THE PEACEFUL SETTLEMENT OF INTERNATIONAL CONFLICTS, A RIGHT OR DUTY OF STATES?

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Abstract

The current article aims to establish if the peaceful settlement of conflicts is a duty of international law entities, which must generate a certain active attitude of cooperation, of looking for suitable solutions for international conflicts or, on the contrary, if it is a right whose exertion is left to the sovereign attitude of the states. Moreover, it will also be established which is the legal content of this duty or right of the states and which are the principles guiding the conduct of the states in this field. In the specialized literature, several opinions have been expressed, starting from the one that this duty does not exist, whether we speak of legal or political conflicts, continuing with opinions stating that this duty exists only when it comes to the conflicts referred to by article 33 of the U.N. Chart, namely those whose extension could endanger the peace keeping process and international security. Moreover, there have also been expressed opinions according to which this duty exists and has a general nature, concerning any type of conflict. In our opinion, the spirit of the UN Chart, the clear provisions of article 2 correlated with article 33, completed by several resolutions of the UN General Assembly adopted by mutual agreement, but also some provisions for this matter from the statutes of the main international organizations, establish a duty to settle conflicts peacefully.

Keywords: *peaceful settlement of conflicts, the UN Chart.*

1. Introduction

The issue debated by the current study is of a real interest taking into account the international contemporary context, troubled by conflicts like those in Ukraine and Syria, but also by the terrorist damage which keeps spreading around, by taking advantage of the instability generated by the internal or international conflicts. The unexpected consequences of the absent fast peaceful settlement of conflicts, irrespective of their nature, prove us that this settlement must be a priority for the foreign policy of both the states involved and the international community. We are speaking, among others, about the crisis generated in the E.U. by the phenomenon of the emigration of the population affected by these conflicts and not only. The serious border incident involving Turkey and Russia, which culminated with the crash of a Russian military plane, followed by tensions in the bilateral relation, but also the reaction of NATO (where Turkey is an important member) point out the considerable importance of the current study. By reference to the strictly theoretical aspects related to this tensioned international situation, we can reach the conclusion that the peaceful settlement of conflicts is an extremely actual field, even if it has been studied in the specialized literature and cross-border practice for a long time. Specialized literature contains several studies regarding the methods for the peaceful settlement of conflicts, but we consider that the researches in the field must also converge towards consolidating this duty, for both the states directly involved and the international community. The passive attitude adopted by some states, but also international organizations, with important consequences upon international stability, represent solid grounds for the current study.

In order to establish whether there is a duty to settle conflicts peacefully, the current study shall take into account several international documents which emerged in the conventional UN practice, but also of some important regional organization like OAS, AU, A.S.E.A.N and the bilateral practice of states. We also find relevant for the issue under research examining the legal practice of the International Court of Justice, but also the main opinions expressed by the specialized literature regarding the aspects analyzed.

2. The duties of international law subjects on the basis of the principle related to the peaceful settlement of international conflicts

Before the actual analysis of these duties, we consider appropriate presenting some controversies which emerged in regard to them, both in the international law literature and practice.

First of all, it must be established if there is a duty to settle international conflicts, and if it exists, which are its nature and the types of conflicts that it concerns. There are authors who consider that states are not bound to settle their international conflicts, this consideration being valid both for serious legal conflicts, but also for side political procedures[1]. There are points of view according to which this duty regards only the conflicts referred to by article 33 of

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[1] Malcolm N. Shaw, *International Law*, Sixth edition, Cambridge University Press, 2008, p.1012.

the UN Chart, namely those whose extension *could endanger the peace keeping process and international security*[2]. Moreover, there are also points of view which consider that the duty has a general nature, concerning any type of conflict[3]. Some authors have various points of view, that there is no duty to settle conflicts, but if the states want for this settlement to take place, then they must do it on a peaceful way[4].

In the analysis of this controversy, we consider necessary to take into account the purpose of public international law, but also the way in which it is reflected in international normative acts. Generally, the accepted purpose of international law is the maintenance of international peace and security. In order to reach this purpose, the peaceful settlement of conflicts must be, by any means, the only manner to resolve disputes, a conclusion imposed by the fact that nations gave up at the use of force and the threat to use force. This objective of international order can be found in several international treaties and documents. Therefore, the UN Chart provides at article 1 that the purpose of the United Nations is to maintain international peace and security, an objective for which the organization shall take effective collective measures in order to prevent and remove the threats against peace and stop any aggression act or other peace infringement. Moreover, article 2 point 3 establishes that "all the Organization members shall resolve their international conflicts by peaceful means, so that international peace and security, but also justice, are not endangered". The Chart takes over article 33, referring to those conflicts whose extension could endanger international peace and security.

The principle is also present in several resolutions adopted by the UN General Assembly, like: Resolution 42/150 from December 1987 on the peaceful regulation of the conflicts between the states, Resolution 2625 from 1970 on the friendly relations between the states, Resolution 37/590 from December 1982 on the peaceful regulation of international conflicts, Resolution 43/51 from December 1988 on the prevention and elimination of disputes and situations which can affect international peace and security and the role of the UN in this field. We have mentioned only some of the most important resolutions (many of them being adopted by mutual agreement), but the list can continue, as the matter presents interest FOR the Organisation and specialists in the field. Going back to the analysis of the duty to resolve international conflicts, in the legal literature but also international practice, some controversies emerged starting from the existence of this duty, but also from other aspects like the types of conflicts concerned by the duty. Some authors claimed that there is no such general duty in the absence of a special agreement and especially as long as there is no threat to use force or to the actual use of force[5]. Moreover, it is also invoked the practice of PCIJ, more concretely the file case from 1923between Finland and Russia regarding East Karelia, in which the court ruled by giving the opinion from July 1923, according to which no state can be forced against its will to make a dispute subject to mediation, arbitration or any other form of peaceful settlement of conflicts. It is also invoked the ICJ legal practice, namely the opinion from 1949 regarding the amends for the damage suffered in the UN service; among others, it is underlined that no pretention can be subject to the jurisdiction of an international court without the agreement of the concerned state. Regarding these arguments, we can make the following observations:

- first of all, reducing the conduct of the states only to not using the force in case of disputes would mean ignoring the UN Chart, but also its spirit, requiring an active attitude of cooperation between the states, which could lead to the peaceful settlement of conflicts.

- secondly, the practice of PCIJ mentioned before took place before the UN Chart, which changed the vision regarding the attitude of the states when it comes to settling disputes. We agree that a state cannot be made to accept the jurisdiction of international courts in the absence of its consent, a fact established for instance by the ICJ statute, at article 36, which is the natural consequence of the sovereign equality of states. Moreover, we can agree that, in the absence of its consent, a state cannot be in principle forced to take part in a procedure for the settlement of conflicts, no matter if it has a jurisdictional character or political-diplomatic one. But this statement is merely theoretical, in the current circumstances of the development of international law. First of all, we are taking into account the spread of cross-government organisations, of international courts, but also an increase of international treaties as legal sources. The common point of all these international realities is the fact that they are based on the principle (among others) related to the peaceful settlement of conflicts. International organisations provide for the duty to resolve conflicts peacefully in their statutes, rendering available several

[2] Alain Pellet, *Peaceful Settlement of International Disputes*, Max Planck Encyclopedia of Public International Law, Heidelberg and Oxford University Press, 2012, p.5.

[3] Alexandru Bolintineanu, Adrian Năstase, Bogdan Aurescu, *Drept internațional Public*, 2nd edition, All. Beck Publ. House,2000, p180, Giorgio Bosco, *New trends on peaceful settlement of disputes between states*, North Carolina Journal of International Law and Commercial Regulation, 1991, p.235.

[4] Martin Dixon, *Textbook of International Law* , 3rd edn., Blackstone Press, 1996, p.248.

[5] Richard B. Bilder, *An Overview of International Dispute Settlement*, Legal Studies Research Paper Series Archival Collection, Emory Journal of International Dispute Resolution, Vol. 1, No. 1 (Fall 1986), p.7.

mechanisms for this purpose. A state, once it has become a member of an organisation, takes upon these duties. The best example is UN, which provides for the duty of a peaceful settlement of conflicts, leaving to states the freedom to choose the way to accomplish it. Under the circumstances in which almost all the world states are UN members, the duty to settle conflicts peacefully is a general one. Moreover, there are several regional organisations including the duty of the peaceful settlement of conflicts in their statutes. For instance, the OAS Chart, at Chapter V, article 24, the Chart of African Union, at article 4, the A.S.E.A.N. Chart at chapter VIII, article 23. The bilateral practice points out an increase of the preoccupations for establishing mechanisms to settle disputes even in relatively new fields of the international law, like the international environmental law. The analysis of international contemporary relations points out that states, in most of the cases, are interested in resolving their disputes, and that this resolution is usually sought ever since the beginning of the dispute. Moreover, states have become more preoccupied with preventing disagreements, there being created cooperation, communication and early warning mechanisms. A major interest of the international community but also of the states which are parts in a dispute is to maintain peace in order to settle a conflict. This interest, stipulated in the UN chart ever since the beginning justifies, in certain conditions, the intervention of the international community in the internal affairs of a state, a fact which any state naturally wants to avoid[6]. Another general reason for the resolution of disputes is avoiding material and human damage. This interest is first of all of the states involved, but also of other states like the neighbouring ones or in an alliance relation. States have a common interest not only in removing the state of danger for the international peace and security, but also in the existence of friendship and good cooperation relations. In this climate, states can develop advantageous economic and cultural relations. The fact that states remove the state of danger for international peace does not mean that it disappears completely, as it can get reactivated in favourable conditions. For this reason, the attitude of states must be that of an active collaboration for the settlement of disputes. We agree that the existence of some disputes does not constitute an impediment in these relations, but the essential thing is the nature and gravity of the disputes and not least the attitude of the parties. Specialized literature has upheld the idea that, sometimes, states are interested in leaving certain conflicts unresolved[7]. Thus, if it is foreseen that the result of negotiations would do nothing but raising tensions even more, it is better for the conflict to be "frozen". As an example, we can mention the 1959 Antarctic Treaty, saying at article IV that the parties were not waiving by means of that treaty their territorial claims or sovereignty rights regarding Antarctica. In these situations, states conclude agreements according to which they do not waive their claims but they do not make others either and they also commit not to perform anything capable to modify the initial statute. In these situations, it is preferable for the states to fulfil their duty to act for the peaceful settlement than resorting to the use of force. Regarding these situations encountered in international relations, we agree that a temporary compromise solution is preferable to an apparent complete resolution of the conflict. In our opinion, the settlement of some conflicts can last for longer, but solid solutions are preferable, obtained after many years of negotiations, instead of apparent settlement solutions.

The opinions expressed in specialized literature state that the principle of the peaceful settlement must be interpreted, as it does not forbid the states to decide by means of an agreement that they will not settle a conflict, as long as this solution does not endanger international peace. Consequently, if a dispute has such a potential, the duty to settle it is also a consequence of the interdiction to use force or to threat to use force[8].

Consequently, we believe that the debate whether there is a settlement duty is no longer actual, as more important for us are the aspects concerning the length of this duty (both in regard to the field and persons involved), but also its nature, considering if it is a result or behavioral one. For determining these aspects it is necessary to analyze some provisions of the UN Chart, some provisions of the Resolutions of the General Assembly with relevance in the field but also the legal practice of the ICJ. There will also be taken into account similar provisions from the constitutive acts of some important regional organizations like: OSCE, OAS, AU and ASEAN.

As for the UN Chart, article 2(3) of it provides for the duty of the states to settle their international disputes by peaceful means, so that the international peace and security, but also justice, are not endangered. Some authors have interpreted that the purpose of the article is for the settlement to be done peacefully, but it is not instituted the duty of settlement[9].

Other authors have interpreted that this article establishes a negative duty in its essence, namely that the states must not settle their disputes by means which would endanger international peace. In our opinion, this article institutes a duty to settle international conflicts and this duty has a general nature, as the text does not make any distinction when speaking of conflicts and when no distinction is made by law, then we shouldn't make one either. We cannot say that it is instituted a

[6] D **N** Hutchinson, *The Material Scope of the Obligation Under the United Nations Charter to Take Action to Settle International Disputes*, Australian Yearbook of International Law, 1993, vol 14, p.8.

[7] Richard B. Bilder, *quoted works*, p.6.

[8] Alain Pellet, *quoted works*, p.2.

[9] Martin Dixon, *quoted works*, p.275.

negative duty of not using force, as this is the consequence of the provisions of article 2(4), which institutes the principle of not using force or the threat to use force. The text imposes a positive duty to act for the peaceful settlement of the conflict. What it should be underlined here is the fact that the text clearly speaks of "international conflicts", unlike article 33, which uses the expression "any conflict" and makes a slightly vague reference to justice, which is no longer present at article 33.

Starting from the content of article 33, which presents the category of conflicts which shall be settled peacefully, namely those whose extension could endanger the peace and security keeping process, some authors have upheld the idea that only the category mentioned above is mandatory[10]. We consider that the text should be interpreted in correlation with article 2(3), which institutes a general settlement duty. In relation to this text, article 33 appears as a special norm, underlining the need for a peaceful settlement of the more serious conflicts. Article 2(3) institutes a principle for the peaceful settlement of any conflict, even more of those referred to by article 33. We can also speak of an argument of texts topography, article 2 being included in the introductory part of the Chart regulating principles, while article 33 is part of a special chapter dedicated to the peaceful settlement of conflicts. As a consequence, we believe that the two do not exclude one another, but complete each other, determining the regulation area. Regarding the notion of dispute which must be peacefully settled, it can be noticed that article 2(3) speaks of an "international dispute", while article 33 refers to "any dispute". This expression from article 33 generated another controversy related to whether only international conflicts must be peacefully settled or also the internal ones which, due to their gravity, endanger international peace and security. The analysed field is extremely sensitive, due to the requirements of the sovereignty principle and the lack of intervention in the internal affairs, also generating controversies about the intervention right based on humanitarian reasons. For this purpose, we can give the example of several civil wars which affected and still affect Africa and Europe (the case of Yugoslavia). In our opinion, we believe that the text must be interpreted that any dispute, even the internal ones, *which damages the international peace and security*, must be settled in accordance with the principles established by the UN Chart, including that related to the peaceful settlement. Some interesting interpretations also emerged in the international practice in regards to the existence or the absence of a dispute. The enforcement of a peaceful settlement method, be it political or jurisdictional, depends on the existence of a dispute[11]. At least one of the parties must prove the existence of a conflict, even if the other denies it. The ICJ ruled like this for the East Timor, when Australia argued that it was not part of a relevant international dispute. The case was referring to the objections of Portugal regarding the negotiation and the conclusion by Australia and Indonesia of the 1989 Treaty on the East Timor, which according to Portugal was transgressing its administration rights, but also the right to make decisions of the population in Timor. As a reply, Australia claimed that the dispute of Portugal was in fact with Indonesia. The Court ruled that it was not relevant whether the true dispute was between Portugal and Indonesia, as Portugal had the right, justified or less, of not complaining against Australia. Consequently, as long as there is a contradiction between the parties regarding the legality or the facts, it is clear that a dispute between Australia and Portugal emerged.

Regarding the field of the entities subject to the duty to settle disputes peacefully, it must be underlined that the logics of the UN Chart was directed particularly towards the states. But this changed starting with 1945, due to the evolution of international law. Therefore, in our opinion, among the international law subjects which have international law related duties, like the one in question, should also be found the international cross-government organizations. Regarding the international liberation movements, they enjoy the legal right to use force, but we believe that they should seek first of all to meet their objectives peacefully, and only if this is not possible to use force in exerting their self-governing right. But in the contemporary international reality it can be noticed an increase of civil wars and of internal conflicts with a potential impact upon the regional security. As a consequence, the UN Security Council and General Assembly resorted to non-state actors (particularly the factions involved in civil wars) to find peaceful solutions[12]. Starting with the end of the '70s, both the Council and the Assembly have urged all the interested parties, including the NGO-s, to find peaceful solutions. Since states allow private entities (natural or legal persons) to settle the conflicts with them by means of international law (as it happens with the human rights or direct investments), the more necessary it becomes to enforce the duty to settle conflicts peacefully also in this relation private-state[13]. We also share this point of view, as irrespective of the nature of the subject involved in the conflict, the value transgressed are the same, namely life, health and freedom of the people. These fundamental human values must be observed by both the legal collective and individual subjects

[10] Alain Pellet, *quoted works*, p.5.

[11] Donald R. Rothwell, Stuart Kaye, Afshin Akhtarkhavari, Ruth Davis, *International Law: Cases and Materials with Australian Perspectives*, Cambridge University Press, 2010, p.206.

[12] For instance: the Resolutions of the Security Council No. 389/ 22.04.1976 on East Timor, 435/19.09.1978 regarding Namibia, 1906/23.12.2009 regarding the situation in the People's Republic of the Congo, 1781/15.10.2007 regarding the situation in Georgia.

[13] Alain Pellet, *quoted works* p.6.

From the perspective of the moment when the duty to settle conflicts peacefully appears, this duty applies all the time, even when the conflict has become an armed one. Article 3 of the Hague Convention from 1907 establishes this. Moreover, resolution 2625 of the General Assembly establishes that states must seek the fast resolution, ever since the start of a conflict. The resolution must be fair. The resolution also underlies that this duty continues to be applied even in the eventuality of the failure in using a method.

Another important aspect related to the duty to settle conflicts peacefully is the good faith which states must show when looking for solutions for settling the conflict. Good-faith means an attitude of honour, honesty and fairness, which states must show in resolving conflicts. The good faith principle can also be found in several international treaties, first of all in the UN Chart, at article 2(2)[14]. According to some opinions expressed in specialized literature, when introducing the article above in the Chart, the objective pursued was, among others, to insure a balance between political and legal interests, but also between the influences of the UN members[15]. Thus, while states benefit equally from rights on the basis of their sovereignty, the good faith clause insures an honest observance of the duties committed to by means of the Chart.

The observance of the good-faith principle when it comes to the resolution of conflicts has also been underlined by the ICJ legal practice in file cases such as Gabcikovo-Nagymaros, the Lanoux Lake and the air incident between Pakistan and India from 1999. References to good faith can also be found in the statutes of other international courts, like the International Criminal Court, at article 86, and at article 23 from the statute of CIRDI. The International Tribunal for the Law of the Sea used in its activity article 294 of the Convention regarding the Law of the Sea, which explicitly calls for the settlement of disputes in the good faith spirit[16].

3. Conclusions

In conclusion, we believe that we can speak of the existence of a duty to settle disputes (irrespective of their gravity) which belongs to all the international law subjects, as a result of the following arguments:

the purpose of international law is to maintain international peace and security and, for accomplishing this goal, states must show an attitude of cooperation and good faith, which involves including the peaceful settlement of the conflicts emerging between them. We cannot speak of international cooperation and normal relations between states which have unresolved "frozen" conflicts. Freezing the conflict must not be a long term solution, but a first step at most towards the ultimate settlement of disputes, avoiding losses of human lives and material damage. States must continue to negotiate in good faith until reaching a fair solution. For this purpose, they are free to use any settlement method they want, as long as this is a peaceful one.

the most important multilateral regulations, like the UN Chart and the statutes of the other regional organizations, provide for the settlement duty. Several bilateral agreements follow the same regulation line.

the spread of international courts and organisations constitute a clue regarding the will of the states to cooperate and settle disputes. For the same purpose, states have become more preoccupied with preventing disagreements, so that several cooperation, communication and early warning mechanisms have been created.

We consider that the specialized literature must approach the issue of the peaceful settlement of internal conflicts, the way in which the international community must intervene, but also the issue of the accountability for not observing the duty to settle disputes peacefully, irrespective of their nature.

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[14] According to it, "All the Members of the Organisation, in order to insure for all the rights and advantages emerging from their quality as Member, must fulfil in good faith the duties assumed according to the present Chart".

[15] JP Müller, *Vertrauensschutz im Völkerrecht, Max-Planck—Institut für Ausländisches Öffentliches Recht und Völkerrecht, Beiträge zum ausländischenöffentlichen Recht und Völkerrecht*, Band 56 , Köln, Carl Heymanns Verlag, 1971, p.226.

[16] Marion Panizzon ,*Good Faith in the Jurisprudence of the WTO,* Hart Publishing, Portland, OR, 2006, p. 15.

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