A Summary of Alternative Dispute Resolutions

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Abstract

The article analyzes the main criteria, legal bases, and necessary conditions for the emergence of international arbitration jurisdiction and other alternative dispute resolution such as mediation and conciliation. This view requires a detailed discussion and analysis starting from the increase in the number of disputes of different subjects of law to the implementation of decisions in practice. The article aims to apply a comparative approach to these conflict resolution procedures. The article also highlights the importance of each of these alternative dispute resolution procedures, given the growing number of entities run by ADR today. In this way the peaceful means of resolving ADR conflicts deserve to be in the spotlight as they are making a special contribution to the consolidation and development of this branch of law. A special focus in the article is occupied by the doctrinal opinions of different authors regarding the nature of each of these tools, the advantages, the efficiency that they have separately as well in relation with each other, always referring to the relevant legislation. On the other hand, the principles of ADR procedures occupy an important place in the summary of this article.

Keywords: *ADR, mediation, conciliation, principles, convention, court, arbitration, arbitration clause, arbitration agreement, state, case, contract, international law, dispute.*

Introduction

The spread of internal conflicts, poverty and economic inequality, refugees and terrorists, and political disputes between nations have all combined to produce an unprecedented amount of interest and study focused on issues of international conflict resolution. The processes by which conflict resolution is achieved are both varied and complex.

According to article 2 of the UN Charter: All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. Article 33 of the United Nations Charter suggests a range of dispute settlement methods. Many of these methods are substantially non-judicial, for example, negotiation, enquiry, mediation, and conciliation. States can decide for themselves how to resolve their disputes peacefully. Approaches can be classified in terms of the participants in the process (unilateral, bilateral, or multilateral conflict resolution), or in terms of the modalities utilized (violent or nonviolent).[1]

An international legal order, as with any effective legal system, must have some rules regarding the settlement of disputes. These rules are particularly necessary in an international community where States are not equal in terms of diplomatic power, access to weapons or access to resources, and where there is the potential for massive

[1] Jacob Bercovitch; Richard Jackson, Conflict Resolution in the Twenty-first Century: Principles, Methods, and Approaches, University of Michigan Press, p.20, 2009.

harm to people and to territory.[2]

One of the strengths of alternative dispute resolution (ADR) has always been its adaptability. The capacity to adapt and to be adapted springs directly from the fundamental characteristic of all ADR disciplines as products of party autonomy.[3] If parties were not able to fit dispute resolution solutions to their needs and the necessities of their disputes, both commercial and private, then ADR would lose the better part of its attraction to a large portion of users. But while ADR is adapted in more beneficial ways, it must always ensure justice[4].

Arbitration

Arbitration, according to the definition of the commission of international law, is "a procedure for resolving disputes between states by means of a binding decision taken on the basis of law and as a result of a voluntarily accepted initiative".

The arbitration procedure was developed in some way by the diplomatic settlement process and represented an advantage towards a well-developed international legal system[5]. International arbitration was considered the most effective and equitable way of resolving disputes, where diplomacy had failed. In its modern form, it came out with the *Jay Treaty of 1794 between Britain and America*, which provided for the creation of mixed commissions to resolve legal disputes between the parties. The procedure was also used successfully in the 1872 *Alabama Claims* arbitration between the two countries, because of which Britain was forced to pay compensation for damages caused by a Confederate warship built in Great Britain. This success prompted further arbitration, for example the *case of Behring Sea and British Guiana and Venezuela* in the late 19th century.

Arbitration today is the most widely used judicial tool for resolving disputes, and even more so than the International Court of Justice (ICJ). Some of the reasons for States to choose arbitration over settlement by the ICJ or by ADR, are the possibility of secrecy, the possibility of greater party control over the composition of the tribunal, and the ability to avoid an intervention in the proceedings by a third state.

Arbitral rulings have significantly influenced the development of many areas of international law, although we now have more consolidated courts.

The 1899 Hague Peace Convention included a series of provisions on international arbitration, the object of which was the basis of Article 15[6], "the settlement of disputes between states by judges chosen by them and on the basis of respect for the law". This became the widely accepted definition of arbitration in international law.

Further, this definition was repeated in Article 37 of the other Hague Convention of 1907 and was adopted by the Permanent Court of International Justice in the case concerning the Interpretation of Article 3, paragraph 2, of the Lausanne Peace Treaty

[2] Martin Dixon, Cases & Materials on International Law, 5th Ed. Oxford University Press, p.650, 2011.

[3] Mercy McBrayer, Adaptability of ADR // The International Journal of Arbitration, Mediation and Dispute Management, Volume 87, Issue 4, pp. 457 – 458, 2021.

[4] Shaw Malcolm, International law, Cambridge University Press, p. 1005, 2017. See, Alec Stone Sweet & Florian Grisel, The Evolution of International Arbitration Judicialization, Governance, Legitimacy, Oxford University Press 2017; Nigel Blackaby, Constantine Partasides, Alan Redfern, Martin Hunter, Redfern and Hunter on International Arbitration: Student Version. Oxford University Press 2015.

[5] Shaw Malcolm, International law Cambridge University Press, p. 1043, 2010.

[6] 'The settlement of differences between states by judges of their own choice and based on respect for law'.

of 1923 and by the International Court of Justice.
As all ways of ADR in international law, the arbitration procedure is voluntary. The arbitration agreement under Article 18 implied the legal obligation to accept the terms of the decision. In this connection the Permanent Court of Arbitration (PCA) was established. Thus, states must give prior approval and exercise of jurisdiction by judges. For example, in the case of the delimitation of maritime zones between Canada and France in 1992 we are dealing with the ad hoc principle, while in the case of PCA we are dealing with the approval of a special procedure[7].
Arbitration is a device for leaving the settlement of disputes as much in the hands of the parties as is possible. It can be conducted confidentially and can be quicker and cheaper than for example the ICJ proceedings. When the parties conclude an agreement, they generally settle the law to be applied to the agreement, and the method of settlement of any disputes which may arise, including the place where the dispute is to be settled, by whom and in accordance with what procedures. They have much more freedom of choice than in court settlement, where there is a standing panel of judges with its own procedural rules[8]. Between 1900 and 1932, about twenty cases went through the PCA procedure, but from that period till now days (especially the last decades) their number began to increase drastically.
Arbitration as a concept is known in most legal systems but does not always take the same form in different states. Inevitably, every other form reflects internal problems and sometimes a different approach to the whole legal system. In addition to civil law, legal systems and common law systems, there are other legal systems, such as those of the former socialist countries, Islamic law, or the Far East[9].
Moreover, many other legal systems, in theory, can be treated as extended to the sphere of influence of another legal system. However, in building and enforcing the rules that these systems have imported from other countries, they finally gain - as is natural - another meaning, due to their adaptation to a different civilization.
Arbitral tribunals have on occasion been asked to produce non-binding legal opinions on disputes, or to attempt to achieve friendly settlement of a dispute in the manner of a mediator or conciliator before issuing a binding ruling.
The substantive differences between arbitration and judicial settlement have also become less precise; the ICJ has developed the chambers procedure to be comparable in many respects to the procedure of an ad hoc arbitral tribunal, although institutional and other differences remain important[10].
There has been extensive discussion about the nature of arbitration. Various theories have been elaborated. One theory is that, since arbitration derives from a clause or agreement, its nature is contractual; hence it is called contractual theory. Another theory is that, given that arbitration proceedings are judicial, its nature is judicial (ju-

[7] Dixon Martin, E drejta nderkombetare, AIIS Tirane, f. 370, 2010. Dixon Martin, Textbook on International Law: 7th Ed. 2013; Nigel Blackaby, Constantine Partasides, Alan Redfern, Martin Hunter, Redfern and Hunter on International Arbitration: Student Version. Oxford University Press 2015; Won L. Kidane, The culture of international arbitration, Oxford University Press 2017.
[8] Martin Dixon, Cases & Materials on International Law, 5th Ed. Oxford University Press, p.654, 2011.
[9] Rubino Mauro, International Arbitration: Law and Practice, Kluwer Law International 2nd Ed. 2001, P.24.
[10] Martin Dixon, Cases & Materials on International Law, 5th Ed. Oxford University Press, p.653, 2011.

risdictional theory); According to prof. Mauro, Sanders rightly refers to these various opinions as a "battle of theories".[11]

When the parties conclude an agreement, they generally settle the law to be applied to the agreement, and the method of settlement of any disputes which may arise, including the place where the dispute is to be settled, by whom and in accordance with what procedures. They have much more freedom of choice than in court settlement, where there is a standing panel of judges with its own procedural rules.[12]

As a conclusion, some of the reasons for States to choose arbitration over settlement by the ICJ or other ADR, are the flexibility, the possibility of secrecy, the possibility of greater party control over the composition of the tribunal, the possibility of closer control by the parties of the questions addressed by the tribunal and the ability to avoid an intervention in the proceedings by a third state.

In addition to arbitration there are other methods for resolving and even preventing disputes.

Conciliation

Conciliation is an institution like arbitration, but certainly quite different from it in procedural legal terms. This well-known system consists of an attempt by a third party, appointed by the litigants, to reconcile them, before they go to litigation (whether court or arbitration). The conciliation process involves a third-party investigation into the basis of the dispute and the submission of a report that includes suggestions for a settlement. As such it includes elements of investigation and mediation, and in fact the conciliation process emerges from the treaties providing for standing committees of inquiry[13].

The attempt to reconcile is generally based on presenting each side the opposite aspects of the dispute, to bring each party together and reach a solution, which will generally be found between the positions of the two parties. Reconciliation reports are only proposals and as such do not constitute binding decisions. So, they are different from arbitration decisions. Conciliation procedures can take many forms and in some legal systems they are presented in different ways.

However, in essence, even with this new look, we are always presented with a traditional reconciliation, the merits of which are undoubtedly indisputable when the parties are persuaded to become more reasonable. In fact, litigation is generally done when at least one of the litigants is unreasonable. Helping the parties to see the reasons is therefore a useful social role of reconciliation[14].

The period between the World wars was the culmination of reconciliation commissions and many treaties were provided to them as a method of resolving disputes.

[11] Rubino Mauro, International Arbitration: Law and Practice, Kluwer Law International 2nd Ed. 2001, P.23.

[12] In the conflict between Ireland and the United Kingdom about the building and operation of the MOX Plant at Sellafield, Ireland commenced dispute settlement proceedings under both the UNCLOS and the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention). Furthermore, it also applied to the ITLOS for provisional measures to prevent the UK from commissioning the plant. The ITLOS ordered the parties to cooperate and to engage in consultations, including the exchange of information, without further delay.

[13] Shaw Malcolm, International law, Cambridge University Press, p. 1007, 2010. See also, Bishop P. The Art and Practice of Mediation, 2nd Ed. 2015.

[14] Rubino Mauro, International Arbitration: Law and Practice, Kluwer Law International 2nd Ed. p. 6, 2001.

But the process has not been widely used and has certainly not justified the trust expressed in it by states between 1920 and 1938. [15]

However, reconciliation processes have an important role to play. They are extremely flexible and by clarifying the facts and discussing the proposals can spur negotiations between the parties. There are several multilateral treaties provide for reconciliation as a means of resolving disputes. The Washington Convention of 1965[16] provides that a conciliation commission should be set up, at the request of a Contracting State or an entity of a Contracting State and regulates its procedure.[17] The Parties shall cooperate in good faith with the Commission to enable the Commission to carry out its functions and to consider its recommendations more seriously. Conciliation is enshrined in the International Arbitration Rules of the American Arbitration Association and is governed by both Commercial Internal Arbitration and Commercial Mediation Rules. However, conciliation is generally more than welcome and is occasionally called mediation. In some cases, the parties may prefer to use conciliation procedures instead of arbitration. This can often be done through the good offices of the Commission or its National Sections.

Other reference for conciliation proceedings can be found in the international arbitration rules of the Milan Chamber of Arbitration. The rules relating to reconciliation were elaborated in the General Act of 1928 on the peaceful settlement of international disputes (revised in 1949). The function of the commissions was defined to include investigations and mediation techniques[18]. The conciliation procedure was intended to deal with mixed legal-factual situations and to act promptly and informally.

In practice, it is often not used for reconciliation. The ICC has in fact stated that in 1986 it received only 8 requests for compliance. This is because the party that knows it is wrong generally tries to avoid a quick resolution of the dispute.

This tendency is encouraged by the length of litigation (and sometimes arbitration) as well as the financial advantage a party may receive from a late payment. Interest, for example, is not a universal achievement, if the winning party is not entitled to full jurisdiction in any jurisdiction from the date of maturity at the meeting.

The conciliation procedure was used in the Island-Norway dispute over the continen-

[15] Shaw Malcolm, International law, Cambridge University Press, p. 1008, 2010.

[16] https://icsid.worldbank.org/sites/default/files/ICSID%20Convention%20English_0.pdf

[17] Article 34. (1) It is the duty of the Commission to clarify matters in dispute between the parties and to seek reconciliation between them on mutually acceptable terms. To this end, the Commission may at any stage of the proceedings and from time to time recommend the terms of the settlement to the parties. (2) If the parties reach an agreement, the Commission shall compile a report noting the issues under discussion and recording that the parties have reached an agreement. If, at any stage of the proceedings, the Commission appears unlikely to reach an agreement between the parties, it will close the proceedings and draw up a report noting the submission of the loss and the recording of the failure to reach agreement. If a party does not appear or participate in the proceedings, the Commission will close the proceedings and draw up a report noting that the party fails to appear or participate.

Article 35 Unless the parties to the dispute otherwise agree, neither party to the conciliation procedure shall have the right to rely on or rely on any other procedure, whether before an arbitrator or in court or otherwise. expressed or statements or acceptances or bids made by the other party in the conciliation proceedings, or report or recommendations made by the Commission.

[18] Such commissions would consist of five persons, one from each opposing party and three others to be appointed by agreement by third-country nationals. The proceedings were to be completed within six months and were not to be held in public.

tal shelf limitation between Iceland and Jan Mayen Island. The agreement establishing the Conciliation Commission stated that the matter was the subject of ongoing negotiations and that the Commission's report would not be binding, both characteristic elements of the conciliation method. The Commission also had to consider Iceland's economic interests in the area, as well as other factors. The role of the concept of natural extension within the delimitation of continental shelves was examined, as well as the legal status of islands and relevant state practices and court decisions. The solution proposed by the Commission was for a common development area, an idea that would not be likely to come from a judicial body to decide solely on the basis of the legal rights of the parties. In other words, the flexibility of the reconciliation process seen in the context of ongoing negotiations between the parties was demonstrated.
Such commissions have also been set up outside the framework of specific treaties, for example by the United Nations. Cases will include the Reconciliation Commission for Palestine under General Assembly Resolution 194 (III), 1948, and the Congolese Reconciliation Commission under Resolution 1474 (ES-IV) of 1960.

Mediation

The use of mediation as a tool to manage conflicts is known as an old way of resolving disputes bases on voluntary principle. Yet because mediation is voluntary, it cannot be assured that every disputant will be open to attempting mediation to manage or resolve conflict. It is not uncommon, for example, for governments confronting a rebel insurgency to reject overtures for mediation. The stronger side in interstate disputes often rejects mediation of their conflicts.[19]
The difference between the two methods of resolving disputes above, would be that the purpose of a conciliator would be to encourage the parties themselves to understand what benefits could be gained from resolving the case out of court, in whichever way they deem most appropriate. Mediation, on the other hand, would have the more concrete purpose of advising each litigant to waive part of his claim, to reach a settlement through a confidential data by removing part of the claim in exchange for receiving the rest of it. To reduce this risk, the mediator may be able to put extra inducements into the scale of the parties' calculations. In fact, situations where the mediator (or conciliator) has that authority should be distinguished from other situations in which he can simply propose a resolution formula to the parties. In most of legal systems the role of mediator (or conciliator) is simply to try to unite the parties. The fact that there is a dispute indicates that the parties, aims are not entirely compatible, but unsuccessful negotiations may cause these differences to become the exclusive focus of attention. It is the mediator who can remind the parties of their essential objectives (or cause them to be redefined) may therefore be able to suggest a mutually satisfactory arrangement. The benefits from accepting mediation may include an end to the violence and the settlement of the conflict but may also consist of narrower

[19] J. Michael Greig; Paul F. Diehl, International Mediation, Cambridge, p.12, 2012. See, Peter Bishop, Cheryl Picard, Rena Ramkay, Neil Sargent, The art and practice of Mediation, 2nd Ed. Toronto p.6, 2015; Vesna Lazić, Steven Stuij, International Dispute Resolution, T.M.C. Asser Press 2018.

gains that are unrelated to the achievement of a diplomatic settlement.
According to J. G. Merrills, if mediation becomes possible when the parties suspect that a settlement on their own terms may no longer be achievable at an acceptable cost, then the mediator's task is to devise or promote a solution from which both can devise a measure of satisfaction[20]. And once the parties are in contact, a mediator can be useful in loosening the tension which may have developed during the dispute and creating an atmosphere conducive to negotiation.
The employment of mediation and good office procedures involves the use of a third party, whether an individual, a state or a group of states or an international organization, to encourage the parties to the conflict to be resolved. Unlike arbitration and adjudication techniques, the process aims to convince the parties to a dispute to reach satisfactory conditions for its conclusion. The provisions for resolving the dispute are not described.
Here is therefore no guarantee that the information brought by a mediator will always be believed; nevertheless, its presence will certainly tend to discourage wishful thinking, while sometimes providing critics of official policy (whose pressure may be important in encouraging a settlement) with a source of valuable intelligence[21].
Technically, good offices are involved when a third party tries to influence the opposing parties to enter negotiations, while mediation implies active participation in the negotiation process of the third party itself. In fact, the dividing line between the two approaches is often difficult to maintain as they tend to merge with each other, depending on the circumstances. An example of the good office method is the role of the American president in 1906 in ending the Russo-Japanese War, or the function exercised by the USSR to help resolve the Indo-Pakistan dispute peacefully in 1965. Another could be the part played by France in encouraging the US-North Vietnam negotiations to begin in Paris in the early 1970s.[22] A mediator, such as the US Secretary of State for the Middle East in 1973-4, has an active and vital role to play in committed in efforts to comfort the contesting parties in accepting his proposals. It is his responsibility to reconcile the various claims and to improve the atmosphere that pervades the discussions. The UN Secretary-General can sometimes play an important role in the exercise of his good offices. An example of this is given in the situation related to Afghanistan in 1988. The Geneva agreements of that year specifically stated that a representative of the Secretary-General would give his good office to the parties. Good offices can also be undertaken by the Secretary General together with the office holders of regional organizations.
The Secretary-General of the United Nations has used the "good offices" function of the position to settle disputes, either personally or through an appointed representative. He can be involved in many ways, including reaching a negotiated solution. An example is the attempts by his representatives to forge a peaceful solution to armed

[20] J. G. Merrills, International Dispute Settlement, 5th Ed. Cambridge University Press p. 58, 2011; Chrisopher W. Moore, The Mediation Process: Practical idea for resolving conflict 4th Ed. 2014.
[21] J. G. Merrills, International Dispute Settlement, 5th Ed. Cambridge University Press p. 62, 2011.
[22] Shaw Malcolm, International law, Cambridge University Press, p. 1004, 2010; J. Michael Greig; Paul F. Diehl, International Mediation, Cambridge 2012; Chrisopher W. Moore, The Mediation Process: Practical idea for resolving conflict 4th Ed. 2014.

conflict since 2011 in Syria.[23]
The Hague Conventions of 1899 and 1907 set out many of the rules governing these two processes. It was established that the signatories of the treaties had the right to provide good offices or mediation, even during fighting, and that the exercise of the right would not be considered by any of the opposing parties as a hostile act. It was also explained that such procedures were not mandatory. The conventions placed the parties to a serious dispute or conflict to use good offices or mediation.
As noted above the aim of mediator's contribution must be to satisfy both parties and, in some situations, it will be possible to do this by giving each state all or most of what it wants. Of course, the fact that there is a dispute indicates that the parties aim is not entirely compatible, but unsuccessful negotiations may cause these differences to become the exclusive focus of attention. A mediator who can remind the parties of their essential objectives (or cause them to be redefined) may therefore be able to suggest a mutually satisfactory arrangement. Although a mediated settlement must be a compromise of some kind, it does not follow that the parties must be treated equally. Each must be given something but need only receive whatever it is ready to settle for as the price of ending the dispute. A state in a relatively weak position may be prepared to sacrifice its original objective and accept some substitute satisfaction as a way of cutting losses and resolving the conflict. Given this voluntary character, both parties in conflict must conclude that they potentially gain more by accepting mediation than they can expect to gain on their own after rejecting third-party assistance.
Mediators can facilitate settlements between parties in conflict by offering encouragement toward agreement, persuading the reconsideration of viewpoints, offering sanctions and rewards to alter bargaining positions, and developing new ideas for potential settlement terms.

Negotiation

Negotiation is the most frequently employed of all methods of international conflict resolution, not only "because it is always the first to be tried and successful, but also because states may believe its advantages to be so great as to rule out the use of other methods, even in situations where the chances of a negotiated settlement are slight"[24].
Of all the procedures used to resolve conflicts, the simplest and most used form is conversation. Negotiations essentially consist of discussion between stakeholders to reconcile different opinions, or at least to understand different positions. Negotiations today are embedded in the modern diplomatic structure of communication between states.[25]
In addition to being an extremely active method of settlement, negotiation is normally a precursor to other settlement procedures, as the parties decide among themselves

[23] Martin Dixon, Cases & Materials on International Law, 5th Ed. Oxford University Press, p.653, 2011.
[24] See, J. G. Merrills, International Dispute Settlement, 5th Ed. Cambridge University Press, 2011. See also, J. G. Merrills 1998.
[25] Jacob Bercovitch; Richard Jackson, Conflict Resolution in the Twenty-first Century: Principles, Methods, and Approaches, University of Michigan Press, P. 19, 2009. See also, Evelina Cela, The Maritime Issue between Albania and Greece // 19th International Conference on: Social and Natural sciences, Global Challenge 2021, ICSNS XIX-2021 Lisbon, 28 December 2021.

how to better resolve their disputes. Negotiations are the most satisfactory means of resolving disputes as the parties are directly engaged (enter such a process to manage their conflict). Every negotiation process unfolds whenever a conflict arises between the parties. It is unique and differs from other processes in terms of the nature of the dispute, the number of participants and the means used. Parties come together in a voluntary process (whether to accept or reject any potential solution) designed to manage their conflict.

In other words, it is a form of communication, exchange of information between parties which have conflicting interests, but which aim to reach a lasting agreement, and which is based on common interests, to resolve the conflict[26]. Negotiation provides legitimate standards (objective criteria) for evaluating and accepting any option, without either party appearing to be unduly compromising.

It is through mutual discussion that the essence of the differences will be revealed, and the opposing objections will be clarified. Bargaining and negotiation is a joint decision-making exercise.

Negotiation provides legitimate standards (objective criteria) for evaluating and accepting any option, without either party appearing to be unduly compromising.

Hostile public opinion in a state may hinder the award of certain points and mutual distrust may complicate the process, while opposition to political positions may be such as to preclude any acceptable negotiated agreement. In certain circumstances there may be a duty to enter negotiations arising from separate bilateral or multilateral agreements[27]. Article 283 (1) of the 1982 Convention on the Law of the Sea[28] provides, for example, that when a dispute arises between States Parties concerning the interpretation or application of the Convention, "the parties to the dispute shall proceed swiftly to an exchange of views in connection with its settlement by negotiation or other peaceful means ".

Moreover, although it has been stated that: Neither in the Charter nor in international law is there any general rule to judge the effect that the exhaustion of diplomatic negotiations constitutes a precondition for a matter before the Court, it is possible that the courts may direct the parties to engage in negotiations in good faith and may indicate factors to be considered when negotiating between the parties. When there is an obligation to negotiate, this would also imply an obligation to pursue such negotiations as much as possible for the purpose of concluding agreements[29].

The court in the German foreign debt case stressed that although an agreement to negotiate does not necessarily imply an obligation to reach an agreement, "this means that serious efforts will be made to that end". Consultations and negotiations between the two countries should be gender-based, should be in accordance with the rules of good faith and should not be mere formalities. unusual delays and systematic refusal to consider proposals or conflicting interests. The point was also made by the International Court of Justice on the Legality of the Threat or Use of nuclear weapons, noting the reference in Article VI of the Treaty on the Non-Proliferation of nuclear

[26] Tafaj F. Alternative dispute resolution, Tirana, Dea Print 2015. f. 15. 2015.
[27] Shaw Malcolm, International law, Cambridge University Press, p. 1004, 2015.
[28] https://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf
[29] See section 1 of Pharagraph 10 of Manila Declaration on the Peaceful Settlement of International Disputes, 1982.

weapons to "continue negotiations in good faith on effective measures relating to the cessation of "nuclear weapons at an early stage and for nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control".

The Court then declared that: The legal importation of this obligation goes beyond that of a mere conduct obligation: the obligation contained herein is an obligation to achieve an accurate result - nuclear disarmament in all its aspects - by adopting a course specific conduct, namely the pursuit of negotiations on this issue in good faith.

In cases where disputes with their continuation may jeopardize the maintenance of international peace and security, Article 33 of the Charter[30] of the United Nations provides that the parties to such disputes must first seek a solution through negotiation, investigation, or mediation, when efforts have not been fruitful, in more complex forms of solution.[31]

Negotiation despite being described as "the best-known way to resolve disputes", there have been cases that have not always been successful, as they depend on a certain degree of mutual goodwill, flexibility, and sensitivity. Parties in a negotiation process consist of primary, directly affected parties and, on many occasions, other interested and potential third parties. Parties in conflict may refer to individuals, groups, organizations, nations, or other systems that are represented in the process and determining who the parties are, what their historical relationship is, and who should be represented at the negotiating table is not always an easy task. This is particularly the case in international negotiation where states may face internal difficulties, a serious lack of legitimacy, or unclear lines of internal decision making.

International negotiation is well suited to an international environment of states, all of whom are legally equal, and all of whom guard their sovereignty with equal passions. In this context, it is a useful way of resolving conflicts between two roughly equal states, where violence remains low, and the issues are essentially about territory or economic resources. Given its features, it is no wonder that empirical studies find that negotiation has been used, either directly or in an assisted form, in more than 90 percent of all international conflicts since 1945[32].

Finally, negotiation as a mechanism is designed, through some joint decisions between the parties, to regulate conflict and to limit or prevent the escalation of its attitudinal or behavioral components.

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[30] https://treaties.un.org/doc/Publication/CTC/uncharter.pdf

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[32] Jacob Bercovitch; Richard Jackson, Conflict Resolution in the Twenty-first Century: Principles, Methods, and Approaches, University of Michigan Press, P. 21, 2009.

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