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JURISDICTIONAL MEANS OF RESOLVING INTERNATIONAL CONFLICTS

Narcisa GALES[1], Dumitrița FLOREA[2], Loredana TEREC-VLAD[3]

Abstract

Starting from the quasi-general expression of International Rule of Law, we note that the emergence and diversification of international jurisdictions contributes to increasing the role of international law in the contemporary international community, as well as to maintaining the international legal order. We agree with the doctrines that international justice made up of the jurisdictional and arbitral courts is an important way of applying the norms of international law, of influencing the development of international law and of strengthening the international public order. According to art. 33 paragraph 1 of the UN Charter, the judicial means of dispute resolution represent arbitration and the judicial path, together with negotiations, mediation, conciliation, investigation or recourse to regional organizations or agreements. Analyzed from the terminological perspective, the expression "international jurisdiction" means a set of arbitration or judicial bodies established by the agreement between states or other subjects of international law, in order to resolve any international differences. The role of international courts is, among others: to resolve international disputes, to interpret international law, to apply existing international law, to identify existing international law and new customary norms, to influence the process of creating international law, to carry out the function of international law for the ordering of international relations.

The process of establishing the common will of the states, expressed in the principles and norms of international law, is an arduous, difficult one, in which the most contradictory interests of the participating states are often confronted. The fundamental principles of contemporary international law that must govern the relations between all the states are called to constitute the substance of international relations, an essential component of an international, political and economic order. Their strict respecting is the sine qua non condition of world peace and security, the democratization of international relations. Against this background and in the current international context, when the political-military events have multiplied with unpredictable and dangerous effects for the

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world security, a special importance in their peaceful resolution as a legal institution of international law, is negotiated as the main means of settlement of international disputes.

Keywords:
International jurisdiction; law; conflicts.

JEL classification: K33.

I. Introduction

We live in a society in which knowledge, truth, communication, etc., come first. Nowadays, we must face some challenges, given to the fast development of technique and technology [1: 79-89], of interpreting reality from the perspective of some subjects such as sociology, psychology or of theories such as social construction[2: 119-129] and constructionism. In this context, the national and international legislation is lined up to the evolution of technique and technology by drafting laws that protect the individuals [2: 119-129].

In the context of the current international relations undergoing radical change, public international law is in a period of accentuating its humanitarian character and in continuous development. International law must be a legal guarantee of international peace and security, of cooperation between states and peoples [3: 75-82]. The necessity of achieving a unanimously accepted international legality is impetuously necessary and signifies the good knowledge of the norms of international law, both in the diplomatic circles and within the member states of the international community.

The continuous expansion, deepening and diversification of the relations of international collaboration between the nations of the world have determined, over the last two decades, in particular, an unprecedented increase in the number of international treaties, agreements and conventions, as bilateral or multilateral legal instruments through that the states define their mutual rights and obligations, or establish rules and principles of conduct valid for the international society as a whole, brought together under the empire of what we call international relations [4: 17-23]. These international relations face different states such as military power, economic power, political regions, level of development. Therefore, these relationships can lead to conflicts of interest, sometimes even dramatic ones, as we have recently observed in the case of the conflict between Russia and Ukraine, Syria or in the former ones from Libya, Tunisia, Egypt and beyond.

An explanation for some conflicting aspects of international life may lie in the different views of states, sometimes subjective on the nature and evolution of international relations, aspects that may affect their behavior internationally. The action of forces with interests contrary to Europeans, exponents of the policy of spheres of influence, of perpetuating relations of political inequality and economic subordination, especially in the current international context, with direct reference to the Arab or Russian area, should not be ignored.

II. The principle of peaceful settlement of international disputes

The principle of peaceful settlement of international disputes and the various procedures of international law for its implementation, have undergone a wide historical evolution. The idea that differences between states can also be resolved by peaceful means, not only by wars, has arisen since ancient times, when it is known that between Greek cities there was ad-hoc or permanent arbitration, as a peaceful means of resolving differences between amputations.

In the requirement that international disputes be resolved by peaceful means, the legal (international law), international morality and foreign policy issues are brought together. In this spirit, George Sofronie wrote: "The commandments of the international legal norm are in perfect agreement in this matter with those of international morality, from which the law of the people inspires, and to which states must strive, as with those of international politics" [5: 15]. Until 1928, when the "Briand-Kellog Pact" was adopted in Paris, settling international disputes peacefully was not a fundamental principle of international law. This way of settling international disputes was regulated only as an alternative to the military solution, which states could resort to before the war began. The peaceful settlement of international disputes appeared as a subsidiary way to the war and was used sporadically.

The emergence of this organic principle is linked to another fundamental principle of contemporary international law - the principle of non-aggression - enshrined for the first time in the Paris Pact. The connection between these two principles was also highlighted in the Helsinki Final Act of 1975, which shows that "peaceful settlement of disputes is complementary to non-resorting to force or threat to force, both of which are essential, though not exclusive, elements of maintaining and strengthening peace and security".

In the relations between the states, as well as in the relations between other subjects of international law, opposite interests, misunderstandings or

litigious problems may arise. In order to designate different states of misunderstanding that can arise in international relations, the specialized literature and the documents in the matter use a varied terminology, with concepts such as: situation, dispute, litigation, conflict, crisis, etc. We mention that these terms are used in relation to the severity of the misunderstanding and its implications on the relationships between the topics in question. The notion with the broadest acceptance, which includes all the others, is that of "dispute".

In its broad acceptance, the notion of dispute refers to a misunderstanding, disagreement or dispute between two or more states regarding a right, claim or interest. Obviously, not any agreement or disagreement between states ends up being the form of a dispute that involves the formation of well-defined opposing positions. Therefore, the existence of a dispute between states is marked by the formulation of divergent claims or opinions (protest or declaration) regarding a problem that the respective states face. In international law, the notion of dispute was first defined by the Permanent Court of International Justice in its judgment of August 30, 1924 (Mavronatis Affair) as follows: "A dispute is a disagreement over a question of law or in fact, a contradiction, an opposition of legal theses or interests". The Dictionary of Terminology of International Law defines the international dispute as "the dispute between two or more villages or, in general, two subjects of international law". International disputes arise not only between states but also between states and international organizations, or between international organizations.

In the doctrine of international law, in international acts, the differences are classified by their nature in:

- legal disputes;
- political differences.

a) The legal disputes

Legal disputes are those in which claims of law are opposed (for example, the claim of one party to a right established by another party: the invocation by one party of an obligation incumbent on another party, which challenges the existence of this obligation).

Charles Rousseau defines legal differences as those differences in which the parties disagree on the application or interpretation of existing law. The statute of the International Court of Justice indicates as legal differences, the following:

- interpretation of a treaty;
- any problem of international law;

• the existence of any fact that, if established, would constitute a violation of an international obligation [6] [4].

b) Political differences

Political disputes consist of an opposition of interests without challenge of law or which is superimposed on a prior challenge of law, a demand for advantages, with or without supporting the contrary, which fails by a refusal or resistance, at least in part, a contested request which seeks to modify the existing legal situation, by invoking the political opportunity, unilateral or mutual convenience, equity [7] [5].

The differentiation between the two categories of differences is relative. For international jurisdiction, all international disputes are legal in nature, the only question that arises is whether or not the applicant's claims can be satisfied by applying the positive law. Regarding this notion often used in international relations, that of "international situation", we just state that it is provided by the UN Book in articles 1, 34 and 35 - it represents "a state of affairs in a country or region, which endangers international peace and security and which can be transformed into an international dispute" [8: 22]. Therefore, between international differences and international situations there is only a difference of degree, not of essence.

Within the framework of contemporary international law, a system of peaceful means for the settlement of international disputes has been set up, to which the states or its other subjects may resort. We mention here an important rule in this area, namely that according to which the states freely choose and based on the agreement between them the peaceful means to which they resort to resolving a dispute arising between them. These represent the sovereignty of states and their equality in rights. There is also an exception to this rule, in the sense that states can establish, on a conventional basis, that they will resort to a certain peaceful means to resolve the differences between them. Thus, the many international multilateral treaties stipulate that the differences arising between their contracting parties regarding the interpretation of the treaty, will be submitted to the International Court of Justice for their resolution. The abolition of the use of force and the threat of force in international relations implicitly determines the peaceful settlement of international disputes. The

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[4] See art. 36, pct. 2 of the Statute of the International Court of Justice.

[5] According to the Dictionary of International Law.

contradictory nature of the contemporary world, the complexity of the accumulated political, economic and social issues, as well as the persistence of outdated international relations and structures, may facilitate or cause the emergence of international disputes, conflicts between states, as we have already seen in practice (for example, conflicts in Egypt from 2011 and 2013, Libya 2011, Morocco 2011, Ukraine 2014-2016, Syria 2015-2018). In the context of the special destructive force of the accumulated weapons, the only rational alternative in the event of conflicts arises is their peaceful settlement. Analyzing the international conflicts that have taken place since 1945 and so far we can see that the vast majority of them have been resolved through peaceful means, which can no longer be achieved.

III. International arbitration

International arbitration, representing a jurisdictional means of resolving disputes, consists in resolving a dispute between states by a person or commission, appointed by the parties, and whose decision, according to the prior decision between the parties, is mandatory. The institution of arbitration, with its roots since ancient times, is developing in the modern period, so that, up to the Hague Conference of 1899, 255 conventions were adopted for the creation of arbitrary tribunals and over 100 conventions providing for the resolution of the dispute by the way. arbitration. The Conventions of 1899 and 1907 in The Hague also regulated the arbitration procedure, providing also for the establishment of a Permanent Court of Arbitration, which is still operating in The Hague, and consists of three bodies: the Permanent Administrative Council, the International Bureau and the Court of Arbitration itself. The court itself is not a permanent institutionalized body, but is formed in each case by the choice of an arbitrary body by the States Parties to the dispute, from a list of personalities with recognized competence, designated by each State party to the Convention.

The activity of this arbitration court, the Permanent Court of Arbitration, is quite small. Apart from this Permanent Court, the States Parties to the dispute proceed to the creation of ad-hoc arbitrations, on the way to conclude a special agreement called compromise. It aims at the concrete dispute that has arisen between the parties and as such defines the dispute, designates the arbitration body, establishing its competence, sets the rules of procedure and can also determine the applicable substantive rules. As a rule, international law applies, but the parties may decide otherwise, for example, to apply the rules of national law of one of the parties to the dispute [9: 247].

The consent to resort to arbitration is expressed either by the compromise clauses included in certain treaties (trade, navigation, bank loans) or by the conclusion of arbitration treaties. At the conclusion of these arbitration treaties, the states also provide for the limiting clauses, excepting from the submission of the arbitration the differences that bring about the attainment of vital interests, the honor or the independence of the state. The arbitration procedure has two phases: written and oral, which includes the administration of evidence and the support of the representatives of the parties. The arbitral sentence is mandatory and must be enforced by the parties who have resorted to arbitration and have committed to enforce it [10: 346]. An arbitrary sentence can be annulled for certain vices: if the arbitrators have exceeded their powers, if one of the parties has not been listened to and could not present their defenses and evidence, if the sentence was given under the influence of the constraint, if the composition of the arbitrary body it was irregular, if there was no valid arbitration or compromise treaty.

IV. International justice

The most important classic court of international law with general competence is the International Court of Justice, which represents one of the 6 main organs of the UN, together with the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, and the Secretariat. According to art. 92 of the UN Charter, the ICJ is the main judicial body of the United Nations. The Statute of the International Court of Justice is an integral part of the Charter of the United Nations. All UN members are *ipso facto* parties to the Statute of the Court. A non-member state may become a party to the Statute of the Court under conditions determined by each case in part by the UN General Assembly on the recommendation of the Security Council (the conditions were first established by the General Assembly on December 11, 1946 by Resolution 91 (I)). These conditions refer to: the acceptance by the requesting State of the provisions of the Statute, of all the obligations of a UN member in accordance with art. 94 of the Charter and assuming the obligation to contribute to the expenses of the ICJ with a fair amount established periodically by the General Assembly which consults with the government of the state concerned. The date on which the requesting State becomes a party to the statute is the date of submission to the Secretary-General of the UN of the instrument of acceptance of these conditions [11: 147]. The Court has a distinct institutional profile vis-à-vis all the other major organs of the United Nations, due to its legal nature and the role assigned by the

Charter, an aspect that results from the analysis of its competences and functions.

The Statute of the International Court of Justice was signed on June 26, 1945 in San Francisco and because it represents an annex to the UN Charter of which it is an integral part (Article 92 of the Charter), it entered into force with the UN Charter on October 24, 1945. The ICJ was elaborated on the basis of the Statute of the predecessor court, the Permanent Court of International Justice with formal changes. At the moment when Romania was admitted to the Organization, it made a declaration that any dispute would be submitted to the Court only with the consent of the parties to the dispute [8: 304]. On June 13, 2015, Law no. 137/2015 for the acceptance of the compulsory jurisdiction of the International Court of Justice, went into act, by which Romania made the following declaration: "*Romania declares that it recognizes as ipso facto obligatory and without special agreement, in relation to any other state that accepts the same obligation, that is, under the condition of reciprocity, the jurisdiction of the International Court of Justice, in accordance with the provisions of Article 36 (2) of the Statute of the Court, in relation to any dispute regarding facts or situations arising after the date of this statement, except:*

a) any dispute regarding which the parties concerned have agreed or will agree to resort to another method of peaceful settlement in order to obtain a definitive and binding decision;

b) any dispute with another State that has accepted the compulsory jurisdiction of the International Court of Justice in accordance with Article 36 (2) of the Statute of the Court less than 12 months before the application for a court case or in the case wherein this acceptance was made solely for the purpose of resolving a particular dispute;

c) any dispute regarding the protection of the environment;

d) any dispute regarding or in connection with hostilities, war, armed conflicts, individual or collective actions undertaken in self-defense or in the performance of functions in accordance with any decision or recommendation of the United Nations, the deployment of armed forces abroad, as well as and decisions regarding them;

e) any dispute that relates to or is related to the military use of Romania's territory, including airspace and territorial sea or maritime areas, where Romania exercises sovereign rights and sovereign jurisdiction;

f) any dispute regarding matters which, according to international law, belong exclusively to the national jurisdiction of Romania. This statement shall remain in force until the date of notification addressed to the Secretary-General of the United Nations, by which this declaration is withdrawn or modified, with effect immediately from the date of notification [12].[6]"

[6] The Law of Romania no. 137 of 06.06.2015 for accepting the compulsory jurisdiction of

With regard to this subject, the Romanian Ministry of Foreign Affairs declared that the entry into force of the law marks the final point of Romania's efforts regarding full anchorage in the jurisdiction of the Hague Court's jurisdiction, thus transmitting a clear signal that Romania is establishing its international relations on compliance. of international law". Romania is convinced that international relations must be founded on law. Romania firmly believes that international law is a value per se, not just an instrument of conduct in international relations. Therefore, full respect for international law is one of the most important pillars of Romania's foreign policy," said Bogdan Aurescu, at a conference on" The role of the International Court of Justice in promoting the rule of law in international relations"[7].

We note that international justice was established for the first time in 1920, through the establishment of the Permanent Court of International Justice (CPJI), as an autonomous institution outside the League of Nations. The CPJI ran from 1922 to 1940, was abolished in 1946 and examined 65 cases concerning the different interests of 30 states.

According to the UN Charter, with the creation of the organization, the International Court of Justice (ICJ) was established as the main body of the UN. His state is an integral part of the UN book, and the regulation approved in 1946 and subsequently amended, establishes detailed rules for organization and functioning. *The jurisdiction of the Court* is twofold: jurisdictional (contentious) and advisory. Only differences between states fall within the jurisdiction of the Court, international organizations being excluded. A State that is not a party to the Statute may accept the jurisdiction of the Court under the conditions set by the UN Security Council [10: 347]. The jurisdiction of the Court refers to the cases with which it is notified by the states, based on their consent, expressed by a compromise (special agreement) to accept the jurisdiction of the Court for a certain dispute. The jurisdiction of the Court may also be accepted by the inclusion of a jurisdictional clause in a treaty, or by a protocol to the treaty.

The statute of the ICJ establishes a modality of recognition as compulsory of the jurisdiction of the Court by the parties, based on a unilateral declaration, which can be made at any time and whose object is the

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the International Court of Justice http://www.legex.ro/Legea-137-2015-140816.aspx.

[7] The law for Romania's acceptance of the compulsory jurisdiction of the International Court of Justice entered into force on June 10, 2015. Mediafax Political Department, http://www.mediafax.ro/social/ legea-pentru-acceptarea-de-catre-romania-a-jurisdictiei-obligatorii-a-curtii-internationale-de-justitie-a-intrat-in-vigoare-14448376.

legal differences. These statements may be made reconditioned or reciprocally conditional on several states. Also, they may include reservations, such as: reservations regarding the issues which essentially fall within the national competence of the state making the reservation, or as regards the differences for which other regulatory methods have been provided.

As far as the applicable law is concerned, the Court will apply (in accordance with Article 38 of the Statute): the treaties, customs, general principles of law, and as auxiliary means, the judgments and the doctrine of the most qualified specialists, being able to solve a cause and according to equity, if the parties agree. The ICJ may be notified by notification of the compromise or by a request addressed to the clerk, indicating the object of the dispute and the parties. The parties are represented by representatives and may be assisted by counselors or lawyers. The procedure comprises two phases: written and oral, during which the memories, countermeasures, replicas and all the pieces and documents that the parties have are transmitted and, of course, witnesses, experts, lawyers, counselors of the parties are heard. The debates, usually public, are conducted by the president, in his absence by the vice-president, both elected by the Court for 3 years. Before submitting the substantive examination of the dispute, the Court may decide to take conservative measures to defend the rights of the parties or may examine the preliminary exceptions (especially those concerning the jurisdiction of the Court or those concerning non-exhaustion of diplomatic negotiations).

The *decisions* of the Court shall be adopted with the majority of votes of the judges present, in case of parity, the vote of the president being decisive. The decisions are motivated. Decisions are final and cannot be appealed, but their review may be required. In case of non-execution of the decision, the states concerned can refer to the Security Council, which will be able to decide the necessary measures for carrying out the decision of the Court.

The *advisory competence* consists in any consultation, without compulsory force, that the Court gives at the request of the General Assembly of the Security Council, of the specialized institutions authorized by the UN [10: 350]. States cannot request advisory opinions from the ICJ. In terms of efficiency, we recall that from 1946 until now the Court has been notified with numerous cases and has delivered a multitude of judgments, advisory opinions and procedural ordinances.

The ICJ continues to be aware of various causes such as: the Libya-Chad territorial dispute (October 1990), the East Timon dispute (Portugal - Austria - 1991), the dispute over the Guinea Bissau-Senegal maritime border

(March 1991), the dispute between Cameroon and Nigeria on the land and sea border (1998). It follows, therefore, that the international court is seized by more and more states from all parts of the world (Europe, Africa, America, Asia); some states such as Libya, the US, Iran, Portugal resorting to the Court with more disputes, others such as Bahrain, Chad, Finland, Qatar address the Court for the first time. At the same time, there is a continuous diversification of the litigations submitted to the Court, which have extended from territorial problems to air incidents, passage through straits, extradition and other disputes [9: 283]. All these illustrate the efficiency of the Court, and, in particular, the increase of the confidence of the states in international justice, which means a good beginning of the Court's return to its status as a "world court". Although in a different and limited area, they are indicated in international jurisdictions and international courts that judge litigation in the field of human rights and in other fields.

According to the *European Convention on the Protection of Human Rights* (1950), in 1959 a European Court of Human Rights was established, which has a rich activity. Thus, according to a statistic from 1991, the Court was notified with 250 litigation by individual persons, in the most diverse problems: the rights of the prisoners, the control of the telephones, the supervision of correspondence, property rights, etc.

Regarding interstate litigation, the only case concerns the methods of interrogating terrorist suspects in Northern Ireland. According to the American Convention on Human Rights (1968), the Inter-American Court of Human Rights operates. In other areas, the Court of Justice of the European Community was established, as well as the International Tribunal established by the 1982 Convention on the Law of the Sea, which has jurisdiction not only on differences between states but also on those involving international organizations, state and private companies. , as well as individuals. Thus, there is a tendency to develop and diversify judicial procedures in international law, as the most appropriate means of resolving international disputes.

V. Conclusions

The principle of peaceful settlement of international disputes applies to all conflicts that may arise in international relations and regardless of their severity. States in a dispute are obliged, in accordance with this principle, to resolve it peacefully, with due regard for their sovereign equality and in accordance with the principles of international justice. Therefore, the essential element of the content of the principle is the general obligation,

which lies primarily with the states, to resolve all international disputes only first peaceful means, without resorting to force.

From a technical, legal point of view, the content of the principle is expressed in the general obligation of states for peaceful settlement of international disputes and their right of free choice of means of resolution. From this results both the imperative character of the obligation of peaceful settlement of international disputes, as well as the optional character regarding the choice by the conflicting parties of the settlement procedure.

The freedom to choose the settlement procedure has a particularly flexible sphere, including not only the state's right to use any of the means of settlement, but also the right to return, after the conciliation, arbitration, or even international justice stage or resorting to international organizations, negotiations, good offices or mediation.

Throughout the entire process of peaceful settlement of disputes, as a condition *sine qua non* of the operation of this principle, the parties must comply with the obligations under the UN Charter, international law in general, and the principles of international justice.

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