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IMPLEMENTATION OF THE INSTITUTION OF MEDIATION IN THE INTERNATIONAL PROCESS: A HISTORICAL ASPECT

There are many reasons why the image of the mediator in conflict resolution is important. In history, in settling various disputes, the parties have turned to those persons who could help them find the quickest and least painful way out of the conflict situation. The activities of such a third party were called «mediation», «petitioning», «offering good offices», etc.

By the end of the Thirty Years' War and the emergence of the first Westphalia system of international relations (1648), Europe had developed negotiation protocols, among them those introduced by Cardinal Richelieu, on the obligation to keep negotiations going in order to reach a positive result.

But even before the parties sat down at the negotiating tables in Münster and Osnabrück, the mediators had to clarify many etiquette issues. Among such questions were whether a canopy should be placed over the papal nuncio's seat in the Church, whether French ambassadors, when visited by a Venetian ambassador, should escort him to the last rung of the stairs or to his carriage, and whether the Elector's ambassadors were entitled to the title of excellency as ambassadors of the great powers of the Republic of Vienna and the Netherlands, among others. And it took four whole years of this bloody war for the mediators to be able to express themselves in a way that they could not. In this context, it is important to analyze the mechanism of solving the issues of world order after the Thirty Years' War. The legal framework of the Westphalian system allowed solving inter-state disputes for a long enough time, based on the principle of sovereignty. But by the twentieth century, the need had become apparent to institutionalize conciliation commissions, which were created when the competence of commissions of inquiry, which acted to examine the circumstances of a dispute between states, was extended. The 1909 U.S.-British Boundary Waters Treaty referred to a commission designed to investigate facts relevant to the dispute and to formulate conclusions and recommendations appropriate to its resolution. However, the commission's conclusions were not regarded as binding on the parties to the dispute.

After World War I, such an institution was established in the 1928 General Act for the Pacific Settlement of International Disputes adopted by the League of Nations, in multilateral treaties, in particular the Treaty of Gondr (1923), the Saavedra Lamas Pact (1933), the Bogotá Pact (1948) and bilateral agreements. The purpose of the Conciliation Commission is to clarify the essence of the dispute, collect the necessary materials, and try to bring the parties to an agreement. The results of the commission's work are recorded in minutes or reports, which are adopted by majority vote in the presence of all commission members. The same dispute resolution procedure is stipulated in the UN Charter. [2]

The procedure for establishing such commissions is defined: it consists of five members; one member is appointed by the disputing States; three other members are elected with the general consent of the parties from among third-country nationals; the parties appoint the chairman of the commission from among them. But this procedure applies only in the absence of any other agreement by the parties concerned. For this reason, in 1964, the mission to settle the Moroccan-Algerian border conflict included seven members.

As the system of international relations has evolved, the interaction of its participants has been enriched by the various forms of dispute settlement in which the «third party» is involved. The term «third party» is a collective term that refers to different organizers of the dispute resolution process, using different techniques to do so. In international practice, «good offices» (fr. bons offices) are known as the assistance of a state or an international body in establishing contact and initiating non-mediated negotiations between the disputing parties.

In international practice, known good offices (francs bons offices) are understood to be the facilitation by a State or an international body of contacts and non mediated negotiations

between disputing parties aimed at the peaceful settlement of a conflict (for details see chapter 1). They can be used both in peace and in military conflict. The value of good offices is that they are advice that is not binding on the disputing parties. The State providing the good offices does not itself participate in the negotiation or adjudication of the dispute on the merits. This is the difference between good offices and mediation.

Mediation became distinguished from facilitation or «good offices» by the mediator making certain proposals as the basis for negotiations and the settlement of disputes. The Hague Conventions of 1899 and 1907 and the UN Charter (Article 33) regulate the mediation procedure as well as good offices. According to the UN Charter, the conventions and existing practice, a mediator may act at the request of the disputing parties, on his or her own initiative or at the behest of powers not involved in the dispute. And also, according to the UN Charter, the UN Security Council can render «good offices» to the disputing parties (Articles 33, 36, 38 of the UN Charter). Already in 1945, the USSR agreed to mediate with the Provisional French Government in negotiations with Switzerland on the situation of internees during the war. As an example of good offices, the Soviet Union arranged a meeting between India and Pakistan, which was aggravated by the India-Pakistan armed conflict that broke out in Kashmir in August-September 1965. The «good offices» stimulated the signing of the Tashkent Declaration of 1966, which included measures to eliminate the consequences of the conflict: withdrawal of both countries' armed forces to initial positions before the confrontation, resumption of normal diplomatic missions, discussion of the measures to restore economic and trade relations between India and Pakistan, etc. [5].

The Declaration was signed on January 10, 1966, after a meeting in Tashkent between the President of Pakistan, M. Ayub Khan and the Prime Minister of India and Pakistan. The meeting itself took place as a result of the Soviet Union's initiative to normalize relations between India and Pakistan after the war between the two countries in 1965.

A variant of collective mediation is the formation of a contact group. The first such international structure was established under UN auspices in March 1992 to coordinate approaches to resolving the situation in the Balkans. It included representatives from the U.S., Russia, Great Britain, France and Germany. However, the institution duplicated the functions of the International Conference on the Former Yugoslavia (ICBY), although the Contact Group differed from the Conference in the participation of the United States of America. When the IBCU dissolved itself, the Contact Group took on the primary role in the peace settlement.

In 1994, the Contact Group drafted and presented a peace plan (the Contact Group Plan) to the parties. Negotiations were interrupted after a terrorist attack in a market in Sarajevo, for which Serbs were accused.

In Madrid in 2002, Spanish Prime Minister José María Aznar created a group called the Quartet for a Middle East Settlement («Middle East Quartet»), an alliance of the European Union, Russia, the United States and the United Nations to consolidate efforts to peacefully resolve the Arab-Israeli conflict and escalate the conflict in the Middle East. Former British Prime Minister Tony Blair is the Quartet's special peace commissioner.

One of the brightest examples of international mediation today is the format of the «Six» international mediators - the five permanent members of the UN Security Council and Germany - to resolve the Iranian nuclear problem.

An area where the services of international mediators are in demand often concerns the settlement of relations between central authorities and separatist structures. For example, Basque armed separatism has been an issue of concern to European society for more than forty years. Now it is not a question of Europeans unconditionally supporting the Spanish government, but of a balanced search for overcoming contradictions. The group of international mediators on the Basque conflict includes French lawyer Professor Pierre Azan, also a UN consultant on human rights issues, Raymond Kendall, former head of Interpol and Commander of the French Légion d'Honneur, Silvia Casale, former head of the European Committee Against Torture and formerly involved in the Northern Ireland peace process, and Albert Spectorovsky, human rights activist and professor at several universities in Israel and the USA.

The group was led by a prominent peacemaker, South African lawyer Brian Kerryn, an international peacemaker who had played a prominent role in the Northern Ireland situation. In 2010, he initiated the signing of the so-called Brussels Declaration, in which members of the international community, including several Nobel laureates, demanded a solution to the Basque conflict. Kerrin opined that «the peace process can succeed not because of some resolutions

passed by international organizations, but only as a result of deep, sustained, detailed and transparent negotiations between the parties involved. It is our task to organize such a dialogue in Spain. [2, p. 97]. The separatists of ETA responded to this call by calling an indefinite truce with the Spanish authorities and agreeing to international monitoring of their actions.

A specific type of mediation was shuttle diplomacy. In the early 1970s, Assistant to the U.S. President for National Security Henry Kissinger drew up plans to end the Vietnam War, improve relations with the Soviet Union, establish relations with China and resolve the Israeli-Egyptian conflict in the Middle East. Implementing this program required new methods and new forms of contact. The first techniques of shuttle diplomacy were practiced in talks with Vietnam, China and the Soviet Union, and Israel and Egypt. The peculiarity of this form of mediation was that a minimum number of people had to be involved in resolving the conflict. Thus, the most important details of the program were sometimes known only to the U.S. president and Kissinger. The diplomacy was secret, secret, hidden even from many senior American politicians and diplomats, because disclosure of the extraordinary and rickety talks could have undermined the emerging momentum in international affairs.

The October 1978 Camp David Accords, which paved the way for peace between Egypt and Israel, are a successful outcome of shuttle diplomacy. At the invitation of U.S. President Jimmy Carter, Anwar Sadat and Menachem Begin came to the Camp David summit to discuss the possibility of a final peace treaty. The negotiations ended with the signing in Washington of two documents entitled «Principles for the Writing of a Peace Treaty between Egypt and Israel» and «Principles for Peace in the Middle East. On 26 March 1979 in Washington, Begin and Sadat signed the Egyptian-Israeli Peace Treaty, which ended the war between the two states and established diplomatic and economic relations between them.

However, the success of shuttle diplomacy as a form of conflict mediation depends not only on the mediator's experience, his responsiveness and the degree of confidentiality of the negotiations, but also on many other circumstances. The negotiator himself or herself must have real power and authority in his or her country, have the unconditional support of the country's leadership, enabling him or her to act without looking back at that leadership, confident that his or her actions will be approved. «Shuttle diplomacy requires careful preparation, so that the negotiator knows not only the views of the parties to the conflict, but also those of third countries whose interests are at stake in the resolution of the conflict. Perhaps that is why shuttle diplomacy does not have many positive examples. One of them is the actions of French President Nicolas Sarkozy in resolving the Georgian-South Ossetian conflict in 2008.

Over time, the behavior of the third party in the conflict has been enriched by new experiences, and therefore the models of its participation in the dispute resolution process have also diversified. This process continues today, introducing new figures into mediation - mediators, moderators, trabelshooters and ombudsmen. While performing the task of helping the parties to a conflict to find an acceptable way out of the situation, these figures differ in their methods of action and in the expectations placed on them. Hence, it seems necessary to characterize these mediation models.

Thus, on January 1, 2011 in the Russian Federation the law «On the alternative procedure of settlement of disputes with the participation of a mediator (mediation procedure)» (FZ-193 of 20.07.2010) came into force. The law establishes an extrajudicial procedure for settling civil disputes with the participation of neutral persons - mediators - as an alternative to court proceedings. In Russia, where historically there have been various forms of mediation, foreign experience comes in. It should be noted at once that its introduction abroad took some time and required a change in the culture of dispute.

In particular, pilot projects were tried in the British Central Land Court in London, in 1996-1998, in the British Court of Appeal, in the courts of Australia, New Zealand, Canada and in a number of courts in various states of the United States. There were unsuccessful attempts to implement mandatory mediation, where judges would not schedule a case for hearing unless the parties first tried to sit down at the negotiating table. The approach then adopted in the New Jersey courts was that mediation would not apply only if the parties could reasonably explain why mediation would not be appropriate in their case. A similar scheme was implemented in a Canadian province. During the two years of the project's implementation, only 1-2% of all cases were rejected in mediation.

The U.S. passed the Uniform Mediation Act, which consolidated more than 2,500 pre-existing laws in the country regulating mediation in different states and areas of its application.

Since 1981, an educational center dedicated to integrating mediation principles into legal practice - The Center for Understanding in Conflict - has been conducting seminars for lawyers, attorneys, and representatives of other professions whose work involves conflict resolution at various levels, based on the approach developed by its founders and directors, Gary Friedman and Jack Himmelstein [4]. Friedman, a practicing mediator in Silicon Valley, is the author of A Guide to Divorce Mediation. (A Guide to Divorce Mediation, which has become a reference book for mediators in the U.S. and Europe, and conducts mediation and legal trainings in the U.S., Europe and Israel. Himmelstein, a professor at Columbia Law School and New York Law School, practices as a mediator in New York City and coaches in the U.S. and Europe. Now in the U.S. without mediators in the economy, politics and business no serious negotiation process takes place in this country, there are magazines covering the problems of mediation, there is the National Institute of Dispute Resolution, private and public mediation services. The American Arbitration Association has a great influence on the development of mediation.

The many causes of conflict in today's world create the need for new mediation roles. We can assume that the mediation mission will not be limited to the figures listed above. At the same time, the new mediators will have to possess all the qualities necessary for the resolution of disputes of a very different nature, in addition to the fact that they involve a growing number of actors. Hence the importance of training specialists in the culture of conflict interaction and mediation.

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МЕТОДОЛОГІЧНЕ ЗНАЧЕННЯ РІШЕННЯ ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ ЩОДО АЛЬТЕРНАТИВНОГО ВИРІШЕННЯ СПОРУ У СПРАВІ «КОМПАНІЯ «РЕГЕНТ» ПРОТИ УКРАЇНИ» (ЗАЯВА №773/03) ВІД 3 КВІТНЯ 2008 РОКУ

Людська природа [1] та буттєвий устрій людського світу [2] суцільно суперечливі. Це породжує перманентні конфлікти найрізноманітнішого характеру, котрі потребують їх адекватного вирішення. Для розв'язання переважної більшості видів цих конфліктів та спорів людством уже вироблені більш або менш дієві інструменти. Найуніверсальнішим серед них продовжує залишатися наразі державне судочинство. Проте все більшу конкуренцію йому складають впродовж щонайменше останніх півстоліття альтернативні методи вирішення спорів. Вони передусім заповнюють ніші, де правосуддя виявляється неефективним чи навіть неможливим. Нормативну базу для цих методів складають в першу чергу Нью-Йорська конвенція про визнання та виконання арбітражних рішень 1958 р., Гаазька конвенція про угоди та вибір суду 2005 р., а з вересня 2020 р. до них додалася Конвенція ООН про міжнародні угоди щодо врегулювання спорів в результаті медіації (Сінгапурська конвенція з медіації). Дві попередніх підписані та ратифіковані