

THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

Gheorghe PINTEALĂ

Abstract: The peaceful resolution of international disputes constitutes a continuous, uninterrupted process based on international law, in which states participate as equal entities in rights. Forced to prevent the occurrence of any international situation or dispute, states have the duty, according to the 1982 Declaration, to resort only to peaceful means of settlement for disputes between them, having the right to freely decide and choose, on the basis of their joint agreement, those peaceful means that are considered convenient, timely and appropriate for a peaceful settlement. The universality of this obligation in contemporary international law has contributed, together with the principle of non-return to force, to essential changes in the content and purpose of this right, in the sense of accentuating and amplifying its function to promote and maintain international peace and security.

Keywords: international law, disputes, settlements

The settlement of international disputes

Contemporary international law has enshrined the obligation of states to resolve their disputes between them exclusively by peaceful means. The peaceful settlement of disputes between states has thus become one of the fundamental principles of contemporary law.

The 1945 UN Charter is the one that enshrines the peaceful settlement of disputes as a fundamental principle of international law, proclaiming that all members of the international organization will resolve their international disputes by way and by peaceful means, so that international peace and security, such as justice, should not be endangered.

The principle of peaceful settlement of international disputes and the concrete means of solving are the result of a long historical evolution of the relations between states and the development and improvement of the institutions and norms of international law. In international practice, there have been cases of resorting to various means of peaceful resolution of conflicts ever since antiquity.

International dispute means in a very broad sense, a misunderstanding, an opposition between two or more states that have reached the stage in which the parties have formed claims or counter-claims, and which constitute an element of disruption of relations between them. International disputes can be born not only between states, but also between them and international organizations or only between international organizations. The Permanent Court of International Justice: *"a disagreement on a matter of law or fact, a contradiction, an opposition of legal or interest-based theses."*

Following the case-law of the Permanent Court of International Justice and the International Court of Justice, the divergence arises from the moment

when *"a government in question finds that the attitude observed on the other party is contrary to the way of seeing of the first."*

Among possible international disputes, international situations that could lead to peace violations are of particular importance. The UN Charter, in Article 34, establishes, in this respect, the right of the Security Council to *"investigate any dispute or situation that could lead to international friction or could give rise to a dispute in order to determine whether the extension of the dispute or the situation could endanger international peacekeeping and security"*.

The peaceful means of solving international disputes are divided into three categories:

1. Non-judicial (diplomatic) peaceful means - talks or negotiations, good offices, mediation, investigation and conciliation;
2. Jurisdictional peaceful means - compulsory arbitration and jurisdiction;
3. Procedure for the settlement of disputes between states through international bodies and organizations.

Negotiation

Negotiation is a simple diplomatic means and one of the oldest and most used in the peaceful settlement of disputes between states. This means does not suppose the intervention of a third party. The primordial role currently played by diplomatic talks lies in the fact that they offer, due to their direct nature and the direct contact between the parties involved, additional possibilities of identifying convergent points of view, allowing the overtaking with patience, tact, understanding of all obstacles or difficulties, as well as agreeing solutions acceptable for all interested parties.

For negotiation to be possible, good communication between the parties is necessary in the sense of free negotiation, on the basis of the fundamental principles of public international law, especially the principle of sovereign equality of the dispute. Acceptance and use of this means do not automatically resolve the dispute. Solutions can be diverse, such as waiving claims, accepting them, engaging in a compromise, essential to meeting the commitments made by the parties at the end of the negotiations. If the dispute is not settled, the parties will have the obligation to resort to other means of settlement, but only by peaceful means.

Talks or negotiations can be grouped into several categories, using several criteria in this respect:

- By the nature of the participants: bilateral and multilateral;
- By the nature of the issues examined: political, commercial, cultural;
- By the quality of the people conducting the negotiations: between heads of state, heads of government, ministerial, expert level.

Good offices

These consist of the action taken by states parties to a dispute by a third - state or international organization - on their own initiative or at the request of the parties, in order to persuade disputed states to resolve disputes through diplomatic negotiations.

The good offices are characterized by the fact that the one who offers them does not participate in the negotiations between the states in question, and its office ceases as soon as the litigants have begun negotiations.

Although they are optional, good offices are means to boost and conclude negotiations. Their features and functions are similar to those of the negotiations, enrolling them in the same category of diplomatic, informal and non-judicial methods. In terms of purpose, the good offices only seek to start or resume negotiations, they end when the parties sit at the negotiating table.

Mediation

In solving the dispute, mediation means active participation of the third party in the negotiations, "can offer advice and proposals to resolve the conflict", the negotiator's action ends only after a final result has been reached. Mediation is about conducting negotiations, the substance of the dispute, to reach a peaceful and convenient solution for the third parties.

Mediation was defined as *"the action of a third party, an international organization or even a recognized personality, aiming at creating the necessary atmosphere for the negotiation between the parties to the dispute and the direct provision of the services of the third party for finding solutions favourable to the parties"*.

International investigation

It consists of verifying, by private parties or by a body jointly appointed by the parties to a dispute or by an international organization, the assertions of the parties and the clarification of some factual, sometimes legal problems, the conclusions resulting from the investigation undertaken having an optional manner for the parties to the dispute. For this purpose, investigative committees have been set up in international practice.

The triggering mechanism of the investigation commission is preceded by the conclusion of a special agreement in which it is stipulated:

- Categories of facts to be clarified;
- Composition of the International Investigation Commission;
- The term of its composition;
- Powers of members (to conduct hearings, trips, expertise);
- Status of the members of the international investigation commission and their obligations;

- Obligations of the litigants (to provide documents, data, and facilitate expertise).

International conciliation

It appeared much later in conventional practice, although some elements of conciliation are also encountered in mediation and investigation, being a combination of these two. Investigating the causes of the dispute as a trait of conciliation is carried out by an independent body, and not by a third party acting as a mediator. There is a close relationship between the independent body and the parties to the dispute, because the former makes proposals, and the parties decide on them.

International documents that have made international conciliation an important means of the practice of states and international organizations in the peaceful settlement of international disputes have been signed in the years:

- 1922 - Resolution of the Assembly of the League of Nations on the conciliation procedure,
- 1929 - General Act of Conciliation, Arbitration and Judicial Regulation, adopted by the Little Understanding,
- 1938 - General Act on the Judicial Settlement of International Disputes,
- 1957 - European Convention for the Peaceful Settlement of Disputes, chapter II,
- 1966 - International Covenant on Civil and Political Rights art. 42,
- 1969 - Convention on the Law of Treaties.

International arbitrage

Resorting to international arbitration implies that two states in a dispute may give a third party (judges, ad-hoc court), by common agreement, the competition to settle the dispute by a judgment given in good faith that it obliges to respect, and is enshrined in the 1907 Hague Convention. It originates in the Alabama Affair, which was a cause of dispute in the United States and England, where the US Government accused the British Government of violating its obligations of neutrality.

International Law. International Court of Justice

International justice is identified as the judicial settlement, being an important step in institutionalizing relations between states in the peaceful settlement of disputes, represented by a permanent international court of law.

The International Court of Justice delivers advisory opinions expressing its opinion on a matter of law regarding the application of the UN Charter and functioning. The advisory opinion is not binding, it is a simple

recommendation. The Court's procedure sets out a set of rules governing the proper administration of international justice.

The main coercion measures are:

- *Retaliation* - consists of the measures taken by a state in order to coerce another state to put an end to its unfriendly acts contrary to international customs;

- *Blowback* - coercive acts adopted by a state, by way of derogation from the rules of international law, against another state, in order to compel it to re-enforce the legality and to repair the damage caused;

- *Embargo* - a preventive measure whereby a state prohibits the importation, exportation or exit from its ports of foreign ships or orders the detention of goods of any kind belonging to a third party;

- *Boycott* - a means of coercion by a state or an international organization against another state that violates the rules of contemporary international law, consisting in the disruption of economic, scientific, and cultural relations.

- *Peaceful maritime block* - consists of preventing a state with its military naval forces from communicating with the ports and coasts of another state without being at war with it; international law forbids the use of maritime blockade during peacetime, which is seen as an act of armed aggression;

- *Breaking diplomatic relations* - is a unilateral act of a state that ends its permanent diplomatic mission in another state.

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UNITED NATIONS ORGANIZATION

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Abstract: The tumultuous history of mankind, marked by a series of conflicts, especially armed conflicts, has led to the establishment of an international organization to support economic and social development in peace, being known as the United Nations Organization. Its actions are in the direction of maintaining peace, promoting human rights, promoting technology and economic development.

Keywords: UN, peace, economic and social progress

Short presentation of the UN

Founded by the governments of a world consumed by wars, the UN was meant to defend peace and support social and economic progress. Even if it does not have global authority, it has made significant progress.

The history of humanity is full of conflicts and injustices. The attempts to stop them have only been partially successful, both in the 20th century and in earlier times. The destructive capacities of modern weaponry and the scale of the wars have made the need for commitments to ensure that world peace becomes a much more stringent subject than in previous years.

The real turning point was the First World War. The carnage was so scary that many people decided to never repeat it. The idea was also encouraged by governments, claiming that they would "lead a war that would end to all wars." And when the US saw themselves involved in the conflict, one of the Fourteen Points presented in January 1918 by US President Woodrow Wilson was the establishment of a "General Association of Nations." As a result, after the end of the war, the League of Nations was established in 1919. The League has had good results as a humanitarian organization but has failed to prevent aggression and to maintain world peace. Its authority was weakened from the start by the absence of the United States, where Wilson's political proposals were rejected by an isolationist Congress. Then, in Italy, Germany and Japan there were militarist regimes installed. They defied internationalism and the democratic powers wanted to avoid another war at all costs. The League could not do much to penalize Japan's aggression against China or the Italian invasion of Abyssinia (1935). When Adolf Hitler embraced expansionist policy, at the beginning (1936 - 1939) the United Kingdom and France stood quiet, and then (1939) declared war on Germany without informing the League.

In the course of the subsequent world conflagration, the Allies presented themselves as fighters for peace, freedom, and decency against barbaric fascism. In 1941, after a naval meeting in the middle of the ocean, Winston Churchill and Franklin D. Roosevelt issued the Atlantic Charter, a set of