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THE CONCEPT OF MEDIATION AND ITS PLACE IN THE SYSTEM OF PEACEFUL MEANS OF RESOLVING INTERNATIONAL DISPUTES

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Annotation
This article explores the concept of mediation and its growing significance as a peaceful means of resolving international disputes. It analyzes the key characteristics and advantages of mediation, its relationship with other dispute resolution methods, and its role in contemporary international law and practice. The article concludes by highlighting the potential of mediation to contribute to a more peaceful and just international order.

Keywords
international law, mediator, UN Charter, parties, "good offices", consultative mediation, compulsory mediation, arbitration mediation

Mediation — in international law, it is a method of peaceful settlement of disputes between States through negotiations with the participation of a third State, also known as a mediator, on the basis of conditions put forward by him.[1]

In this particular case, mediation means the provision of services by the subject(s) to two or more parties, with the subject(s) acting as a third party. The subject can be either an individual or a legal entity (usually an organization). The settlement of a dispute with the participation of a third neutral party is called mediation.

Article 33 of the UN Charter stipulates that the parties, first of all, should try to resolve the dispute through negotiations, investigation, mediation, conciliation, arbitration, judicial proceedings, recourse to regional bodies or agreements or other peaceful means of their choice.[2] Thus, the UN Charter enshrines the principle of peaceful settlement of disputes as fundamental.

Conciliatory procedures such as mediation and "good offices" deserve special attention, since they are conducted with the participation of a third State.[3;168] According to one point of view, "good offices" are an integral part of mediation, and on the other, for example, according to E.A. Pushkin, "good offices" is an independent way to peacefully resolve disputes. Despite the fact that these procedures are very similar, they have a number of features that distinguish them from each other. D.A. Shlyantsev believes that good offices can be provided before the start of direct negotiations, while mediation is most often a tool for reaching consensus between the parties already within the framework of negotiations that have begun.

The State that provides "good offices" should facilitate the establishment of contact between the disputing parties and persuade them to negotiate. Communication between States is carried out through this State, but it does not participate directly in the negotiations themselves. An example of the provision of "good offices" is the agreement reached between India and Pakistan, which had an armed conflict in 1965. The initiative to normalize relations between the countries was taken by the USSR. As a result of the actions of the USSR, which facilitated the meeting of representatives of these two states, the Tashkent Declaration was signed in 1966. "Good offices" can be provided not only by States, but also by international organizations. According to Vorobyova S.V., good offices lead to a mediation procedure and thus are the first stage of a two-stage scheme for resolving an international conflict.[4;33]

Unlike "good offices" through mediation, a third party actively participates in negotiations between the

disputing parties. It can also lead the negotiation process and make proposals for reconciliation of the parties. The mediation procedure has been developed in the most detail in regional agreements. Among them are the 1936 Inter-American Treaty on "Good Offices" and Mediation. A special feature of this agreement is the possibility of mediation by individuals. An example of mediation is the activities of the USSR and the United States to resolve the war of independence of Namibia. Formally, both countries acted only as observers, but actually performed mediation functions.

The main provisions on the use of mediation and "good offices" are reflected in the Hague Conventions of 1899 and 1907. In our opinion, the norms defined in them do not fully regulate the procedure for applying these dispute resolution methods. Currently, cases are becoming more common when not only two disputing parties are involved in the conflict, but third forces are behind them, which acquire.

Consultative mediation is used in cases where the parties are inclined to compromise, but for some reason could not work out the appropriate wording. In this case, the parties must agree on the candidacy of the mediator and obtain his consent to mediation. The Advisory mediator acts as a moderator of the discussion, highlighting the most significant arguments and conclusions, helping the parties to reach a consensus.

Arbitration mediation is used in a situation where the parties are ready to entrust the resolution of a conflict to a disinterested mediator. In this case, the parties must agree on the candidacy of the mediator, obtain his consent to mediation and formulate their arguments and proposals. The mediator sums it up by analyzing the arguments of the parties. The result summed up by the mediator can be challenged only if there are new arguments that were not previously taken into account.

Compulsory mediation can be introduced by administrators or the Arbitration Committee in the event of a complex, large-scale, prolonged conflict, or a conflict with a large number of participants, when it is difficult or impossible for the parties to agree on mediation on their own.

Mediator (main role). A neutral third party that facilitates the mediation process and helps the parties reach a mutually acceptable solution. The responsibilities which mediators should have:

- Establishing the basic rules and structure of the process;
- Facilitating constructive communication between the parties;
- Assistance in identifying the interests and needs of the parties;
- Exploring solutions and finding common ground;
- Preparation of a draft agreement on dispute settlement.

Each mediator must have the following qualities:

- Impartiality and neutrality;
- Excellent communication skills;
- The ability to listen and ask questions;
- The ability to analyze and think creatively;
- Respect for cultural differences.

Mediator is a person or group of people who, being a third neutral, independent party, not interested in this conflict, help the conflicting parties resolve the existing dispute. In some schools of mediation, the mediator may play a more active role, while in others the role of the mediator is reduced mainly to facilitation (assistance).

Peaceful means of resolving international disputes fall into three categories:

- peaceful means without a jurisdictional character (diplomatic) negotiations, good offices, mediation, investigation and reconciliation;
- by peaceful means with the jurisdictional nature of arbitration and compulsory (compulsory) jurisdiction;
- the procedure for resolving disputes between States through international organizations.

When resolving a dispute, mediation means the active participation of a third party in negotiations; he/she "can give advice and suggestions in order to resolve the conflict";[5] the negotiator's action ends only after the final result is achieved. Mediation takes into account the course of negotiations. In the doctrine, mediation was defined as "the action of a third person, a State, an international organization, or even a recognized person through which." It is aimed at creating an atmosphere necessary for negotiations between the parties to the dispute, and directly offering the services of a third party to achieve solutions beneficial to the parties."

Mediation is the fastest and cheapest way to resolve disputes and an informal alternative to litigation.

Mediation is the preferred means of resolving international disputes.

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