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RESEARCH ARTICLE

NEGOTIATIONS AS A MECHANISM OF PEACEFUL DISPUTE RESOLUTION

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ABSTRACT

Solving of disputes through negotiations, in the past and so in present has a key place in international law and international relations. Main purpose of this paper is to explain negotiations as a mechanism of peaceful dispute resolution and providing a brief summary of the similarities and differences in respect to the arbitrage.

INTRODUCTION

The idea of peaceful dispute solving has a long history and many methods and ways of dealing with such disputes have been developed. Peaceful dispute resolution is the most critical and important question in this period of history. Resolving disputes as a precondition for preserving world peace and security is a fundamental institutional goal of the United Nations and other regional international organizations, which is just another confirmation of this fact. The fact that the International community is made of countries different in their social and economic structure, ideological, religious and other orientation, as well as in terms of other differences and numerous criteria, it is quite normal for their interests to conflict, misunderstand and disputes that can lead to collisions and conflicts. One of the tasks of the United Nations, expressly referred to in article 1, paragraph 1, is to use peaceful mechanisms, and according to the principle of justice and international law, to regulate and resolve international disputes or situations that may lead to disturbance of peace and security.

Direct diplomatic negotiations: Direct diplomatic negotiations that imply a procedure by which disputed countries are attempting to find a solution - inter, are by exchanging opinions between their authorized representatives - are first and most common used manner of peaceful resolution of disputes. It is a mechanism used more frequently than any other means of peaceful resolution of disputes. Often, negotiations are only mechanism used, but not because this is the mechanism to be tried and often successful, but because countries believe its advantages are so great that they exclude other mechanisms even in situations where the chances for finding a solution are very small. The fact that it is a mechanism that can be used independently, in combination to another, and most often precedes all others, tends to be one of the most widespread and widely used mechanisms. When another mechanism is used for dispute solving, negotiations are never completely eliminated, example when appointing a conciliation commission, a survey, arrangements for reaching an arbitrage compromise or implementation of an arbitrage decision, etc., regardless that in one or another form the negotiations have a vital place in the international disputes. Basically, this mechanism is mostly used because the consent to negotiate oblige the countries to start, but without any obligation to reach a solution.

Consultations: When a government foresees that its decision or proposed policy could harm another country, bilateral talks may prevent a dispute because they create space for mutual adjustment.[1] The practical value of consultations is that they provide necessary information at an early stage, before anything happens. It is much easier to make a certain modification at the decision-making stage (decision making stage) than later, when such modification may be treated as external capitulation and subjectto fierce domestic criticism. Consultation differs from the two in its similar forms: notification (notification) and obtaining of prior consent (obtaining of prior consent). The advantages of consultations in bilateral relations are equally evident in multilateral relations, in international organizations. When two countries, usually neighboring countries, have established very close cooperation, it is possible to establish mechanisms for negotiation, consultation and coordination of both legislative and administrative enforcement measures, in particular on

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[1]Merils, J. G., Solving of international disputes, 4th – edition, Cambridge University, 2005, page 3

common interest issues, such as environmental protection, economy, trading, border security, etc. Consultations are usually conducted by the representatives of the Ministries of foreign affairs at various levels, but the practice of consultations between various ministries, parliamentary groups, etc. is becoming more frequent.

Forms of negotiations: Negotiations between countries usually take place through normal diplomatic channels, i.e. through the Ministries of Foreign Affairs. Alternatively, if the subject matter of the negotiations is specific, the negotiations are conducted by representatives of the various ministries, agencies and agencies responsible for the dispute. Negotiations usually begin with one party announcing its position and usually continue with exchanging statements, highlighting proposals and counter-proposals. In the case of problems that are frequent or often repeating or in situations that require continued supervision, countries may decide to institutionalize negotiations by creating so-called mixed or joint commissions. Neighboring countries often create such mixed commissions that deal with issues such as establishing and border demarcation, border incidents or other common interest issues. They may have broader jurisdiction with unlimited duration, so-cooled permanent or one-time purpose or so-called ad hoc mixed commissions. If negotiations through established mechanisms prove to be unproductive, for their unblocking is usually approached toward the Summit of heads of states or governments or foreign affairs ministers. This summit diplomacy may move things around and move the bureaucracy in desired direction, but is often approached once the work is either at its end or is already completed, and the desired result is already secured. The greatest weakness of summit diplomacy in respect to conventional negotiations can be attributed to glam or and publicity, excessive expectations, brave and pre-optimistic statements that may later be difficult to achieve.

Limitations of negotiations: Serious disputes often force countries to terminate diplomatic relations, and negotiations are usually impossible if the parties to the dispute refuse to have any contacts, either official or unofficial. In order negotiations to be possible and successful, the parties must believe that the benefit shall be greater than the potential harm. If their interests and positions are diametrically opposed, negotiations with the result that one party should completely or largely retreat from its original position are hardly acceptable.

A serious deficiency of negotiations is the use of influence and power in international relations. Thus a country with a completely unfair claim, using its influence deriving from its power, can secure a favorable solution through negotiations. The party that possess such an advantage, it is normal to insist to negotiations, where it will be easier to use its power in the desired direction, on the contrary to a court procedure where the weaker party shall feel more comfortable, more secure and at least formally equal. Negotiations that actually present giving proposals and counter-proposals in order the parties to meet and reach consent (compromise), of which both shall be satisfied (a situation where there are only winners and not losers), can be strongly influenced not only by the domestic but also by the international public. The element of giving and taking that is in the core of successful negotiations and is the basis of compromise can be under tremendous pressure if the process is followed at every step, primarily by the domestic interest groups, but not least by international interested parties. Another problem arises when one of the parties uses propaganda, which can make serious proposals doomed to failure.

Similarities and differences between arbitrage and negotiations: The negotiation technique is quite simple, in negotiations participate only the disputing parties and often there is a lack of objectivity. The most important difference is that in the arbitrage, in the procedure, the dispute is settled by representatives of the parties to the dispute and a certain number of neutral arbitrators selected mutually by the parties, while at the negotiations only representatives of the parties to the dispute are involved. Another important difference is that at negotiations the result is not necessarily specific, they can be interrupted and continue without a final resolution, they can be useful in overcoming differences in certain parts of the dispute, while the arbitrage has as a final result verdict that provide an answer to the questions raised by the disputed parties, which is subject to mandatory enforcement in "good faith".

Conclusion

From the all above-mentioned it can be concluded that disputes are an unavoidable part of the international relations such as disputes between individuals are unavoidable in internal relations, so with the emergence of the idea of peaceful dispute resolution which subsequently contributed to creation of funds for peaceful dispute resolution is a new era, where the violent manner of dispute resolution is completely materially and formally prohibited. When the parties want to keep then control of the dispute, to have the opportunity to accept and reject the proposed solution, they approach to diplomatic mechanisms for resolving their disputes, and if the parties expect a binding solution they approach to judicial or legal remedies. Parties in one dispute most often use negotiations for resolving their disputes as they allow them to keep the dispute under control without third party influence. Regarding the relation of the arbitrage to the other mechanisms of peaceful dispute resolution, certain similarities and differences can be identified, which characterize the specificity of each dispute resolution instrument. Considering the relationship between negotiations and arbitrage, a lack of objectivity can be established, i.e. lack of an objective third party involved in resolving the dispute.

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