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Mediation – Political-Diplomatic Means for Solving International Conflicts

Mădălina Cocoşatu[1]

Abstract: The peaceful settlement of international disputes is a fundamental requirement for the preservation of international peace and security. The contemporary international law consecrated the states' obligation to settle the conflicts between them exclusively through peaceful means. In the modern age, characterized by the dynamics of the international relations and structures, the problem of using the modalities of peaceful settlement of disputes is closely connected to the adaptation of international law to the requirements of the new international economic and political order. Together with negotiation, good offices, conciliation and international investigation, mediation represents an important modality in the peaceful settlement of international conflicts. In the paper at hand, we shall present the historical evolution of this institution and will analyze the procedure for achieving mediation, in comparison to the other modalities. Also, an important role in our research will be held by the analysis of the role of the United Nations Organization in solving international conflicts through political-diplomatic means.

Keywords: International Conflicts, mediation, regulation, process of peaceful

1. Introduction

The peaceful settlement of international disputes and the concrete means for solving them are the result of a long historical evolution of the relations between states and of the development and improvement of the institutions and regulations of international law, representing one of the fundamental principles of international law.

The most important norms which make up the content of this principle are the states' obligation to settle their international disputes only through peaceful means and through the free choice of the solving means.

The peaceful means of solving international disputes are divided into three categories (Geamănu, 1983, p. 39):

- peaceful means without jurisdictional character (diplomatic) – the talks or negotiations, good offices, mediation, inquiry and conciliation;
- peaceful means with jurisdictional character – arbitration and mandatory (compulsory) jurisdiction;
- the procedure of settling the disputes between the states by means of the international organisms and organizations.

The means without jurisdictional character or the diplomatic ones are those which target the reaching of an agreement between the states for the settlement of the dispute.

[1] National School of Political Studies and Public Administration, Romania, Address: 6 Povernei str., Sector 1, Bucharest, Romania, Tel.:+4021.318.08.97, fax: +4021.312.25.35, Corresponding author: madacocosatu@yahoo.com.

2. The Regulation of the Process of Peaceful Settlement of International Disputes

The approach of the international conflicts from the perspective of mediation became a priority both on the global agenda, and on that of the European Union, the EU legislation stipulating, through different recommendations the resorting to mediation in international litigations, litigations which involve extraneity elements. Thus, ”states should consider setting up mechanisms for the use of mediation in cases with an international element, when appropriate ... Taking into account the particular nature of international mediation, international mediators should be required to undergo specific training[1].”

The history of the legal regulations and the international law practice knew different evolutions in what concerns the different peaceful settlement means. The first consecrations in the international law instruments of the principle of the peaceful settlement of international disputes were reflected in the Peace Treaty of Paris (1856), and more comprehensively in the Conventions of Hague in 1899 and 1907. Although they failed in the issue of disarming, the Conferences of Hague managed to systematize and improve the diplomatic procedures for solving disputes, referring to all disputes, widely treating mediation, good offices and the inquiry. In art. 2 of both Conventions it is stated: „In case of serious disagreement or conflict, before an appeal to arms, the Signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers". The expression „ as far as circumstances allow" made this declaration directly dependent on the will of each party to the dispute and, leaving the choice to the parties’ discretion, was not a compulsory stage for the settlement of the dispute.

Article 7 of the Convention regulated the fact that "The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war... If mediation, occurs after the commencement of hostilities it causes no interruption to the military operations in progress, unless there be an agreement to the contrary".

The consecration of arbitration in the category of peaceful means was performed through the Convention of 1907, which created the Permanent Court of Arbitration, institution destined to facilitate the resorting to this manner of regulation. The pact of the League of Nations, adopted in the Peace Conference of Versailles in 1919, marks a considerable progress compared to the Conventions of Hague. Thus, according to the provisions of art. 12 of the Pact, the League member states committed that, in case among them there would emerge a dispute susceptible to lead to a conflict, they will subject it to a procedure of arbitration or to a legal regulation, or to the examination of the League Council. The pact established, before resorting to force, a moratorium of three months from the arbitral or legal decision or from the Council report. The UN Charter of 1945 adopted by the Conference of San Francisco brought important developments in this field, being the one consecrating the peaceful regulation of disputes as a fundamental principle of international law, proclaiming that All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered [2].

It was considered that any international dispute, regardless of its nature, content and seriousness, must be settled peacefully. In this respect, the UN Charter, in art. 11(3), 34 and 35 refers to situations „are likely to endanger international peace and security”, considered as conditions that could lead to international frictions or which could give birth to a dispute, which means that also such situations or conflicting states must be settled peacefully. We also underline that the distinction between political disputes – considered as susceptible of being settled only through diplomatic means (negotiations, good offices, meditation, inquiry, conciliation or resorting to international organizations) and the disputes with legal character, which, in principle, could be settled through jurisdictional means (arbitration, International Court of Justice) (Miga- Beşteliu, 2003; Bolintineanu, Năstase, 1995,

[1]https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(98)1&Language=lanRomanian&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864

[2] Art. 2 of the UN Charter

p.1288), appears as lacking grounds, because any dispute involves both political and legal aspects. Indeed, it could not be claimed that the political disputes, unlike the „legal" ones, must not be settled according to the rules of international law. The promotion of alternative methods for conflict settlement represents a constant preoccupation at the international level, as well, fact which also derives from the activity of the Council of Europe, from the numerous recommendations regarding the mediation activity regarding: international family mediation, international civil mediation, international criminal mediation and international trading mediation.

3. Analysis of the Procedure of International Dispute Mediation

In solving the dispute, mediation means an active participation of the third party in the negotiations; he/she "can offer advice and proposals in view of solving the conflict (Selejan-Gutan, 2003, p.39); the negotiator's action is over only after a final result has been reached. Mediation takes into account the running of the negotiations, the matter of the dispute, in order to reach a peaceful and convenient solution for the parties. In the doctrine, mediation was defined as being "the action of a third party, state, international organization or even recognized personality, by means of which is targeted the creation of the atmosphere necessary for running the negotiations between the parties to the dispute and the direct offering of the third party's services in order to reach solutions favourable for the parties."

Mediation is as old as conflict.

In case of conflicts emerging within international relations, mediation appears as the best answer for solving conflicts having as triggering basis problems related to ethnicity, sovereignty or independence. The mediation activities apply in an increasingly larger number in conflicts in the international arena. Mediation is different from the good offices, by means of the direct and active participation to the negotiations and through the proposal of solutions by the mediator. As a form of solving the conflict, mediation differs from the other forms, such as arbitration or negotiation, especially through the fact that this third person, the mediator, has no decisional power and no last word with respect to the conflict between the parties (Moore, 1986, p. 58).

The procedure for running the mediation is not regulated in international law, being established by the parties together with the mediator in what concerns the location, the terms, the running of the meetings, the oral or written character of the debates, the type of meetings (common or separate) etc. Mediation is essentially structured by the principles laying at the basis of this institution, each of the mediation principles intrinsically contributing to the value and the good functioning of mediation and to the building of trust that the parties and, implicitly, the wide public, grants this manner of conflict solving (Lempereur, Salzer, Colson, 2008, p. 61).

The principles on which mediation is based are *volunteering* (no party can be forced, by another person or authority, to participate to a mediation procedure), *self-determination* (the understanding belongs to the parties, any term established by the understanding must be proposed and accepted by the parties), *confidentiality* (both the mediator and all other parties present undertake to keep the confidential character of all aspects discussed in the mediation), *neutrality* (presupposes that the mediator remains outside the conflict between the parties, he/she does not get involved in this conflict, except within the limits imposed by procedure), *impartiality* (the mediator sits in a middle position towards the parties; he/she does not wish at all that either party wins or is favoured during the mediation procedure), as well as the *prior informing of the parties* with respect to the process, their duties and rights. The mediator must be a third party mutually agreed by all parties in dispute. He/she must prove special diplomatic skills which impose tact, prudence, discretion and perseverance. Also, he/she must know very well the facts and each party's attitude regarding the conflict between the states. The third party must act such as to determine the parties to cooperate in finding a solution, but avoiding constraints or pressures of any type, in order to impose the solution. Of course, the solutions do not have compulsory character for the parties. Mediation can be offered or requested. Mediation

has an informal and confidential character in order to avoid the political pressures between the states. Both mediation and the good offices target the nearing of the viewpoints, until accepting a common solution by all parties in dispute and they can be used for all types if litigations. They allow using all de facto and de jure argument (Ruzié, 2002, p.203). The intervention of the international organizations is based on the commitment of the member states to fulfill with good faith the obligations undertaken and on the capacity recognized through the constitutive act of an international organization to intervene for the peaceful settlement of a dispute (Elien, 1977, p. 457-470). The difference between mediation and good offices consists in the fact that, in the case of the latter, with the resuming of the negotiations, the third party's role ends. Some authors consider that the limit of the two procedures is difficult to establish, and they are sometimes confused (Shaw, 1997, p.723)[1].

4. Conclusion

International disputes are inherent to the development of contemporary international relations. On its way to progress and civilization, mankind is confronted with numerous new and complex problems whose solving calls for the participation of all states, often their approaches and viewpoints being different, which generates the emergence of disputes. The practice of international life demonstrated that there are no conflicting situations, no matter how complex, which to not be possible to solve through peaceful means. In conclusion, we can state that involvement in the mediation process can have only a positive result: even in the situation when the litigation is not solved through mediation, the parties will have their claims much better outlined following the mediation and, aware of their positions with respect to the litigation object, they will be much closer to solving it.

5. Future work

Studying and analyzing the mediation process in the context of international disputes, I want to deepen the study and another methods of peaceful settlement of disputes. We also believe that greater attention needed to the role of the international organizations in the process of peaceful settlement of disputes. So, I want to do a study on regional and international statistics regarding the number of disputes resolved peacefully, and a statistical methods used to solve them.

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****UN Charter*.

[1] This confusion exists in the Convention of Hague in 1907, in art. 2,3 and 6 which refer to good offices or mediation. In art. 33 of the Charter the good offices are not listed, although, in practice, this article was many times invoked as legal grounds