking development since the end of the Cold War has been the emergence from relative obscurity of three previously underutilized strategies for international conflict resolution. These strategies all deviate from the zero-sum logic of international conflict as a confrontation of interests. The observation that these strategies are now more widely used is not meant to imply that they are always used effectively. Also, the strategies are often used together, and sometimes the distinctions among them may be blurred. One strategy may be called conflict transformation.

This is the effort to reach accommodation between parties in conflict through interactive processes that lead to reconciling tensions, redefining interests, or finding common ground. This strategy departs radically from the logic of enduring national interests by making two related presumptions: that interests, and conflicts of interest are to some degree socially constructed and malleable, and that it is possible for groups to redefine their interests to reduce intergroup tension and suspicion and to make peaceful settlements more possible. Certain intergroup conflicts, particularly those associated with the politics of identity, are seen as having significant perceptual and emotional elements that can be transformed by carefully organized intergroup processes so as to allow reconciliation and the recognition of new possibilities for solution.

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The results of that analysis suggest that, although it makes sense to look carefully and critically at what is known about the traditional strategies and tools of conflict resolution that have received considerable attention from scholars and practitioners, it is especially important to examine what is known about less familiar strategies and tools that received limited attention in the past and that may be of major importance under the new conditions. This book does not attempt to comprehensively review knowledge about the effectiveness of the conflict resolution techniques based mainly on the influence of tools of traditional diplomacy.

Instead, the contributors were asked to examine only a few of these techniques and only in some areas of their application: threats of force by the United States, economic sanctions, methods for controlling "spoilers" in peace processes, and the issues of timing and ripeness in negotiation and mediation. Generally, what the contributors find is that the new conditions in the world have not invalidated past knowledge about how and under what conditions these techniques work. However, the new conditions do call for some modification and refinement of past knowledge and suggest that the old tools sometimes need to be thought of and used in new ways. Each of the above chapters includes a summary of the state of knowledge about the conditions favouring effective use of the techniques it examines.

Much closer attention is paid to the emerging strategies of conflict resolution and to the techniques that embody them, about which much less has been written. For most of the conflict resolution techniques that involve conflict transformation, structural prevention, and normative change, there is no systematic body of past knowledge from the previous era that is directly relevant to current needs.7 Practitioners' experience in implementing these techniques has not been seriously applied to post-Cold War conditions, and international relations scholarship did not pay much attention to them in the past. Therefore, careful examination of what is known about the effectiveness of these techniques is particularly needed at this time.

Fortunately, these techniques, though underutilized, are not new. Each has a history that may hold lessons for conflict resolution in today's divided states. For example, one type of structural prevention strategy is to offer autonomy—special status and governance rights—for certain culturally identified subunits in a unitary or federal state. There is a fairly long history of happy and unhappy examples of autonomy that may hold valuable lessons for the current era. But it is only very recently that scholars have looked to cases like Scotland, Puerto Rico, the Soviet republics and autonomous regions, Catalonia, Greenland, the Native American reservations of the United States and Canada, the French overseas territories and departments, and the like to find lessons that might be informative in places like Chechnya, Bosnia, and Hong Kong. In the past, when such structural arrangements were the subject of scholarly attention, it usually came from specialists in domestic politics (e.g., comparative researchers on federalism) or international law, not international relations scholars, so the questions have been framed differently and the answers discussed in a community that rarely interacts with specialists in international conflict resolution.

The same situation holds for constitutional design. The world is full of constitutions and electoral systems, and their consequences for conflict management in their home countries are available for historical examination. However, until recently, relatively little systematic attention was paid to the question of how electoral system design shapes the course of conflict in a society.

The real effect on conflict resolution will be in how the process of truth seeking is undertaken, the impact on public policy, and the responses of public actors. Truth commissions make their strongest contributions to preventing violence when:

1. Civilian authorities are willing and able to implement the commission's conclusions and recommendations.
2. Perpetrators are weak and have incentives to acknowledge and apologize for past wrongs.
3. Human rights groups and other elements of civil society are strong and support the commission and its recommendations.
4. The internal community supports the commission and its recommendation.
5. The commission has a strong mandate and adequate resources; and
6. The old regime is no longer strongly supported or feared.

These conclusions imply that international support for strong truth commissions, civil society organizations, and domestic institutions for peaceful conflict management can all contribute to peace making in transitional countries.

The UN secretary-general consider providing security from private markets when (and only when) public

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security for humanitarian operations is unavailable from global or regional institutions. Paid, volunteer, or professionally trained security personnel, employed without regard to national origin and beholden to their employer rather than to any single government, could reduce the likelihood of systematic diversion of humanitarian assets to fuel violence.

4. MECHANISM TO RESOLVE DISPUTES

Expanding the pool of experts on panels, Digitizing paperwork, and other tactics to streamline operations.

Some have suggested the WTO's dispute body take decisions based on majority vote rather than consensus, as it does now, though such a move would likely be opposed by the United States and others. Currently, a single member can delay proceedings.

One option is to remove ISDS from some agreements altogether, as countries such as Australia have done, pushing businesses to first pursue challenges through the domestic legal system and then, if unsuccessful, allowing for state-state dispute settlement. The USMCA provides a stripped-down model: jurisdiction will be limited to narrower cases, investors will have to exhaust all local courts first, and all proceedings and documents will be public.

In another alternative, the EU is developing an investment court that will operate more like the WTO tribunal system, with a permanent roster of judges, strict conflict-of-interest rules, public proceedings, and an appeals process. The EU and Canada included a version of this in their 2016 trade agreement.

REFRENCE

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