THE ROLE OF DIPLOMACY IN MAINTAINING PEACE: POLITICAL-DIPLOMATIC MEANS FOR THE PEACEFUL SETTLEMENT OF DISPUTES

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Abstract

Diplomacy plays an essential role in maintaining international peace, offering states – the main subjects of international law – a series of means for the peaceful settlement of disputes. This study analyzes the political-diplomatic means used in the management of disputes, such as negotiation, mediation, conciliation or good offices. The ways in which these instruments can be applied in practice and their effects on international relations are examined, by highlighting their limits.

Keywords: *the peaceful settlement of disputes, negotiation, good offices, mediation, international inquiry, international conciliation.*

1. Introductory aspects

The peaceful settlement of disputes was first codified in the *Hague Convention for the Settlement of International Disputes* of 18 October 1907. This obligation is now found in the UN Charter, in art. 33 para. (1). Thus, „the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security shall first of all seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, recourse to regional organizations or arrangements, or other peaceful means of their own choice".

Under art. 5 of the Manila Declaration[1], „States shall seek in good faith and in a spirit of cooperation, a prompt and equitable solution to their international disputes, by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, recourse to regional arrangements or entities, or other peaceful means of their own choice, including good offices. In seeking such a solution, the parties shall agree on peaceful means 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.

The non-jurisdictional procedures are represented by political-diplomatic means (negotiation, good offices, mediation, inquiry and conciliation), while the jurisdictional procedures include arbitration and institutionalized courts. The recourse to international organizations in order to resolve the dispute is also included within the jurisdictional procedures.

The use of political-diplomatic means is a way by which states parties to a dispute resort to diplomatic channels in order to resolve their disagreements.

The political-diplomatic means of settling international disputes are characterized by the fact that they facilitate an agreement between the parties, which is not binding on them, the emphasis being on their „formal position before the law"[2]. The political-diplomatic means are flexible, and the parties to a dispute exercise full control over these procedures. These means include negotiation, good offices, investigation and conciliation.

2. Negotiation

Negotiation is considered to be the simplest method and, perhaps, the only universally accepted means of settling a dispute. It is also considered to be „the natural method of diplomatic exchange and, as such, in certain cases, negotiation constitutes a necessary first step before the parties decide to resort to other procedures to settle their dispute"[3]. The states involved in a dispute agree to establish a meeting between their

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[1] Approved by Resolution 37/10 (available at *https://documents.un.org/doc/resolution/gen/nr0/427/42/pdf/nr042742.pdf?token=bdFxEanoUxZ7bNeljm&fe=true*, accessed on 25 February 2025).

[2] A. Kaczorowska, *Public International Law*, 4th ed., Routledge, New York, 2010, p. 622.

[3] *Idem*, p. 623.

representatives, with the aim of settling, in good faith, their dispute. Negotiation helps to clarify the situation of conflictual nature.

The negotiation process does not require the intervention of a third party to act as an arbitrator, and the parties make compromises and reach a conclusion themselves. Negotiation usually takes place in secret, sometimes on the territory of a third state. „The aim is to avoid the influence of public opinion and the action of the mass media in order to facilitate a transaction regarding the positions that generated the dispute"[4].

Negotiations can be bilateral or multilateral. In the latter case, they often take the form of conferences. Negotiations take the form of oral discussions accompanied by written documents, being more than a simple deliberation and, therefore, can lead to a solution agreed by the parties. They exchange views on the various mutual proposals presented during the negotiations and conclude their work by drawing up an understanding, the clauses of which define the conditions for the settlement of the dispute. In relations between states, there is the practice of inserting into the content of treaties, a clause providing the need for prior negotiations. Under this provision, the parties undertake to initiate negotiations with the purpose of settling the dispute, before resorting to other means of dispute settlement. „From a legal point of view, doctrine and practice consider such provisions as sources of an obligation of conduct, but not as sources of an obligation of result"[5].

Negotiation is the precursor to other settlement procedures, as the parties decide among themselves how to best resolve their differences. It is useful even though a settlement is not reached, as complicated disagreements can be clarified. Through mutual discussions, the essence of the differences will be identified and opposing arguments elucidated. However, negotiations do not always succeed, as they depend on a certain degree of mutual goodwill, flexibility and sensitivity. Practice shows that there are situations in which States provide in treaties for recourse to procedures involving the intervention of third parties in the event of failure of negotiations. The International Court of Justice has stressed that „neither in the Charter nor in international law is there any general rule under which the exhaustion of diplomatic negotiations constitutes a prerequisite for a matter to be submitted to the Court"[6] for settlement.

If, as a result of negotiations, the parties do not reach an agreement, the negotiation process may be postponed or a declaration may be drawn up, stating that the negotiation was ineffective. One of the advantages of negotiation is that it can be resumed when the parties are prepared to try again to reach a settlement to their dispute.

The value of negotiation as a method of settling international disputes has been recognized by both the Permanent Court of International Justice (PCIJ) and the International Court of Justice (ICJ).

3. Good offices

Good offices are a method of dispute settlement in which a neutral third party, of high reputation and respectability, due to its credibility, seeks to influence the parties to make efforts for a negotiated settlement of the dispute. Art. 33 of the UN Charter does not mention good offices among the means of dispute resolution.

Good offices „may be offered by third parties or requested by the parties to a dispute. In order to engage in activities of good offices, the third party needs the consent of the parties"[7]. The consequence of this aspect is that good offices, as a means of peaceful dispute settlement, are optional. Only states that are not involved in the dispute have the right to grant good offices.

The role of the third party that offers good offices is materialized in activities such as determining the parties to the dispute to resort to negotiations or offering advice that will lead to the cessation of resentment between them. The third party exercises its moral influence to ensure that the parties negotiate their claim, in a fair and equitable manner[8].

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[4] M. Deyra, *Droit international public*, 6th ed., Gualino, 2018, p. 153.

[5] R. Ranjeva, Ch. Cadoux, *Droit international public*, EDICEF, Paris, 1992, p. 227.

[6] ICJ judgment from 11.06.1998, Land and Maritime Boundary between Cameroon and Nigeria, Recueil 1998, p. 303 (available at *https://www.icj-cij.org/sites/default/files/case-related/94/094-19980611-JUD-01-00-BI.pdf*, accessed on 22.02.2025).

[7] A. Năstase, B. Aurescu, *Drept internațional public. Sinteze*, 9th ed., C.H. Beck Publishing House, Bucharest, 2018, p. 314.

[8] Examples of good offices: the Secretary-General of the United Nations offered in 2011, his good offices in an attempt to resolve the Anglo-Argentine dispute over sovereignty over the Falkland Islands, 19 years after the armed conflict that opposed the two states; Norway offered its good offices in 1993 to facilitate secret talks, which took place in Norway, between the Palestine Liberation Organization and Israel, which ended with the signing of the Oslo Accords (the Oslo Accords were signed at the White House, but were named after the capital of Norway, where the secret negotiations took place); the President of the United States offered his good offices in the Russo-Japanese War (1904-1905). The treaty ending the war was signed at the Portsmouth Naval Base in New Hampshire on September 5, 1905. President

The parties to the dispute may accept or refuse the offer of good offices made by the third party that may or may not respond positively to the requests made to them.

Good offices are not intended to provide a solution. They represent a diplomatic procedure, the essential purpose of which is to facilitate the resumption of dialogue and negotiations between the parties; the third state offering its good offices does not participate directly in the dispute settlement mechanism. The effectiveness of the system consists in complying with a certain number of elementary requirements, such as the discretion and authority of the personality or institution called upon to offer its good offices. The impartiality of the third party is important because trust in its reliability is a necessary condition for establishing contact between the parties to the dispute.

The proposal to offer good offices is not considered, by either party to the dispute, as an unfriendly act; on the contrary, it is viewed as a friendly gesture.

4. Mediation

Mediation consists of the action of a third party which, at the request and with the consent of the parties to a dispute, strives to facilitate the resolution of the disagreement.

Often, good offices are transformed into mediation. This is possible because the third party has already been accepted by the parties to the dispute. Therefore, mediation can be an extension of good offices.

The mediator can be one or more states, an international organization or, exceptionally, a public or private personality.

The role of the mediator is to lead the parties to resume negotiations. It actively participates in identifying solutions by following the discussions, intervening to bring the points of view closer and, at the same time, proposing, if necessary, specific solutions. However, as in the context of good offices, the mediator has no decision-making power; the solutions accepted by the parties bind them alone and put an end to the dispute.

The mediator uses a variety of techniques to open or improve communication between the parties to the dispute in order to help them reach an agreement. It also uses various techniques to lead negotiations in a constructive direction and to help the parties find the best solution to settle their dispute. The focus is primarily on the needs, rights and interests of the parties. „The mediator should strive to make each party understand the point of view of the other and, at the optimal time, even propose concrete solutions that are likely to be accepted by the parties. However, the parties to a dispute are free to refuse the solution proposed by the mediator”[9].

The mediator's role ends when one of the parties to the dispute requests it or when the mediator itself becomes aware that its proposals are not accepted[10].

According to *the Guidance for Effective Mediation*[11], „an effective mediation process responds to the specific features of the conflict. Mediation takes into account the causes and dynamics of the conflict, the positions, interests and coherence of the parties, the needs of society, as well as the regional and international environments. Mediation is a specialized activity. Through a professional approach, mediators and their teams provide a buffer for the parties in conflict and instill confidence in the process, and the belief that a peaceful resolution is achievable. A good mediator promotes (...) listening and dialogue, generates a spirit of collaboration through problem solving, ensures that the negotiating parties have sufficient knowledge, information and skills to negotiate with confidence, and broadens the process to include relevant stakeholders from different segments of society. Mediators are most successful in helping the negotiating parties to reach agreements when they are well-informed, patient, balanced in their approach, and discreet”.

Compared to other means of peaceful dispute settlement, mediation has several advantages, namely: saving time and costs; mediation offers the parties a solution, which means that it is more likely to produce an outcome that is acceptable to all parties; as long as the outcome is the materialization of the parties' cooperation, being mutually acceptable, compliance with the mediated agreement is usually high; the parties

Theodore Roosevelt had accepted the request to offer his good offices for the resolution of the war, a service for which he would later be awarded with the Nobel Peace Prize, etc.

[9] A. Năstase, B. Aurescu, *op. cit.*, p. 314.

[10] Under art. 5 of the Hague Convention of 1907.

[11] ***, UN Guidance for Effective Mediation, UN, New York, p. 5 (Annex to the Report of the Secretary-General on Strengthening the Role of Mediation in the Peaceful Settlement of Disputes, Conflict Prevention - A/66/811, 25.06.2012 (*https://peacemaker.un.org/sites/peacemaker.un.org/files/GuidanceEffectiveMediation_UNDPA2012%28english%29_0.pdf*, accessed on 13.01.2025).

involved in mediation are willing to work together to find a solution, which is why they are more open to understanding the other party's point of view and working on the core issues of the dispute[12].

„Not all conflicts are amenable to mediation. There are several indicators that suggest the potential for effective mediation. First and foremost, the parties to the dispute must be open, trying to negotiate an agreement; second, the mediator must be accepted, credible and well-supported; and third, there must be a general consensus at regional and international levels to support the process. When an effective mediation process is hampered, other efforts may be needed to limit the conflict or alleviate human suffering, but there should be constant efforts to remain engaged, so as to identify and take advantage of possible opportunities for mediation in the future"[13].

There is a number of characteristics of the mediation identified in the specialized literature, which constitute, at the same time, advantages of this means of peaceful dispute settlement in relation to other political-diplomatic means. Thus[14]: mediation saves time and costs; in mediation, no one knows what happened except the states involved and the mediator; mediation is more likely to produce an outcome that is acceptable to all parties; because the outcome is the result of the parties' cooperation and is mutually acceptable, compliance with the mediated agreement is usually high; the parties to mediation are usually willing to work together to find a solution. As a result, the parties are more open to understanding the other party's point of view and working on the core issues of the dispute. This has the added advantage of frequently preserving the relationship that existed before the dispute; the mediator serves as an impartial facilitator, guiding the parties through the process. The mediator helps the parties to think outside the box to expand the range of possible solutions.

5. International inquiry

The UN Charter lists *the inquiry* among the methods of peaceful settlement of international disputes. It is currently used together with other methods of dispute settlement, because, in its original form, as an independent method of dispute settlement, the inquiry is no longer of real interest to the parties involved in a dispute[15]. In this form, the inquiry is appreciated for its effectiveness. In some situations, it is even mandatorily required in order to establish the facts in a dispute.

One of the most common obstacles to the successful settlement of disputes in public international law is the establishment of the facts, since it has been observed that the opinions expressed in the dispute are very different. Most international disputes remain blocked due to the lack of will and the inability of the parties to agree on the facts that formed the basis of the dispute. Therefore, the identification of the real issues that led to the emergence of the dispute represents an obstacle that prevents the negotiations from being successfully resolved.

The importance of the inquiry, as a means of resolving disputes, lies in the fact that it is concerned with the objective identification of facts, the knowledge of which will ultimately help the dispute resolution process[16]. The purpose of the investigation is to facilitate the resolution of disputes that are based mainly on a difference of opinion on the „facts".

Under art. 9 of the Hague Convention for the Peaceful Settlement of International Disputes, of 1907, „in international disputes which involve neither honor, nor essential interests and which arise from a difference of opinion on the facts, the Contracting Powers consider it useful and desirable that the parties, that have been unable to reach an agreement through diplomatic channels, should establish, in so far as circumstances permit, an international commission of inquiry, responsible for facilitating the settlement of such disputes by clarifying, through an impartial and conscientious examination, the questions of fact". Starting from this provision, we can define international inquiry as the method used for „the elucidation of highly controversial matters forming the subject of an international dispute, by a commission designated for this purpose by the parties to the dispute or

[12] According to T.P. Ol, United Nations' Provisions for Pacific Settlement of International Disputes, Acta Universitatis Danubius. Relationes Internationales, vol. 14, no. 2/2021, p. 89.

[13] *Ibidem*.

[14] *Ibidem*.

[15] T.P. Ol, *op. cit.*, p. 90.

[16] ***, Peaceful Settlement of Disputes, Asian-African Legal Consultative Organization, p. 11 (available at *https://www.aalco.int/59thsession/Final%20Peaceful%20Settlement%20of%20Disputes%20on%2011.10.2021.pdf*, accessed on 13.01.2025).

by an international organization, the conclusions of which are of optional nature"[17]. Therefore, the parties to a dispute, in the event that they have failed to reach an agreement through diplomacy, should establish an International Commission of Inquiry to facilitate the resolution of these disputes, by elucidating the facts through a conscientious and impartial investigation.

The international investigation is carried out by an independent commission which, in addition to identifying the facts, evaluates the evidence in order to provide a legal view of the problem. In this way, the Commission of Inquiry has both an executive and a judicial role[18]. The international Commission of Inquiry is established by the parties to the dispute, based on the agreement between them. The agreement by which the international commission of inquiry is established may be prior to a dispute and contained in a special bi- or multilateral treaty which provides for international investigation as a peaceful means of settling disputes that may arise between the contracting parties[19]. Under Art. 10 of the Hague Convention of 1907, the agreement specifies the facts to be examined and establishes the method and time frame for the formation of the Commission, as well as the scope of the commissioners' powers.

The Commissions of Inquiry are composed of an odd number of members, called commissioners, who may be nationals of the States parties to the dispute, but also of third States. The commission of inquiry must be made up of „reputable observers" whose task is to identify and objectively describe the circumstances of a particular factual situation that gave rise to the dispute[20]. The commissioners are elected and carry out their mission as specialists, and not as representatives of the States. Under art. 14 of the Hague Convention of 1907, the parties are also entitled to appoint special agents to the Commission of Inquiry, with the task of representing them and serving as intermediaries between the latter and the Commission. In addition, they are authorized to instruct the advisers or lawyers designated by them to present and defend their interests before the Commission.

The Commission may, with the consent of the parties, travel temporarily to places where it considers it useful to use this means of information or delegate the travel to that place to one or more of its members. The temporary presence of the Commission on the territory of any state is possible only after obtaining the authorization of the state on the territory of which the information is to be identified[21].

The deliberations of the Commission shall be held behind closed doors and shall remain secret. Any decision shall be made by a majority of the members of the Commission. Any decision of the Commission shall be adopted by a majority of votes. The result of the investigation shall be recorded in a report, limited to the establishment of the facts and without being binding on the parties. The parties to the dispute shall retain complete freedom in the use of the findings in the report[22].

6. International conciliation

International conciliation is a „method of regulating international disputes of any nature, in which a commission, established by the parties, either permanently or for a specific situation, as a result of a dispute, proceeds to an impartial examination and endeavors to define the terms of an arrangement, likely to be accepted by the parties, or grants the parties any assistance that may be requested for the purpose of regulation"[23].

According to the *European Convention for the Peaceful Settlement of Disputes* of 1957, all disputes between the states parties to the Convention may be submitted to international conciliation, with the exception of disputes that, according to the convention, must be submitted to judicial resolution[24].

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[17] Alex. Burian (editor-coordinator of the edition), Drept internațional public, 3rd ed., revised and added, „Elena-V.I." LLC Typography, Chișinău, 2009, p. 631.

[18] ***, Peaceful Settlement of Disputes, *op. cit.*, p. 12.

[19] According to O. Bontea, *Theoretical and Practical View of international Investigation and Conciliation*, in National Law Magazine no. 11/2007, p. 52.

[20] M.N. Shaw, *International Law*, Cambridge University Press, Cambridge, 2008, p. 1020.

[21] Art. 20 of the Hague Convention of 1907.

[22] Under art. 35 of the Hague Convention of 1907.

[23] A. Năstase, B. Aurescu, C. Jura, *Drept internațional public. Sinteze pentru examen*, 5th ed., revised and added, C.H. Beck Publishing House, Bucharest, 2009, p. 350.

[24] Art. 4 para. (1) (the convention is available at *https://rm.coe.int/1680064586*, accessed on 14.03.2024).

According to the *Regulations on the procedure for international conciliation*, developed by the Institute of Public Law[25], the Conciliation Commission is notified by the parties to the dispute, according to the agreement between them. If the parties have not agreed on this subject, the referral may be made by a joint request of the parties or by a request addressed to the President by one of them, briefly indicating the subject of the dispute. Upon receipt of a unilateral request, the President shall ensure that it has been communicated to the other party and that the latter agrees to resort to conciliation. From the analysis of art. 5 of the 1957 Convention, it follows that, under this international legal instrument, there may be two types of international conciliation commissions, namely: *permanent conciliation commissions*, which are established prior to the dispute, and *the special conciliation commission*, which is established by the parties to the dispute, if they have not agreed to submit the dispute to the permanent conciliation commission.

Conciliation may take place only on the basis of an agreement between the parties, by means of which it is agreed that a third party should be appointed to investigate the dispute and to recommend terms for its settlement.

The Commission shall consist of five members. The Parties shall each appoint one Commissioner, who may be chosen from among their own nationals. The other three Commissioners shall be appointed by common agreement, from among nationals of other States. These three Commissioners shall be of different nationalities and shall not have their habitual residence on the territory of either Party or be in the service of the Parties[26].

If the Commission finds that the Parties are not in agreement on a matter of fact, it may proceed, either at their request or of its own motion, to consult experts, make on-site visits or hear witnesses. In the latter case, the provisions of Title III of the Hague Convention for the Pacific Settlement of International Disputes of 1907 shall apply, and international investigation may be resorted to.

At the end of its work, the Commission shall define the terms of an agreement which the Parties may accept. If the Parties accept the proposed agreement, a report reproducing its terms shall be drawn up. If the parties or one of them does not accept the agreement and the Commission considers it unnecessary to attempt to obtain the agreement of the parties on different terms of the agreement, a report shall be drawn up which, without reproducing the terms of the proposed agreement, states that the parties could not be reconciled.

The International Conciliation Commission is provided for in various international treaties as a means of peaceful settlement of disputes which may arise between States in connection with their application (for example, the International Covenant on Civil and Political Rights of 1966).

7. Conclusions

In conclusion, diplomacy plays an essential role in maintaining global peace, having the ability to resolve conflicts through peaceful means and to prevent them from escalating into violence. Political and diplomatic means for the peaceful settlement of disputes allow states to express their views and reach agreements that respect the rights and interests of all parties involved. Thus, diplomacy significantly contributes to conflict prevention, protecting international stability and security. At the same time, even if there are challenges and obstacles, the ongoing role of diplomacy is to provide a framework in which peaceful solutions can become a reality, strengthening international relations in the long term and promoting a global order based on cooperation and mutual respect.

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