THE PEACEFUL SETTLEMENT OF DISPUTES - FUNDAMENTAL PRINCIPLE OF PUBLIC INTERNATIONAL LAW

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Abstract

Enshrined in the 1970 Declaration, under the name of the principle of peaceful settlement of international disputes, the principle obliges states to settle their disputes by peaceful means, so that peace, international security and justice are not endangered. States must act in good faith and in a spirit of cooperation to reach a swift and just solution based on international law. For this purpose, states can resort to means such as: negotiation, investigation, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their choice, including any settlement procedure agreed upon, prior to the occurrence of a dispute to which they are parties.

Keywords: *peaceful settlement of disputes, dispute, fundamental principle of public international law, means of peaceful settlement of disputes.*

1. Introductory aspects

„The principles of international law represent legal constructions around values considered important for international relations, for their highlighting, their promotion in the system of legal rules and institutions that govern the international conduct of states and, in particular, for their protection”[1]. These principles „arise through the tacit or express agreement of states, by customary or conventional means [and] have an imperative character”[2]. International relations are regulated by the principles of international law.

The relations that are established within the international society arise and develop on the ground of the creation and application of international law, one of its fundamental principles being *the peaceful settlement of disputes*.

Peace, defined as the absence of war, has always been one of the major challenges faced in international law. The interests of international society highlight the efforts made by the international community of states to keep intact the «binding legal character of the principle of peaceful settlement of disputes, to keep war „outlawed”. (...) The increasingly obvious disarmament and jurisdictionalisation of international life, especially through the International Court of Justice and the International Criminal Court, are contributing to the coherence of the notion of lasting peace. As a result, the use of force remains an option clearly framed and delimited by legal rules clearly defined by the international community»[3].

2. The notion of „dispute”

In public international law, international disputes arise between subjects of international law in the form of conflicts between states, disputes or litigation between states and international organisations, conflicts between international or even internal organisations within different international organisations. Conflicts between persons of private law and subjects of international law do not constitute a dispute of public international law *stricto sensu*. This is why the peaceful settlement of disputes occupies an important place in international relations. „The prolongation of conflicts is likely to question peace and security in international relations. In domestic law[4], the judge is the physical body called to settle disputes between different subjects of

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[1] A. Năstase, B. Aurescu, *Drept internațional public. Sinteze*, 9th ed., C.H. Beck Publishing House, Bucharest, 2018, p. 76.

[2] G. Geamănu, *Drept internațional public*, vol. I, Didactic and Pedagogic Publishing House, Bucharest, 1981, p. 126.

[3] B.M. Tchéré, *Le reglement pacifique des differends internationaux*, (*https://revuejuris.net/2020/09/04/le-reglement-pacifique-des-differends-internationaux/#:~:text=La%20mission%20de% 20la%20CIJ,pas%20tous%20deux%20des%20Etats.*, accessed on 04.10.2023).

[4] With regard to domestic law, the remark made in the doctrine draws attention, namely: „The internal determination of law is based on the legal quality of will and interest, which is the essential quality of the whole legal system. No matter how many changes the legal system undergoes, this quality will remain unchanged” (M.-C. Cliza, C. Nivard, L.-C. Spătaru-Negură, *The European Social Charter and the*

law, whether they are persons of private law or persons of public law. In public international law, the absence of an institution similar to the justice of peace does not necessarily mean an absence of rules to which the subjects of international law must obey, for the settlement of their disputes”[5].

Not every dispute arising in international relations can be qualified as „dispute”, even if, we are, often in the presence of subjects of public international law which have as object, a more or less specific subject. We are going to approach situations of *international dispute* likely to endanger, by their dimension, international peace and security.

In international disputes we encounter subjects of international law. *Ratione personae*, disputes may involve conflicts between states, between states and international organisations, or between international organisations. However, conflicts between persons of private law and subjects of public international law do not constitute an international dispute.

In 1924, PCIJ, in the judgment in Mavrommatis Case[6], defined *the dispute* as „a disagreement on a question of law or fact, a contradiction, an opposition of theses or legal interests between two states”. In the practice of the International Court of Justice, reference is often made to this definition offered by the PCIJ, as early as 1924. Thus, in the judgment pronounced in the case of Northern Cameroon[7], the Court considered that „it is sufficient to state that (...) the opposite positions of the parties regarding the interpretation and application of the relevant articles of the Trusteeship Agreement reveal the existence, between the Republic of Cameroon and the United Kingdom, (...) of a dispute that they have, in the sense accepted by the jurisprudence of the current and former court”[8]. In the same sense, there is also an advisory opinion[9] of the Court from 1988, in which the court considered that „the existence of an international dispute must be established objectively”, but also the judgment pronounced in the East Timor case[10] in which „the Court recalls that, in the sense accepted in its jurisprudence and that of its predecessor, a dispute is a disagreement on a matter of law or fact, a conflict, an opposition of theses or legal interests between the parties”[11]. A final example that we have in mind is the judgment of the ICJ in *the Land and Maritime Boundary Case* between Cameroon and Nigeria[12] which states that, „having the meaning accepted in its jurisprudence and in that of its predecessor, a dispute is a disagreement on a matter of law or fact, a conflict, an opposition of legal theses or interests between the parties”[13].

The notion of *dispute* should not be confused with the notion of *situation*. According to art. 34 of the UN Charter, *the situation* is a state of fact that „could lead to international friction or give rise to a dispute”. The dispute arises from a claim of a state against another state that refuses to comply with it.

Disputes vary widely in both their severity and nature. In public international law, they can be classified into *legal disputes* and *political disputes*.

Legal disputes are those in which the parties dispute a right. At the same time, these disputes may have as object, a misunderstanding between the states, regarding the existence, application or interpretation of a rule of law (for example: the interpretation of a treaty; any issue of international law; the existence of any fact, which, if established, would constitute a breach of an international obligation; the nature and extent of compensation due because of a breach of an international obligation)[14].

Theory of Human Rights Law, in The European Social Charter: A Commentary, vol. 1, Cross-cutting Themes, Koninklijke Brill NV, Leiden, 2022, p. 211).

[5] *Ibidem*.

[6] The judgment of 30.08.1924, *Affaire des concessions Mavrommatis en Palestine*, in Publications de la Cour Permanente de Justice Internationale, series A, no. 2, p. 11 (*https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_A/A_02/06_Mavrommatis_en_Palestine_Arret.pdf*, accessed on 04.10.2023).

[7] *Affaire du Cameroun septentrional (Cameroon v. Royaume-Unie)*, Exceptions préliminaires, judgment of 02.12.1963, ICJ Recueil 1963, p. 15 (*https://www.icj-cij.org/sites/default/files/case-related/48/048-19631202-JUD-01-00-FR.pdf*, accessed on 23.01.2024).

[8] *Idem*, p. 27.

[9] *Applicabilité de l'obligation d'arbitrage en vertu de la section 21 de l'Accord du 26 juin 1947 relatif au siège de l'Organisation des Nations Unies*, Advisory Opinion of 26.04.1988, ICJ Recueil 1988, p. 12 (*https://www.icj-cij.org/sites/default/files/case-related/77/077-19880426-ADV-01-00-FR.pdf*, accessed on 23.01.2024).

[10] *Timor Oriental (Portugal v. Australia)*, judgment of 30.06.1995, ICJ Recueil 1995, p. 90 (*https://www.icj-cij.org/sites/default/files/case-related/84/084-19950630-JUD-01-00-FR.pdf*, accessed on 23.01.2024).

[11] *Idem*, p. 99-100, para. 22.

[12] *Frontière terrestre et maritime entre le Cameroun et le Nigéria*, exceptions préliminaires, judgment of June 11, 1998, ICJ Recueil 1998, p. 275 (*https://www.icj-cij.org/sites/default/files/case-related/94/094-19980611-JUD-01-00-FR.pdf*, accessed on January 23, 2024).

[13] *Idem*, p. 314, par. 87.

[14] Art. 36 para. (2) of the ICJ Statute: „2. The states parties to this Statute may at any time declare that they recognize as *ipso facto* binding and without a special convention, in relation to any other state accepting the same obligation, the jurisdiction of the Court for all legal disputes having as object: a. the interpretation of a treaty ; b. any issue of international law; c. the existence of any fact that, if

Political disputes are those in which the contradiction has no legal ground, but represent claims that have no counterpart in positive law; the parties rely on extrajudicial considerations.

International disputes must be settled based on the sovereign equality of states and in accordance with the principles of free choice of means. The recourse to a settlement procedure or the acceptance of such a procedure freely consented to by States in respect of a dispute to which they are parties, or a dispute to which they may be parties in the future, cannot be regarded as incompatible with sovereign equality.

3. The principle of peaceful settlement of disputes

One of the particularities of public international law resides in the fact that it benefits from its own principles, different from the principles of law, known by the constitutional systems of states. It concerns those „legal constructions created around values considered important for international relations, (...) which govern the international conduct of states”[15]. These principles „arise through the tacit or express agreement of states, by customary or conventional means [and] have an imperative character”[16]. International relations are regulated through the principles of international law.

The fundamental principles of international law are rules of universal application, which means that they can be applied in all fields, as a result of the will of the overwhelming majority of states and have an *erga omnes* effect). They are characterised by maximum generality[17], in the sense that "they represent the abstraction of what is essential from the entire system of public international law, having a leading and dominant role for this system"[18]. At the same time, they have an imperative character (they are *ius cogens* legal rules), they are binding and they protect a fundamental value in the relations between the subjects of public international law.

Pursuant to *the Declaration on the Principles of International Law Concerning Friendly and Cooperative Relations between States, according to the United Nations Charter of 1970*[19], all states must „be inspired by these principles in their international conduct, and develop their mutual relations based on the strict observance of the above-mentioned principles”. Among the principles enshrined in the Declaration[20], there is also the principle of peaceful settlement of international disputes. Under this principle, states must settle their disputes by peaceful means so that peace, international security and justice are not endangered. Thus, states have the obligation to identify a fair settlement of their international disputes by resorting to one of the following means: negotiation, investigation, mediation, conciliation, arbitration, judicial settlement. They can also resort to regional bodies and agreements.

The parties to an international dispute have the obligation, should they fail to reach a solution through one of the peaceful means, to continue to seek a settlement of their dispute through other peaceful means upon which they shall agree. States involved in an international dispute, as well as other states, must refrain from any act likely to aggravate the situation, so as not to endanger international peace and security.

International disputes must be settled based on the sovereign equality of states and in accordance with the principles of free choice of means. The recourse to a settlement procedure or the acceptance of such a procedure freely consented to by States in respect of a dispute to which they are parties, or a dispute to which they may be parties in the future, cannot be regarded as incompatible with sovereign equality.

Enshrined in the 1970 Declaration, under the name of *the principle of peaceful settlement of international disputes*, the principle is also found in the *Declaration on the principles governing mutual relations between the participating states*, an integral part of *the Final Act of the Conference for Security and Cooperation in Europe, drawn up in Helsinki on August 1, 1975*. Thus, states „shall endeavour in good faith and in a spirit of cooperation to reach a swift and equitable solution based on international law.”

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established, would constitute a violation of an international obligation; d. the nature or extent of the reparation due because of the breach of an international obligation”.

[15] A. Năstase, B. Aurescu, *op. cit.*, p. 76.

[16] G. Geamănu, *Public International Law ...*, *op. cit.,* p. 126.

[17] «In respect of the term „general”, Franck Moderne raised the question on the degree of generality used in order to define a principle as being general - at the level of an institution, of a branch of the law or at the level of the entire legal order» (E. Anghel, *General Principles of Law*, LESIJ no. XXIII, vol. 2/2016, p. 120).

[18] A. Năstase, B. Aurescu, *op. cit*., p. 78.

[19] UN General Assembly Resolution no. 2625 (XXV) October 24, 1970, at the 25th (1970) jubilee session of the UN General Assembly.

[20] The declaration includes 7 fundamental principles, namely: the principle of non-recourse to the threat of force or the use of force; the principle of resolving international disputes by peaceful means; the principle of non-interference in the internal affairs of states; the principle of cooperation; the principle of self-determination; the principle of sovereign equality of states; the principle of fulfilling international obligations in good faith - *pacta sunt servanda*.

The obligation to settle disputes by peaceful means is the first rule to which the subjects of public international law must obey. It prohibits the use of force to enforce claims or settle disputes. Beginning with the Briand-Kellogg Pact, war, as a means of settling disputes, was prohibited. This obligation is the corollary of the prohibition to threaten or resort to force in order to settle international disputes, a prohibition which is expressly mentioned in art. 2 para. (3) of *the UN Charter*[21].

On November 15, 1982, the UN General Assembly adopted, in its session of 1980, held in Manila (Philippines), the *Manila Declaration on the Peaceful Settlement of International Disputes*[22], based on a text prepared by the Special Committee on the Charter of the United Nations and for Strengthening the Organization's Role. The declaration was developed at the initiative of the following states: Egypt, Indonesia, Mexico, Nigeria, Philippines, Romania, Sierra Leone and Tunisia.

According to point 2 of the Declaration, „all states must settle their international disputes exclusively by peaceful means, so that international peace and security and justice are not endangered". In accordance with the provisions of the Declaration, the settlement of disputes is achieved based on the sovereign equality of states and in accordance with the principle of free choice of means, complying with the obligations arising from the UN Charter and the principles of justice, respectively of public international law[23].

Throughout the duration of the dispute, the states parties must continue to respect in their mutual relations, their obligations under the fundamental principles of international law regarding the sovereignty, independence and territorial integrity of states[24]. Also, these States, as well as others not involved in the dispute, must refrain from any act likely to aggravate the situation to the point of jeopardising the maintenance of international peace and security[25] and making it difficult or preventing a peaceful settlement of the dispute.

Before addressing the Security Council or the UN General Assembly, in accordance with the provisions of the Charter of the United Nations, "states party to regional agreements or organisations shall make every effort to settle their local differences by peaceful means through such agreements or organisations".

Starting from the content of the Declaration, we can identify, both for the states involved in the dispute and for third states, a series of "correlative obligations, among which it should be noted: during the peaceful settlement process, the states party to an international dispute, like other states, must refrain from any act likely to aggravate the situation; since peaceful settlement has been established as a fundamental principle of international law, both parties have the obligation to settle the dispute peacefully; strict compliance with the principle of the freedom of parties to choose the modalities of this regulation is required; disputes must be settled in accordance with the principles of justice and international law"[26].

4. Means of peaceful settlement of disputes

The issue of the peaceful settlement of international disputes was discussed as early as 1899 and 1907, at the Hague Peace Conferences, but within the conventions concluded at those conferences, war, as a means of settling disputes, was not prohibited. It was only in 1928, through the Briand-Kellogg Pact, that military means of conflict resolution were recognized as illegal. Therefore, with the prohibition of interstate armed conflicts, peaceful dispute settlement procedures have become a fundamental principle of international law aimed at preventing and resolving conflicts between states, by peaceful means.

The settlement of disputes can be characterised by the existence of an obligation and a right, as follows: the obligation of the parties involved to settle disputes by peaceful means and the right (freedom) of choice of the parties regarding the method of settlement of these disputes.

[21] Art. 2 para. (3) of the UN Charter: „All Members of the Organization shall settle their international disputes by peaceful means, in such a manner that international peace and security, as well as justice, are not endangered."

[22] Endorsed by Resolution 37/10 (*https://documents.un.org/doc/resolution/gen/nr0/427/42/pdf/nr042742.pdf?token=bdFxEanoU xZ7bNeljm&fe=true*, accessed on 22.02.2024).

[23] Point 3 of the Declaration.

[24] Point 4 of the Declaration.

[25] We note that this obligation is not imposed only at the level of UN member states; it is also present in the regulations of the European Union. Thus, „maintaining peace and strengthening international security according to the principles of the United Nations Charter, as well as the principles and objectives of the Helsinki Final Act and the objectives of the Paris Charter, including those relating to external borders" is one of the objectives of the Union (A. Fuerea, *Dreptul Uniunii Europene. Principii, libertăți, acțiuni*, Universul Juridic Publishing House, Bucharest, 2016, p. 18).

[26] R.M. Beșteliu, *Drept internațional public*, vol. II, 2nd ed., C.H. Beck Publishing House, Bucharest, 2014, p. 2.

The peaceful settlement of disputes was first codified in the *Hague Convention for the Settlement of International Disputes* of October 18, 1907. Currently, this obligation is found in the UN Charter, in art. 33 para. (1). Thus, „the parties to any dispute, the prolongation of which could endanger the maintenance of international peace and security must seek to settle it, first of all, through negotiations, investigation, mediation, conciliation, arbitration, through judicial means, recourse to organisations or regional agreements or by other peaceful means of their choice".

According to point 5 of the Manila Declaration[27], states must seek in good faith and in a spirit of cooperation, a swift and equitable solution to their international disputes through any of the following means: negotiation, investigation, mediation, conciliation, arbitration, judicial settlement, recourse to agreements or regional entities or through other peaceful means chosen by them, including good offices. In seeking this solution, the parties will agree on peaceful means that are appropriate to the circumstances and nature of the dispute.

Therefore, states are free to choose the method of dispute settlement: through non-jurisdictional or jurisdictional procedures.

Non-jurisdictional procedures are represented by political-diplomatic means (negotiation, good offices, mediation, investigation and conciliation), while jurisdictional procedures include arbitration and institutionalised courts. Recourses to international organisations in order to settle the dispute, are also included in the jurisdictional procedures.

If by using one of the mentioned peaceful means, a solution is not reached, the parties to the dispute must identify a mutually acceptable means to settle the dispute peacefully.

States parties to a dispute have the obligation to refrain from any action that could aggravate the situation so as to endanger the maintenance of international peace and security and thereby make the peaceful settlement of the dispute more difficult.

5. Conclusions

The legal rules of public international law come from the will of the states, which is materialised in conventions or customs, generally accepted as enshrined and established legal principles for the purpose of regulating the coexistence of these independent communities or in order to pursue common objectives[28]. States have reached a consensus that whenever disagreements between them escalate into a dispute, it should be submitted to peaceful settlement. Art. 2 para. (3) of the UN Charter obliges member states to „settle their international disputes by peaceful means". Moreover, art. 33 of the Charter provides a list of ways (negotiation, mediation, arbitration, etc.) from which states can choose to settle disputes that, if left unsettled, would endanger international peace and security. International documents subsequent to the Charter, such as the Helsinki Final Act of 1975 and the Manila Declaration of 1982, contain legal rules confirming the willingness of states to accept the settlement of their disagreements by peaceful means. Currently, the settlement of international disputes by peaceful means represents one of the fundamental principles of international law, with significant character[29].

This guiding principle of international law aims at maintaining international peace and security, along with ensuring international justice, should these be endangered by unilateral armed attacks or multilateral aggression. It is universally applied, as result of the will of the overwhelming majority of states, and has *erga omnes* effect. Moreover, it has imperative character, being, therefore, a legal rule of *jus cogens*.

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[27] *Precited*.

[28] R.-M. Popescu, *Drept internațional public. Noțiuni introductive*, Universul Juridic Publishing House, Bucharest, 2023, p. 19.

[29] „Perhaps more than ever, humanity faces this reality: the obligation to identify legislative solutions for the time being as well as for future generations along the fine lines between law, ethics and morality. This is why the drafters of international legal instruments, which will subsequently be reflected in national legislation must show great wisdom in proposing those measures that safeguard the present as well as the future on the one hand and, on the other hand, that guarantee the existence of the rule of law" (E.E. Ștefan, *News and Perspectives of Public Law*, Athens Journal of Law, vol. 9, issue 3, July 2023, p. 395).

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