WAYS OF PEACEFUL SETTLEMENT OF DISPUTES WITHIN CERTAIN INTERNATIONAL ORGANIZATIONS

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Abstract

Peaceful settlement of international disputes is one of the fundamental principles of international law, mainly formed via custom, but enshrined in numerous international treaties.

For the dispute management and settlement, some specific procedures were created in the United Nations, the UN specialized agencies and the regional organizations.

These procedures are complementary, to those who work directly between states, but the organization authority gives the necessary juridical strength for solving arising disputes.

Research of this matter aims at knowing concrete ways of settling disputes arising in intergovernmental organizations, in order to correctly apply instruments governing them, and to refine specific system of measures and procedures.

Keywords: *disputes, intergovernmental organisations, regional organizations, Security Council of UNO, peaceful solving.*

Introduction

While international organisations function, many types of disputes may appear[1], such as:

- which concern *the relation between the member states* of the organisation, related to *the interpretation and application of a constitutive document;*

- *between a member state and the above-mentioned organisation;*

- *between the different bodies of an international* and which generally concern competence conflicts;

- *between the different international organisations* with a similar profile and which regularly regard the limitation of their competence;

- *between the organisations and private*, specific to the integration organisations;

- *between the organisation and the employees or its agents*.

The majority of disputes within one international organisation appear between two or more member states, relating to the interpretation and application of the constitutive document of the organisation or when a member state is in dispute with the respective organisation.

The peaceful researches that allow the management and solving of disputes[2], and the specific procedures created within the framework of the United Nations Organisation, in the specialized institutions of UNO, as well as within regional organisations contribute to making the best measures for preventing conflicts among the state members of the international organisations.

These procedures have a complementary character, compared to those that act directly among states, however the authority of the organisation provides increased strength[3].

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[1] Adrian Năstase, Bogdan Aurescu, Cristian Jura, *Drept internațional public. Sinteze pentru examen*, Third Edition reviewed and completed (Bucharest: All Beck, 2002), p. 253.

[2] Aurel Preda-Mătăsaru, *Tratat de drept internațional public*, Third Edition reviewed and completed, (Bucharest, Lumina Lex, 2008), p.245, that shows that the peaceful solving of international disputes constitute one of the fundamental principles of public international law.

[3] Dumitra Popescu, *Drept internațional public* (Bucharest, University Titu Maiorescu Press, 2005), p.267.

The competence of the United Nations Organisation in solving disputes

The U.N.O can regulate the disputes within the organisation by peaceful ways or methods of constraint.

Regarding the peaceful methods, UNO, within the General Assembly, can *approach* any issues referring to the maintenance of peace and international security, can *invite* the parties to join the dispute, through the Security Council, as to solve them using peaceful methods, can *investigate* (also by means of the Security Council) any dispute or situation which could give rise to a dispute, or may *recommend* the parties joining the dispute different procedures or methods more appropriate to solving the issues.

Thus, UNO does not directly solve the disputes among state members (excepting those of a juridical nature, which depend on the competence of the International Court of Justice), but contributes to their solving or non-aggravation, to the extend that the parties involved accept the solutions proposed or are convinced to proceed directly to solving them.

The United Unions Organization is competent, by means of its bodies, to settle or solve *disputes*, as well as international *situations* which might lead to the infringement of peace or which might endanger the peace and international security.

In conformity to art.2 par.6 and art.35 par.2 from the UNO Charter, this organization may regulate not only litigations which may occur between its members, but also litigations in which other states are involved, provided that the latter have priorly approved to the solving of disputes by means of the peaceful methods stipulated in the Charter.

• *The UNO Security Council* has, in conformity with art. 24 from the UNO Charter, a main responsibility in maintaining the peace and international security.

In order to exercise this function, the Security Council is entitled to act in conformity with the dispositions of the chapters VI-VII of the UNO Charter, which enables it to take preventive or coercive measures as to peacefully solve disputes „in case of threats against peace and acts of aggression". Likewise, chapter VIII of the Charter, with the title „Regional agreements" establishes the competence concerning the agreements or regional organisms to take certain measures referring to the maintaining of peace and security, as well as their relation with the Security Council.

The Security Council may intervene, in conformity with the Charter, as to solve disputes in the following situations:

- when the parties present to a dispute requests the intervention by a common initiative or separate demands;
- if a third state, member of the UNO, states that prolonging the dispute in which it is not personally involved, would endanger the peace and international security;
- when an UNO member state, refers to a dispute in which it is involved, accepting the solving conditions stipulated in the Charter;
- at the initiative of the General Assembly or General Secretary of UNO;
- at personal initiative.

After the statement, the actions of the Security Council mainly depend of the nature of the dispute which it has to stabilize.

Thus, it may initiate an investigation to establish whether the present situation is susceptible to threaten the maintenance of peace and international security[4].

In order to perform the investigation, the Security Council may assign a subsidiary body or a commission formed of representatives of the states in litigation, or from independent personalities.

[4] Art. 34 from the UNO Charter stipulates: „The Security Council may investigate any dispute or situation which might lead to international conflicts or could give rise to a dispute, as to establish whether prolonging the dispute or the situation would endanger the maintenance of peace and international security".

In conformity with art.36 par.1 from the Charter, the Security Council may *recommend* procedures or methods of settling conflicts by means of peaceful methods to the states in litigation, taking into consideration the conclusions of the investigation (when it has been proposed).

The recommendations may be *general*, inviting the parties to appeal to peaceful solutions in order to solve the dispute, or *concrete* (precise), indicating the use of mediation, of the good offices etc., depending on the nature of the dispute and the present situation. Moreover, the Council may recommend that a dispute may be sent to a *regional organisation* to be regulated, without losing its right to supervise the solving of the dispute.

In the situation in which a dispute is extremely serious as to constitute a threat to the peace, an infringement of the peace or an act of aggression, the Security Council may adopt decisions which embody a mandatory power. Decisions may refer to measures that *do not comply using armed force* or measures that imply the use of an *armed force* [5].

From the first category of measures, we can mention: *partial or total interruption of economic relations and rail, sea, air, postal, telegraphic, radio communications and other means of communication, as well as interrupting diplomatic relations*.

The measures from the second category are decided by the Security Council when it considers that those which do not imply the use of armed force failed to prove adequate. In this situation, in order to maintain and re-establish peace and international security, *demonstrations, measures of blockade and other operations executed by air, naval and land forces of the Members of the United Nations* may be used.

• *The General Assembly of the United Nations Organisation* has, in conformity with the UNO Charter, the following competence regarding the peaceful regulating of international disputes[6]:

- *examines* the general cooperation principles for the maintenance of peace and international security, making *recommendations* regarding the later both to the UNO members and to the Security Council (art.11 par.1);

- *debates* any issue with which it is consulted and make recommendations regarding it (art.11 par.2);

- *draws the attention* of the Security Council on situations which would endanger the peace and international security (art.11 par.3);

- *recommends* measures for settling any situation in a peaceful manner that is suspected to cause damage to the relations among states (art.14).

In conformity with art.12 par.1 from the UNO Charter, the General Assembly can not intervene with recommendations regarding the disputes or situations which are subjected to the examination of the Security Council, if the later exercises, regarding these disputes or situations, the functions which are attributed by the Charter. In these cases, the General Assembly may pronounce itself only when the Council expressly demands to state its position regarding a dispute

Moreover, in conformity with art.11 par. 2 from the Charter, when an international issue requires coercive measures, it will be remitted by the General Assembly to the Security Council, who holds a monopoly situation in coercive matters[7].

• *The General Secretary of the United Nations Organisation* may draw the attention of the Security Council regarding any issue which might endanger the peace and international security (art.99 of the UNO Charter). This may fulfill missions of good offices, mediation or invite the parties in a dispute, as to solve it by negotiations[8].

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[5] Art. 41 and respectively art. 42 from the United Nations Organizations Charter.

[6] Năstase, Aurescu and Jura, *Drept internațional public. Sinteze pentru examen*, p.255; Raluca Miga-Beşteliu, *Drept internațional. Introducere în dreptul internațional public*, Third Edition (Bucharest, All Beck, 2003), p.372-373

[7] Quốc Dinh Nguyễn, Alain Pellet şi Patrick Daillier, *Droit international public* (Paris, Librairie générale de droit et de jurisprudence, 1987), p.739.

[8] Dumitra Popescu, *Drept internațional public,* p.269

These functions are exercised, in conformity with art.98 of the UNO Charter, based on a mandate granted by the General Assembly or the Security Council.

In conformity with art.99 from the Charter, the General Secretary is authorized to trigger the intervention of the Security Council, if this is not performed by the state or a group of states involved in an international dispute.

The regional organizations to which UNO Charter offered the role of peacefully regulating disputes

In art. 52, paragraph 2 from the United Nations Organisation Charter it is stipulated that the UNO member states which conclude agreements and the regional organisations must make every effort in other to solve these local disputes peacefully, with the aid of the regional organisation, before these disputes are submitted to the Security Council.

The Charted does not stipulate a hierarchy or a distribution of competences as to solve disputes, between the UNO and the local structures[9].

However, by corroborating the dispositions of art.52 par.3, with those of art.34 and art.35 from the Charter, in conformity to which the Security Council has the competence to involve itself in any dispute which threatens the peace and international security, it results that this organism may decide in each concrete case, if the case requires it to be directly involved in the peaceful solving of the dispute or the issue can be transferred to local structures.

In the situation in which measures of coercion are imposed, these will not be undertaken based on the local agreements or by the regional bodies, without the authorisation of the Security Council.

The most representative regional organisations which aim at maintaining the peace and security, by anticipating the solving of disputes by peaceful measures are: The Organisation of African Unity (O.A.U.), the American States Organization (A.S.O.), The League of Arab States and Organisation for Security and Cooperation in Europe (O.S.C.E.).

• *The Organisation of African Unity* was created in the year 1963, and one of its role being the peaceful regulating of disputes between state members, by negotiations, mediation, conciliation or arbitration.

In the framework of this organisation the Commission of Mediation, Conciliation and Arbitration was founded, by a Protocol enclosed to the OAU Charter, signed in Cairo in the year 1964, the month of July.

The African states which present disputed may appeal to the Commission, if this is commonly agreed upon or at the initiative of a party involved in the litigation. Moreover, the Commission may be referred by the Council of Ministers or the Conference of Heads of State and Government of the OAU, as to solve the disputes that embody an international character.

If one or more state-parties involved in a dispute do not accept to solve it by the Commission, the solving competence passes to the Council of Ministers or even the Conference of the African Unity Organisation.

Regularly, the African states have not appealed to legal procedures, but have resorted to *mediation* by means of special committees or *ad-hoc* committees, or have resorted to the *good offices* of certain personalities in the African states..

• *The American States Organization* was created in the year 1948, the Charter from Bogota containing many regulations concerning the peaceful solving of disputes among state members, by means of investigation, good offices or conciliation.

The bodies which have the competence of solving international disputes among state members, if these issues were impossible to solve in usual diplomatic ways, are the *OSA Council* and

[9] Nguyễn, Pellet and Daillier, *Droit international public,* p.743.

the *Committee for dispute regulation* (which in the year 1967 replaced the Inter-American peace committee).

• *The League of Arab States,* which was created in the year 1945, did not found a specialized organ for the peaceful solving of international litigations, but accomplishes this activity by means of the League Council. It is formed from the representatives of the member states and, in conformity to art. 5 from the Covenant of the League of Arab States, it can solve disputes, at the request of the parties in litigation, provided that they do not refer to independence, sovereignty or the territorial integration of states.

The Council uses, as to solve disputes, procedures of mediation, conciliation and good offices.

The parties in litigation do not participate to the debates of the Council, and its decisions, as an arbitrary body, are mandatory for the states in dispute.

• *The Organisation for Security and Cooperation in Europe*

In conformity with Principle V, stipulated in the Declaration of Principles from the Final Document of the Conference in Helsinki (1975) concerning security and cooperation in Europe, the Organisation for Security and Cooperation in Europe grants a particular importance to the peaceful solving of international disputes.

In conformity with the dispositions from the Final Document and the Charter from Paris for a new Europe (1990), the member states militate for peaceful, fast and efficient solving of the disputes among them, based on the international law, resorting in this purpose to means such as: negotiating, investigating, mediating, conciliating, arbitrating, legal regulating etc. (at the choice of the parties) or using any other procedure of regulating which has been agreed upon[10].

The systems of peaceful regulating within the Organisation for Security and Cooperation in Europe are based on the following main principles[11]:

- litigations non-regulated by means of direct contracts between the parties (negotiations or consultations) are applied;

- regulatory systems of the Organisation for Security and Cooperation in Europe to which they resort have a subsidiary nature, having the role of completing the pre-existent ones and not replace them.

From the practice of negotiations, performed especially in the years 1991 and 1992, four systems of peaceful regulatory systems for the disputes within the Organisation for Security and Cooperation in Europe were defined.

a) *The Procedure from La Valetta* stands for a document adopted in the year 1991, following an expert reunion, held in Malta, which establishes a pan-European mechanism, based on the intervention of third parties, to which member states of the C.S.C.E. may result to, as to solve the disputes among them.

At the request of a party involved in the litigation, a *C.S.C.E. body is created*, formed from one or more members selected by common agreement from a list of qualified candidates, held at the Center of the Organisation for Security and Cooperation in Europe for conflict prevention, in Viena. This body first attempts to *establish a contact with the parties in dispute*, as to choose the method of approach: investigation, conciliation, mediation, good offices, arbitration or the legal method.

If the parties do not reach an agreement regarding the means to solve the dispute, any of the parties, in term of 3 month from the notification concerning the disagreement, may request the *Body* to formulate *notifications* or *observations upon the background of the dispute*, the parties being free to accept these notifications or refuse them.

b) *The Convention regarding the conciliation and arbitration within the Organisation for Security and Cooperation in Europe,* adopted in December 1992 and that entered in force on the 5th

[10] Miga-Beşteliu, *Drept internaţional. Introducere în dreptul internaţional public*, p.377.

[11] These elements result from the final document of the reunion from Viena (1989) and from the Charter in Paris for a new Europe (1990).

of December 1994, decided the founding of the *European Court of Conciliation and Arbitration,* headquartered in Geneva.

If a dispute occurs among the member states, any party may request the establishment of a *Conciliation Committee*, which must support the parties in order to solve the litigation, in conformity with the international law and commitments to which the parties subscribed within the *Organisation for Security and Cooperation in Europe*, the Commission accomplishes a final report which is sent to the *Organisation for Security and Cooperation in Europe* for it to utilize the coercive measures at its disposal, if in term of 30 days from the notification of the parties, they refuse the proposals for solving the litigation.

The Convention also includes the possibility of arbitration, as an optional means to solve disputes among state members. The Arbitral Court may be formed by a common agreement of the parties or by the unilateral demand of a state in litigation, this being formed of 5 members. The sentence of the Court is definite and mandatory, being pronounce in conformity with the international law or „*ex aequo et bono*", when the parties agree

c) In the year 1992, at the proposal of Great Britain within the *Organisation for Security and Cooperation in Europe*, a document entitled „Dispositions regarding a Conciliation Commission" was adopted, which completes the „*La Valetta*" procedure.

The use of this conciliation procedure must be based on the agreement of the states involved in the disputes, except the situations in which the parties accepted the procedure by reciprocal unilateral declarations, prior to litigations. The conciliation procedure is applied only to disputes between two states (not more than two).

The conciliation commission is founded ad-hoc for every dispute, and its works are finalized in a report in which propositions for the solving of the dispute are made.

In case it is rejected by both state parties, the report will be sent to the Committee of Senior Officials of the Organisation for Security and Cooperation in Europe to provide the measures which are imposed.

d) In the year 1992, at the initiative of the United Nations of America, the *Organisation for Security and Cooperation in Europe* adopted another document regarding the peaceful regulation of disputes, entitled „*Dispositions regarding conducted conciliation*". This document does not establish a new procedure to solve disputes, however, it conducts the parties to follow the *British conciliation procedure or the procedure stipulated in the Convention regarding the conciliation and arbitration* within the Organisation for Security and Cooperation in Europe.

The Committee of Senior Officials of the Organisation for Security and Cooperation in Europe or the Committee of Ministers of Foreign Affairs may conduct the parties in dispute to resort to conciliation, without them having the right to oppose (except litigations regarding territorial integrity, national defence, sovereignty upon the national territory or competing claims upon the jurisdiction of other areas). This procedure does not apply when the parties involved in the litigation agreed to resort to a means of regulation except for Security and Cooperation in Europe [12].

Conclusions

The procedure for solving international disputes by peaceful means reflects one of the fundamental principles of international public law, as it allows a faster restoration of the law order and prevents the alteration of relationships among states, in contradiction with the option of applying sanctions of international public law. Moreover, one may say that the application of sanctions constitutes the exception, the basic rule being the peaceful solving of disputes.

Reflecting upon the entire subject of discussion, we conclude that no matter how well the system of international public law may be adjusted, and how much would be achieved on acception the principles which are at the basis of applying it within the international organisations, it would still

[12] Năstase, Aurescu and Jura, *Drept internațional public. Sinteze pentru examen,* p.268-269.

be more important that the contentious issues be solved by means of preventive diplomacy, by means of dialogue from positions of equality and by respecting to sovereignty of every state, thus avoiding tensed relations within the international entities and the alteration of state relations.

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