BOOK REVIEW

Title	:	The Peaceful Settlement of International Disputes
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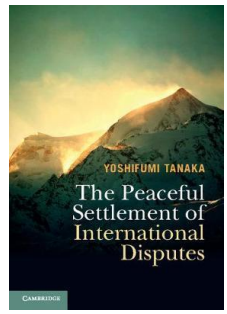

Yoshifumi Tanaka is a Professor of International Law at the Faculty of Law, University of Copenhagen. He has published widely in the fields of the law of the sea and international environmental law. I had a profound admiration for Tanaka's writings, particularly in law of the sea subjects. He has a compelling method in deliberating issues comprehensively but still convenient to digest, especially for academicians, practitioners, and law students (postgraduate). Settlement of International Dispute is considered as a foundation of the establishment and the development of International Law. Accordingly, there are plenty of books and writings had published addressing similar topic, however, Tanaka's book is distinctive. Tanaka successfully gives the reader an exhaustive and extensive analysis of the procedures for dispute settlement both in traditional means and newly development. In addition, He complemented figures and tables to give the reader a comprehensive understanding.

This book consist of two parts, the first part is discussed the foundation of international dispute settlement which divided into seven parts: (1) International Dispute Settlement in Perspective, (2) Negotiation, Good Offices and Mediation; (3) Inquiry and Conciliation; (4) International Dispute Settlement through the United Nations; (5) Inter-State Arbitration; (6) International Court of Justice (1): Organisation and Jurisdiction of the Court; and (7) International Court of Justice (II): Law and Procedure of the Court. In the second part, Tanaka is examined international dispute settlement in particular fields, which divided into five parts: (8) International Dispute in the UN Convention on the Law of the Sea; (9) The WTO Dispute Settlement System; (10) Peaceful Settlement of International Environmental Disputes; (11) Peaceful Settlement of Disputes Involving Non-States Actors; and (12) The Quest for Peace in International Law.

Tanaka started the discussion with the distinction between static (legal) and dynamic (non-legal) disputes and the expansion of international disputes scope.

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He stated that recently the scope of international dispute is changing due to the emerges of non-state actors in international relations. He described four types of disputes involving non-state actors: (1) intra-state dispute between the government and a liberation movement; (2) dispute between states and natural/juridical persons; (3) dispute between an international organisation and its member states; and (4) dispute between an international organisation and individuals. Tanaka also classified two model of means of settlement of inter-state disputes, Model 1: A Single Model, which can be considered as the development from subjective means to more objective means, from negotiation (the most subjective means of dispute settlement), and may mitigated by the involvement of a third party. The degree of objectivity is further enhanced by employing to inquiry and conciliation (third commission). The objectivity is finally assured by international adjudication. Model 2: A Dual Model (A), where dispute settlement methods are divided into two categories, diplomatic methods (refers to negotiation, good offices, mediation, inquiry, conciliation and dispute settlement through international organisation) and judicial methods (arbitration and international court or tribunal). Another model, Model 2: A Dual Model (B) is divided means of dispute settlement into two categories namely static means of dispute settlement (establishing an impartial commission or a judicial body) and dynamic means of dispute settlement (through political authority – UN). Tanaka concluded that the principal features of the dispute settlement system in international law characterised by four elements: (1) a consent-based; (2) non-hierarchical between adjudicative/quasi-adjudicative and non-adjudicative; (3) the principle of free choice of means; and (4) the flexibility and evolutionary of international dispute system.

Tanaka is examined international dispute concerning environmental protection, he explained that an environmental dispute is defines as a dispute which includes an environmental aspect. Nowadays, international environmental dispute is considered as a crucial issues in international law, therefore, he emphasized the role of international courts and tribunals in the settlement of international environmental dispute. First, Tanaka analysed the role of litigation in the settlement of environmental disputes and the challenges within the process. Tanaka described three challenges relating to the international adjudication and the settlement of international environmental disputes: (1) difficult to prove causality between activities and environmental damage suffered; (2) environmental pollution caused by activities of multiple states and resulted shared responsibility; and (3) difficulty of resolving the fundamental question of non-compliance through international adjudication. Tanaka observed that arbitration has an important role in the settlement of international environmental disputes. The advantages of arbitration, for example, the flexibility to appoint scientist or experts as an arbitrator and flexibility of applicable law and procedure. Several

environmental dispute were settled by arbitration such as Bering Fur Seal (1893), Trail Smelter (1935/41), Lac Lanoux (1957), OSPAR Arbitration, and South China Sea Arbitration (2016). Tanaka added that non adjudicative procedures, for instance, fact-finding by treaty commission, also plays an important role relating to the involvement of technical and factual aspects. An illustrative example in this matter is the fact finding procedures established by 1909 Boundary Water Treaty between the United States and Canada. Tanaka indicated the crucial role of non-compliance procedures as a mechanism to prevent breach of obligations provided in treaties, with characterised by four features: (1) non-confrontational; (2) preventive and future-oriented; (3) non-consent-based; and (4) the safeguarding of common interests of the parties to environmental treaties. The non-compliance procedures found in Montreal Protocol, Kyoto Protocol, Biosafety Protocol, Water and Health Protocol, and Aarhus Protocol.

Dispute settlement involving non-state actors is elucidated broadly in this book. Tanaka explained that the increasing activities of non-state actors in international relation has considerably generating an international dispute which one of the party is non-state actor. Tanaka decribed the four types of international disputes involving non-state actors can be identifies as follows: (1) intra-state disputes; (2) disputes between states and juridical/natural persons; (3) disputes between an international organization and its member states; and (4) disputes between an international organization and individuals. In this chapter, Tanaka examined the prototype example concerning the settlement of the four types of disputes. For the first type, Tanaka specified the role of the UN in the settlement of intra-state disputes. When the disputes involving internal armed conflicts, civilians are the main victims, the involvement of the UN becomes significant. UN Secretary-General Boutros Boutros-Ghali in An Agenda for Peace encouraged a comprehensive approach comprising four elements: (1) Phase I, Preventive Diplomacy; (2) Phase II, Peacekeeping Operation, (3) Phase III, Peace-making; and (4) Phase IV, Peacebuilding. Peacekeeping is the deployment of a UN presence (UN Military or police personnel, or civilians) in the field, to expands the possibilities for both the prevention of conflict and the making of peace. While peacebuilding phase is defines as a complex, long-term process of creating the necessary conditions for sustainable peace. It comprises a wide range of activities such as disarming the previously warring parties, the custody and destruction of weapons, the restoration of order, repatriating refugees, monitoring elections, protection of human rights, and promotion of political participation. A key concept in consolidating peace in post-conflict situations, namely transitional justice, is a fundamental building block of sustainable peace in state in conflict and post-conflict situation. Transitional justice constitutes both judicial and non-judicial institutions. The Abyei arbitration is the example of intra-state arbitration, a dispute between Government of Sudan and the Sudan People's Liberation

Movement/Army (SPLM/A). The Abyei become an important region of the existence of significant oil reserves, located between the north and the south of Sudan. The arbitration is established to settle a boundary delimitation of the Abyei area. The Abyei arbitration demonstrated as a useful means of resolving intra-state dispute with regard to its flexibility and respecting to locus standi and procedures. Another type of intra-state arbitration is mixed arbitration, combination features of both public and private international arbitration to settle a dispute between states and juridical/natural persons. The first type of mixed arbitration is the Centre for the Settlement of Investment Dispute (ICSID) and the second type is mixed arbitration created as part of peace process between hostile states (The Iran-United States Claims Tribunals). The settlement of disputes between states and individuals in post-conflict situation is adequately provided by the United Nations Compensation Commission (UNCC). The commission performed a fact-finding function to examine claims submitted by states and non-state actors (international organization, corporations and individuals). As for a dispute arise between international organization and its member states, a possible solution is request an advisory opinion to the Court. Regarding the dispute between international organization and individuals, particularly a dispute between an international organization and its staff, Tanaka addressed the outline of the UN internal justice system and inspection panel of the world bank. UN new system of administration of justice is coordinated by the Office of Administration of Justice. The system is a two-tier judicial system on the basis of the United Nations Dispute Tribunal (UNDT) and the United Nations Appeals Tribunal (UNAT). While the World Bank Inspection Panel provides an important mechanism to secure that affected people can bring complaints with regard to alleged misconduct of the Bank.

Tanaka completed the book with the chapter described the quest for peace in international law. In this chapter, Tanaka focusing in the interlinkage of three elements to achieve sustainable peace, (1) peaceful settlement of international disputes; (2) the prohibition of threat of use of force; and (3) disarmament. He explained that the UN Charter contain two categories of components of peace. The first category divided into two elements, the prohibition of armed force and the maintenance of international peace and security (narrow sense). The second category is embodied in the Preamble include the protection of fundamental human rights, promotion of social progress and better standards of the economic and social advancements of all peoples (broad sense). In brief, peace relies on the interlinkage between three aspects: human rights, the environment and sustainable development. Tanaka explained in further details that the peaceful settlement of international disputes is closely linked to the principles of non-use of force in a dual sense. The effectiveness of the international dispute settlement system relies on the prohibition of the threat or use of force. However, the

principle of non-use of force that provided in UN Charter does not prohibit all types of use of force (UN Charter specifically prohibited the illegal use of force). The distinction between legal and illegal use of force become a crucial aspect in international law. Tanaka further explained that in UN Charter, international security system is provided by the collective security. Thus, the three elements (can be called 'triad for peace') which can be considered as essential conditions for sustainable peace are the peaceful settlement of international disputes, the non-use of force secured by the collective system and disarmament. After World War II, disarmament and arms control encounters challenges, specifically in nuclear weapons disarmament. It can be considered as very slow in progress. The fundamental problem in sustainable peace in the international community is the ineffectiveness one of the element, while these three components must be supported together in the same time. Tanaka delivered the possibility to strengthen the interlinkage between three pillars, include the role of judicial organs, particularly the ICJ, in consolidating the important principle of non-use of force, the role of ICJ's provisional measures in armed conflict situations, and post-conflict peacebuilding through UN. These points are directly and indirectly contribute to prevent use of force and to promote disarmament.