INTERNATIONAL LEGAL MEANS AND PROCEDURES TO SETTLE INTERNATIONAL DISPUTES

Mykhailo Vainagii
[1]*postgraduate student, "KROK" University, Head of Protocol Section of the Criminal Cassation of the Supreme Court, Kyiv, Ukraine, e-mail: mykhaylow@ukr.net*

Abstract. *The article highlights the norms and provisions of the international legal documents within the League of Nations, the United Nations Organization, the Organization for Security and Co-operation in Europe, the Council of Europe, the Organization of American States and the Organization of African Unity (African Union) in terms of the means and procedures for the peaceful settlement of disputes. In the process of studying the international legal acts, there are analysed provisions stipulating the use of means and procedures for the settlement of international disputes. There are also described characteristic features of applying these tools and mechanisms. Besides, it is conducted an analysis of their peculiarities and perspectives for the use in practice.*

Keywords: *international legal document, international organization, peaceful settlement of disputes, good services, mediation, reconciliation, negotiations, negotiation process, mediator, mediation, arbitrator, arbitration, arbitration process, court, judge, judicial settlement.*

JEL Classification: K33, K40, K41, K49

Formulas: 0; fig.: 0; tabl.: 0; bibl.: 22.

Introduction. The history of formation and development of international legal mechanisms of dispute settlement goes back to the beginning of the twentieth century. However, unwritten means and procedures existed long time before they were formed in writing at the level of international organizations. Their early form looked as traditions and customs that have come to us through the ages via historical descriptions and mentioning.

Literature Review. Analysis is mainly conducted based on official legal acts within various international organizations. Mostly, it relates to the League of Nations, the United Nations Organization, the Organization for Security and Co-operation in Europe, the Council of Europe, the Organization of American States and the Organization of African Unity (African Union).

Aims. The purpose of this article is to describe and analyse the norms and provisions of international legal instruments within various international organizations for the purpose of implementing the principle of peaceful settlement of disputes and the existing means and procedures.

Methods. During the research there were used various methods. In particular, the method of analysis and synthesis, structural and logical methods, comparative method and generalization.

Results. One of the first international legal documents for the peaceful settlement of disputes was the Convention on the Pacific Settlement of International Disputes of 18 October 1907 (hereinafter referred to as the Convention of 1907). [1]

In the preamble to the Convention of 1907 it is written that the contracting states will promote by all the efforts in their power the friendly settlement of international disputes.

And in accordance with Article 1 of the Convention of 1907 with a view to obviating as far as possible recourse to force in the relations between States, the Contracting Powers agree to use their best efforts to ensure the pacific settlement of international differences.

Although a word – negotiations – is not found in the text of the Convention of 1907, it is often emphasized the pacific settlement, resolution of disputes, differences and it is referred to good services and mediation of the third parties.

The Convention of 1907 also stipulates the setting up of the international commissions of inquiry. In accordance with the Article 9 of the Convention of 1907, in disputes of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of facts, the Contracting Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

In addition to the international commissions of inquiry, the Convention of 1907 foresees the functioning of the Permanent Court of Arbitration. Appeal to the Permanent Court of Arbitration entailed the obligation to honestly obey the arbitral award.

The difference between Court of Arbitration and Commission of Inquiry is that Court of Arbitration acts customarily, and the Commission of Inquiry investigates the facts of the case and submits them to the parties without taking a mandatory decision for both parties.

It is interesting that, in accordance with the Article 91 of the Convention of 1907, it replaced in the relations between the Contracting States the Convention for the Pacific Settlement of International Conflicts of 29 July 1899.

It follows that a similar convention was already adopted at the First Hague Peace Conference in 1899.

If to look in the chronological sequence, one of the following such international instruments was the General Act for the Pacific Settlement of International Disputes of 26 September 1928 (hereinafter – the Act of 1928), adopted within the League of Nations. [2]

This Act was amended by UN General Assembly on 28 April 1949.

The so-called innovation of the Act of 1928 was the establishment of a conciliation procedure. The act provided for the formation of a standing or special conciliation commission.

Pursuant to the Article 1 of the Act of 1928 disputes of every kind between two or more Parties to the Act of 1928 which it has not been possible to settle by diplomacy shall, subject to such reservations as may be made under the Article

39, be submitted, under the conditions laid down in the Chapter I of the Act of 1928, to the procedure of conciliation.

The Conciliation Commission shall be composed of five members. The commissioners shall be appointed for three years. It shall be constituted by the third party at the request of one of the parties to the dispute for three (special) or six (permanent) months. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of the third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties. They shall be re-eligible. The parties shall appoint the President of the Commission from among them. The commissioners appointed jointly may be replaced by agreement between the parties. Either party may, however, at any time replace a commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand. Decisions on the substance of the dispute shall be taken by a majority vote if all its members are present.

The task of the Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the parties to an agreement. It may, after the case has been examined, inform the parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision.

The proceedings of the Commission must be terminated within six months.

At the close of the proceedings, the Commission shall draw up a procès-verbal stating, as the case may be, either that the parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken unanimously or by a majority vote.

In addition to the provisions on the functioning of the conciliation commissions, the Act of 1928 contained provisions on judicial settlement and arbitration in terms of dispute resolution.

Today, the UN documents play a key role in approving the principle of peaceful settlement of disputes. These are the UN Charter, the UN General Assembly resolutions and declarations, documents of other bodies and institutions of the UN system. This list also includes regional agreements that confirm the provisions of this universal principle in regional relations. [3]

According to the article 33 of the UN Charter, 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, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means. [4]

We can see how it was widened and detailed the list of tools and procedures that can be used by the conflicting parties to resolve the dispute between them.

Concerning the UN internal documents, on November 15, 1982, the UN General Assembly adopted the Manila Declaration on the Peaceful Settlement of International Disputes and approved it by resolution No. 37/10. [5]

In accordance with this Declaration, the UN General Assembly has solemnly declared that all states shall act in good faith and in conformity with the purposes and principles enshrined in the Charter of the United Nations with a view to avoiding disputes among themselves likely to affect friendly relations among States, thus contributing to the maintenance of international peace and security. They shall live together in peace with one another as good neighbours and strive for the adoption of meaningful measures for strengthening international peace and security. At the same time, every state shall settle its international disputes exclusively by peaceful means in such a manner that international peace and security, and justice, are not endangered.

The same Declaration calls states for seeking in good faith and in a spirit of cooperation an early and equitable settlement of their international disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements or agencies or other peaceful means of their own choice, including good services. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate to the circumstances and the nature of their dispute.

Besides, this Declaration encourages the UN Member States to conclude agreements for the peaceful settlement of disputes among them. States should also include in bilateral agreements and multilateral conventions to be concluded, as appropriate, effective provisions for the peaceful settlement of disputes arising from the interpretation or application thereof.

It is also stated here that direct negotiations are a flexible and effective means of peaceful settlement of disputes. And when states choose to resort to direct negotiations, states should negotiate meaningfully, in order to arrive at an early settlement acceptable to the parties.

Starting from 1983 and till 1989, the UN General Assembly has been adopting resolutions on the peaceful settlement of disputes between states at the end of each year.

On December 19, 1983, at the 101st plenary meeting, the UN General Assembly adopted resolution No. 38/131 on the peaceful settlement of disputes between States. [6]

On December 13, 1984, at the 99th plenary meeting, the UN General Assembly adopted resolution No. 39/79 on the peaceful settlement of disputes between States. [7]

On December 11, 1985, at the 112th plenary meeting, the UN General Assembly adopted resolution No. 40/68 on the peaceful settlement of disputes between States. [8]

On December 3, 1986, at the 95th plenary meeting, the UN General Assembly adopted resolution No. 41/74 on the peaceful settlement of disputes between States. [9]

On December 7, 1987, at the 94th plenary meeting, the UN General Assembly adopted resolution No. 42/150 on the peaceful settlement of disputes between States. [10]

On December 9, 1988, at the 76th plenary meeting, the UN General Assembly adopted resolution No. 43/163 on the peaceful settlement of disputes between States. [11]

On December 4, 1989, at the 72nd plenary meeting, the UN General Assembly adopted resolution No. 44/31 on the peaceful settlement of disputes between States. [12]

Discussion. All these resolutions are characterized by a fact that their contents mostly are repeated without introducing anything new from year to year. The UN General Assembly reaffirmed its adherence to the principles of international law; urged Member States to resolve disputes exclusively by peaceful means in accordance with the UN Charter; drew attention to a fact that the issue of peaceful settlement of disputes shall be considered by Member States as one of the central ones; encouraged states to implement to the full extent the provisions of the 1982 Manila Declaration and their fair implementation by all parties; and emphasized the necessity to continue efforts to strengthen process of the peaceful settlement of disputes through progressive development and codification of international law.

Another feature is that in 1990 such a resolution was no longer adopted within the framework of activities of the UN General Assembly. It seems that issue of peaceful settlement of disputes between states was especially relevant within the United Nations in the period from 1982 to 1989. Drawing a parallel with historical events, the USSR war in Afghanistan continued during this period, and the Cold War between the USA and the USSR ended.

In order to consolidate the principle of peaceful settlement of disputes and to detail the conditions for preventing and eliminating cases that threaten international peace and security, on December 5, 1988, the UN General Assembly adopted resolution No 43/51, approving the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the UN in this Field. [13]

Almost for the first time, at the level of an international legal document, it was written that states should consider the use of bilateral or multilateral consultations in order better to understand each other's views, positions and interests.

Besides, there was made an emphasis on approaching the relevant organs of the United Nations in order to obtain advice or recommendations on preventive means for dealing with a dispute or situation.

In addition, the Security Council should consider sending, at an early stage, fact-finding or good offices missions or establishing of the UN presence, including observers and peace-keeping operations, as a means of preventing the further deterioration of dispute or situation.

This Declaration of 5 December 1988 contains the reaffirmation of the Declaration on Principles of Internal Law concerning friendly and cooperation among States in accordance with the Charter of the United Nations, the Manila Declaration on the Peaceful Settlement of International Disputes and the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations.

On November 15, 1989, at the 56th plenary meeting of the UN General Assembly, there was adopted Resolution No 44/21 on enhancing international peace, security and international cooperation in all its aspects in accordance with the UN Charter. [14]

This Resolution called for improvement of international cooperation in resolving international problems detailing their political, economic, social, cultural and humanitarian character. The document also called upon Member States to intensify their practical efforts towards ensuring international peace and security in all its aspects through cooperative means to settle disputes peacefully. In addition, Member States were again encouraged to consult and cooperate within the framework of the UN system, the Security Council, the General Assembly and their appropriate subsidiary bodies in order to find multifaceted approaches to implement and strengthen the principles and the system of international peace, security and international cooperation laid down in the UN Charter.

Based on the Pan-American Union, which has existed since 1890, the Organization of American States (OAS) was formed. One of the main goals of the OAS is preventive diplomacy and the peaceful settlement of disputes between Member States. [15]

As part of the regional agreements on the peaceful settlement of disputes within the Organization of American States on April 30, 1948 in Bogota, Colombia, there was adopted the Inter-American Treaty on the Pacific Settlement of Disputes, the so-called Bogotá Pact. [16]

According to the Bogotá Pact, in the event of a dispute, the parties, firstly, seek to resolve the dispute through direct negotiations via usual diplomatic channels. And only after that if a controversy cannot be settled the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the Bogotá Pact. Among them there are good services and mediation, procedure of investigation and conciliation, judicial procedure and procedure of arbitration.

Pursuant to the Article 58 of the Bogota Pact the following treaties, conventions and protocols shall cease to be in force, namely:

- Treaty to Avoid or Prevent Conflicts between the American States, of May 3, 1923;
- General Convention of Inter-American Conciliation, of January 5, 1929;
- General Treaty of Inter-American Arbitration and Additional Protocol of Progressive Arbitration, of January 5, 1929;
- Additional Protocol to the General Convention of Inter-American Conciliation, of December 26, 1933;
- Anti-War Treaty of Non-Aggression and Conciliation, of October 10, 1933;
- Convention to Coordinate, Extend and Assure the Fulfilment of the Existing Treaties between the American States, of December 23, 1936;
- Inter-American Treaty on Good Offices and Mediation, of December 23, 1936;
- Treaty on the Prevention of Controversies, of December 23, 1936.

As we can see from the above list of legal normative acts, an issue of using the negotiations for the peaceful settlement of disputes and other peaceful means and procedures was of great interest to the Member States of the Organization of American States.

On 29 April 1957, the European Convention for the Peaceful Settlement of Disputes was adopted in Strasbourg on the European continent by the Council of Europe. This Convention provides for judicial settlement, conciliation, arbitration and general provisions. [17]

Like the Inter-American Treaty of the OAS of 1948, the European Convention of the CoE of 1957 emphasizes the need for a peaceful settlement through similar procedures (conciliation, court, arbitration), without calling for an active bilateral negotiation process and without particularly elaborating on the effectiveness of negotiations.

Convention on Conciliation and Arbitration within the OSCE was adopted by the Council of Ministers on 15 December 1992 in Stockholm as part of the Decision on Peaceful Settlement of Disputes. [18]

In this Convention, the States parties reaffirm their solemn commitment to settle their disputes through peaceful means and their decision to develop mechanisms to settle disputes between them.

This OSCE Convention of 1992 provides for the establishment of a court of conciliation and arbitration from among world mediators and arbitrators; conciliation commissions and arbitral tribunals.

Just like in all the other regional agreements on peace settlement referred to above, the submission of a dispute to the Conciliation Commission provided for in the OSCE Convention of 1992 occurs after the dispute has not been settled within a reasonable period through negotiation (Article 18).

As of today, the OSCE has the following mechanisms for peaceful settlement of disputes within the framework of the OSCE: the military anti-crisis

mechanism (the Vienna mechanism), mechanism of consultations and cooperation for emergencies (the Berlin mechanism), the human dimension mechanism (the Moscow mechanism), the early warning and early actions mechanism of the OSCE High Commissioner on National Minorities, mechanisms for the peaceful settlement of disputes. In addition to the above mechanisms, there are also certain procedures (conciliation, arbitration) and an early warning system before the OSCE Governing Council. [19]

Within the African continent, and more specifically within the African Union (from 1963 to 2002, the Organization of African Unity), a Protocol relating to the Establishment of the Peace and Security Council of the African Union was adopted on 9 July 2002 in Durban (Republic of South Africa). [20]

The Protocol stipulates that the so-called Cairo Declaration on the Establishment of a Mechanism for Conflict Prevention, Management and Resolution adopted on 28 June 1993 shall cease to be in force and the Protocol shall become effective instead.

The content of this Protocol included calling Member States for settlement of disputes peacefully, for ensuring peace, stability and security, for creation of conditions for sustainable development. The Peace and Security Council was established as a standing decision-making organ for the prevention, management and resolution of conflict, as a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crises situations in Africa. In its activities, this Council shall be supported by the Commission, Panel of the Wise, Continental Early Warning System, African Standby Forces and Special Fund.

Among the bodies that support the efforts of this Council are a Panel of the Wise which shall be composed of five highly respected African personalities from various segments of society who have made outstanding contribution to the cause of peace, security and development on the continent. They shall be selected by the Chairperson of the Commission after consultation with the Member States basing on regional representation and appointed by the Assembly for three years. The main task of this Panel is to advise on all issues pertaining to the promotion and maintenance of peace, security and stability in Africa.

Among the principles of the Constitutive Act, solemnly affirmed by the Member States there is the principle of the peaceful settlement of disputes through negotiation, mediation, conciliation or arbitration. [21]

Returning to the United Nations as the largest global international organization, on 23 June 1992, the UN Secretary-General Butros Butros-Gali, on the initiative of the Security Council, presented his report entitled "An Agenda for Peace". The main topics of this document were: preventive diplomacy, peace-making and peacekeeping. The document consisted of an introduction and ten parts that covered a considerable range of peace-making and peacekeeping tasks. New key definitions were proposed. For example, preventive diplomacy means actions purposed to prevent disputes between the

parties and counteract the escalation of disputes into conflicts (sending fact-finding missions, creating demilitarized zones, preventive deployment of the UN peacekeeping forces). Peace-making means actions purposed to reach an agreement between the warring parties through peaceful means provided for in Chapter VI of the UN Charter. Peacekeeping means to ensure the presence of the UN in a certain area, which has so far been carried out with the consent of all stakeholders, which is usually associated with the deployment of military or police personnel, and often civilians. [22]

It should be emphasized that the definition of "peacekeeping" leaves a room for debate over the agreement of the parties to the conflict upon the military presence of the UN peacekeeping forces.

Conclusion. Summarizing the above, we can conclude:

1. The principle of peaceful settlement of disputes is firmly established in virtually all international legal instruments worldwide. Most often, peaceful means and procedures for settling international disputes include negotiations, mediation, inquiry, good services, intermediary, reconciliation, judicial procedures, arbitration and various commissions on dispute resolution;

2. However, the institution of negotiations as a dispute settlement mechanism has not received a detailed description at the level of international legal documents. Features that contribute to, or vice versa, hinder the success of the negotiation process have been ignored by authors and participants of international meetings;

3. In virtually all the means and procedures of settling international disputes, the emphasis is made on a necessity to engage the third neutral party, person which can approach the situation more objectively and can help the parties to resolve it;

4. Since the end of the twentieth century, a new "trend" has emerged in the area of peaceful settlement of disputes – preventive approach, that is, to prevent situations that may lead to conflicts and open confrontation with use of weapons;

5. Despite such a wide variety of international legal instruments and procedures for the settlement of international disputes, the number of collisions, disputes and conflicts worldwide is not diminished, and none of the existing instruments and mechanisms can guarantee their quick and peaceful settlement.

References:

1. Convention on the Peaceful Settlement of International Conflicts of 18 October 1907. Retrieved from https://zakon.rada.gov.ua/laws/show/995_938 [in Russian]

2. The Universal Act for the Peaceful Settlement of International Disputes of 26 September 1928, as amended by the UN General Assembly of 28 April 1949. Retrieved from https://zakon.rada.gov.ua/laws/show/995_f68 [in Russian]

3. Proskurina, O.O. (2012). Political Conflictology. Luhansk: LNU named after T. Shevchenko. 351 p. [in Ukrainian]

4. United Nations Charter. Retrieved from https://zakon.rada.gov.ua/laws/show/995_010 [in Russian]

5. The Manila Declaration on the Peaceful Settlement of International Disputes of 15 November 1982 adopted by the UN General Assembly Resolution No. 37/10. Retrieved from https://zakon.rada.gov.ua/laws/show/995_568 [in Russian]

6. UN GA Resolution of 19 December 1983 No. 38/131 "Peaceful settlement of disputes between States". Retrieved from https://undocs.org/en/A/RES/38/131 [in English]
7. UN GA Resolution of 13 December 1984 No. 39/79 "Peaceful Settlement of Disputes between States". Retrieved from https://undocs.org/en/A/RES/39/79 [in English]
8. UN GA Resolution of December 11, 1985 No. 40/68 "Peaceful Settlement of Disputes Between States". Retrieved from https://undocs.org/en/A/RES/40/68 [in English]
9. UN GA Resolution of 3 December 1986 No. 41/74 "Peaceful Settlement of Disputes between States" https://undocs.org/en/A/RES/41/74 [in English]
10.UN GA Resolution of 7 December 1987 No. 42/150 "Peaceful Settlement of Disputes Between States". Retrieved from https://undocs.org/en/A/RES/42/150 [in English]
11.UN GA Resolution of 9 December 1988 No. 43/163 "Peaceful Settlement of Disputes Between States". Retrieved from https://undocs.org/en/A/RES/43/163 [in English]
12.UN GA Resolution of 4 December 1989 No. 44/31 "Peaceful Settlement of Disputes between States". Retrieved from https://undocs.org/en/A/RES/44/31 [in English]
13.Declaration on the prevention and resolution of disputes and situations that may threaten international peace and security, and on the role of the United Nations in this field, adopted by UN General Assembly resolution No. 43/51 of 5 December 1988. Retrieved from https://zakon.rada.gov.ua/laws/show/995_573 [in Russian]
14.UN GA Resolution of 15 November 1989 No. 44/21 on "Strengthening international peace, security and international cooperation in all its aspects in accordance with the UN Charter". Retrieved from https://undocs.org/en/A/RES/44/21 [in English]
15.Official website of the Ministry of Foreign Affairs https://mfa.gov.ua/en/about-ukraine/international-organizations/oas [in Ukrainian]
16.American Treaty on Pacific Settlement "Bogotá Pact" (A-42) from 30 April 1948. Retrieved from http://www.oas.org/en/sla/dil/inter_american_treaties_A-42_pacific_settlement_pact_bogota.asp [in English]
17.European Convention for the Peaceful Settlement of Disputes from 29 April 1957. Retrieved from https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000 1680064586 [in English]
18.Convention on Conciliation and Arbitration within the CSCE, December 15, 1992. Retrieved from https://zakon.rada.gov.ua/laws/show/995_a11 [in Ukrainian] and https://www.osce.org/cca/111409?download=true [in English]
19.Kubievich, S.P. (2014). Stages of Formation and Features of Dispute Resolution within the Organization for Security and Co-operation in Europe (OSCE). Journal of the Kyiv University of Law. № 4. p. 292 - 296. [in Ukrainian]
20.Protocol establishing the African Union Peace and Security Council of 9 July 2002. Retrieved from https://au.int/sites/default/files/treaties/37293-treaty-0024_- _protocol_relating_to_the_establishment_of_the_peace_and_security_council_of_the_af_rican [in English]
21.Charter of the Organization of African Unity (African Union) of 25 May 1963. Retrieved from https://au.int/sites/default/files/treaties/7759-file-oau_charter_1963.pdf [in English]
22.Polishchuk, P.A. (2017). Participation of Great Britain in UN International Peacekeeping Missions (1990-2010), Journal of Political Life. № 3. p. 114-120 [in Ukrainian].

Received: January 06, 2019