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Observations Regarding the International Regulation of Mediation, as a Diplomatic Way to Resolve the Conflicts between States

Dan Alexandru Gună^{a,*}^a*Valahia University, Târgoviste, Romania*

Abstract

Mediation is one of the political-diplomatic ways which are the most frequently regulated but also used for resolving the international conflicts between states. It is regulated by the international conventions either in a distinct manner, or by referring to the category of peaceful methods to which it belongs. In the circumstances in which is distinctly regulated, mediation can be found along with reconciliation, good offices and inquiry, according to the model provided by article 33 of the U.N. Charter. Apart from the enumeration method, there are also (less frequent) situations in which mediation is separately indicated either as self-standing or together with good offices. In what the international organizations are concerned, it can be noticed that, apart from providing for mediation within their statute, efforts are made to organize a permanent professional basis for some structures specialized in using mediation throughout the process of resolving conflicts. The importance of mediation as a method to prevent and resolve disputes has been underlined when the U.N. General Assembly adopted a special resolution regarding this method, but also at the creation of a specialized body for mediation.

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Key words: mediation; resolution of international conflicts; U.N. Charter.

1. Introduction

The Romanian doctrine has defined meditation as the "action of a third party (state, organization or official person), of taking part in the peace talks which it usually leads, by examining the ground of the conflict and making proposals capable to offer a basis for settling it" (Geamănu Grigore, 1983, p.400).

Mediation has the following features:

* Corresponding author. Phd. Gună Dan Tel.: 0726093100.

E-mail address: gunadan@yahoo.com

- is a political-diplomatic method to resolve conflicts;
- is resorted to when a conflict cannot be settled by the parties and it represents in practice an extension of the efforts made by the parties to settle the conflict;
- involves the intervention in the conflict of a third party accepted by the other ones, that has the role to help the existing parties to resolve their conflict. In its essence, mediation constitutes a form of negotiation, involving an additional protagonist;
- has a triple optional character: on the one hand, it involves the acceptance, by the parties, of the peace attempts made by the mediator and his solutions, while on the other hand the acceptance, by the mediator, of the parties' demand to arbitrate (Malița, 1982, p. 94).
- is subject to extra-legal elements. The element of interest from the perspective of international public law is that the latter's fundamental principles are observed when applying mediation (Popescu, Chebeleu, 1983, p. 36).

Mediation, as method of dispute resolution, is regulated by public international law and also by national laws as extrajudicial procedure but the nature of the two regulations is different.¹

2. Observations regarding the international regulation

Mediation is regulated by the international conventions either in a distinct manner, or by referring to the category of peaceful methods to which it belongs. In many cases it is used a clause with a similar content: "should a conflict emerge between parties in relation to the enforcement or interpretation of a convention, the parties will attempt to settle that conflict by means of peace talks or other peaceful methods." This kind of regulation is encountered in the following circumstances: the Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes (article 22), the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (article 20), the UN Framework Convention on Climate Change (article 14), and so on.

In the circumstances in which is distinctly regulated, mediation can be found along with reconciliation, good offices and inquiry, according to the model provided by article 33 of the U.N. Charter. Many agreements use provisions such as: "should a conflict emerge between parties in relation to the enforcement or interpretation of the present convention, the parties shall attempt to resolve it by means of peace talks, inquiry, mediation, reconciliation, arbitration, international courts or any other peaceful method freely chosen." This form of regulating mediation can be found, for instance, within the international environment law typical to conventions such as: the Nairobi Convention (2007) on the Removal of Wrecks (article 15), the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships from 2009 (article 14), the International Convention from 5th October 2001 on the Control of Harmful Anti-fouling Systems on Ships (article 14), the FAO Agreement from 24th November 1993 to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (article IX), the Convention for the Preservation of the Southern Bluefin Tuna, signed in 1993, by Australia, Japan and New Zealand (article 16) and so on.

Moreover, mediation can be found regulated as mentioned before also in the economic international law typical to conventions such as: the WTO Agreement from Marrakech (article 5 of Annex 2), the CARICOM Treaty in its revised form from 2001, signed at Chacaguaramas (article 192), the Arusha Treaty from 30th November 1999 on the East-African Community (article 7), the A.S.E.A.N Protocol on Enhanced Dispute Settlement Mechanism from 2004 (article 4) and so on. Also, mediation is regulated by the international commerce agreements such as: the Free Trade Agreements between China-New Zealand, ASEAN-Korea, China-Costa Rica, Japan-Switzerland and so on. In the practice of the European Union, there can be noticed more thorough rules on the mediation applying to protocols aimed at resolving commercial disputes within the Euro-Mediterranean agreements concluded with Egypt, Algeria, Jordan and Morocco.

Apart from the enumeration method, there are also (less frequent) situations in which mediation is separately indicated either as self-standing or together with good offices. Such regulations can be encountered in the

¹ See for example: DIRECTIVE 2008/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2008 on certain aspects of mediation in civil and commercial matters, Romanian law 192/2006 regarding mediation.

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