

TORRES CAZORLA, María Isabel, *La mediación como mecanismo de arreglo pacífico de controversias en Derecho Internacional Público* (Tirant lo Blanch, Valencia, 2024)

The book under review deals with a classic topic in public international law. It adds to the long list of academic works on mediation as a peaceful mechanism to settle controversies among states (pp. 245-263). It is welcome, however, because the author claims the pertinence of mediation before a world currently dominated by the proliferation of armed conflicts, the violation of the purposes and principles of the Charter of the United Nations in full impunity and the emergency of the climatic change. All together are threatening the future of humanity.

In her foreword, professor Diago also shares the view that even in adverse contexts mediation represents the last chance to settle conflicts. As far as the current conflicts show the emergency of non-state actors, mediation needs to be adapted to new changes (p. 16). Mediation means that a third party, impartial and neutral, enables the dialogue and negotiation between the two conflicting parties who voluntarily accept the mediation (p. 17).

The work is divided into five chapters which follow a logical structure. Moreover, it contains some conclusions. The first chapter (pp. 25-73) is a general introduction to the topic of means to peacefully settle international disputes in a historical perspective. While both legal and political disputes always existed in the world, the author pays special attention to the origins and evolution of the states obligation to peacefully settle disputes in both The Hague Peace Conferences of 1899 and 1907. Their main outcome was the 1889 Convention for the Pacific Settlement of International Disputes regulating three means of political settlement (i.e. good offices, mediation and international commission of inquiry) and one legal settlement procedure (the Permanent Court of Arbitration, still in force). All of them were optional and only the arbitration award is binding to the parties.

Next, the author deals with the practice developed by the Society of Nations and the United Nations Organization in the field of mediation. Article 2(3) of the 1945 UN Charter stated that “All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”. It was followed by Article 2(4) by which “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”. In addition, Chapter VI (“Pacific Settlement of Disputes”) reminds that parties to any dispute shall seek a solution by “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement...” or other peaceful means of their own choice [Article 33(1)], all of them optional. Moreover, GA Resolution 2625 (XXV) of 1970 and the 1982 Manila Declaration on the Peaceful Settlement of International Disputes (which named the good offices), as well as the Organisation for Security and Co-operation

in Europe (OSCE, 1994) and its Tribunal on Conciliation and Arbitration restated the UN Charter and made no significant progress to the issue.

The second chapter (pp. 75-110) presents a classification in two categories of means to peacefully settle disputes in international law since the adoption of the UN Charter, namely: First, the no jurisdictional means (i.e. negotiation, good offices, mediation developed by GA Resolution 65/283 of 22 June 2011-, conciliation developed by GA Resolution 50/50 of 11 December 1995 and fact-finding, all of them no binding). Second, the jurisdictional means (arbitration and judicial settlement, both optional but binding their decisions; a clear distinction between them is provided in p. 99).

The third chapter (pp. 111-165) deals with the distinction between good offices and mediation. While they are similar mechanisms, mediation allows the third party to propose ways of settlement (p. 117). Once the mediator is accepted by the conflicting parties, the mediation procedure is very flexible and may be used in any situation, but it is more suitable to prevent conflicts, once initiated, or to consolidate peace when the conflict is over (p. 122). Ways and functions of the mediation must be carried out confidentially, as detailed in p. 132. The incumbent of the mediation may be a personality, third state(s) or an international organization, in particular the UN where the Secretary-General appoints special representatives/envoys for each conflict, to offer good offices and mediation between conflicting parties (pp. 142-145). In any case, the mediator must be impartial (p. 150), but no neutral (pp. 152-153); he or she needs a thorough knowledge of the situation (p. 161) and be trained in mediation techniques (p. 164).

The fourth chapter is the central theme of the book (pp. 167-193), focussed on the international mediation at the UN system and the tools developed by the Secretary-General, such as the 1992 Manual on the peaceful settlement of disputes among states, the 2010 Manual for UN mediators and the 2011 Mediation start-up guidelines. In accordance with them, mediation requires to be accepted by the parties in conflict and the mediator be credible and well supported by the international consensus (p. 168).

Next, the author reviews the role paid by the UN principal organs in the field of mediation. Firstly, the Security Council has the primary role since it may, at any stage of a dispute, “recommend appropriate procedures or methods of adjustment” [Article 36(1) of the UN Charter]. Should the continuance of the dispute endanger the maintenance of international peace and security, it shall “recommend such terms of settlement as it may consider appropriate” [Article 37(2)]. Should all the parties to any dispute so request, it may “make recommendations to the parties with a view to a pacific settlement of the dispute” (Article 38). Following SC Resolution 1325 (2000), UN peace-keeping operations shall adopt a gender approach, paying attention to the special protection that women and girls deserve in conflicts. The Secretariat Department of Political Affairs provides a permanent team of independent experts in mediation. UN-Women claims to increase the number of women in mediation procedures. Moreover, SC Resolution 2686 (2023) encourages the Secretary-General to involve women, youth, civil society and religious leaders in mediation procedures (pp. 169-177). Lastly, OHCHR and DPPA issued in 2023 their first practical note on enhancing the quality and effectiveness of mediation efforts through human rights.

Secondly, the General Assembly may make recommendations with regard to “general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments” [Article 11.1 of the UN Charter]. Unless the SC is acting in such situation (Article 12), the GA may recommend measures for the peaceful adjustment of any situation, including those resulting from a violation of the purposes and principles of the UN Charter (Article 14). Moreover, the current war of aggression in Ukraine moved the GA to bypass the SC and take action in accordance with GA Resolution 377(V) of 1950 (“United for Peace”) (pp. 178-180).

Thirdly, the Secretary-General may bring to the attention of the SC any matter which may threaten the maintenance of the international peace and security (Article 99 of the UN Charter). In addition, he or she shall perform such other functions as are entrusted to him or her by the UN principal organs (Article 98). According to this mandate and encouraged by the World Summit of 2005, the Department of Political Affairs and its network of special representatives/envoys and presences in the field have developed a consolidated practice in order to offer good offices and/or mediation to conflicting parties, covering 36 situations in 2009. Unfortunately, the Russian war of aggression in Ukraine or the Israeli Palestinian genocide in Gaza, including the aggression in Lebanon and the extension of the war to Yemen, Syria and Iran, show *inter alia* the limits of mediation when one party to the conflict (respectively, Ukraine and Israel) prefers war to peace and is fully supported by USA and its allied from NATO and the EU (pp. 180-189).

Fourthly, some examples are provided on the practice developed by UN specialized agencies in the field of mediation, whose constitutive treaties may prescribe one or more ways to settle disputes. This is the case of the International Civil Aviation Organization (ICAO) and mediation activities carried out by its Council; the UNESCO 1962 Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking the Settlement of any Disputes which may Arise between States Parties to the Convention against Discrimination in Education and its 2005 Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation; the World Intellectual Property Organization (WIPO) and its Arbitration and Mediation Center; and the International Bank for Reconstruction and Development (IBRD) (pp. 189-193).

The fifth chapter deals with several examples of international mediation provided by regional international organs, such as the EU and its methods of alternative dispute resolution (ADR) including mediation; the 2003 Strategy on European Security; the mediation role carried out by the EU High Representative for Foreign Affairs and Security Policy, established in 1999, including in the fields of international co-operation for development, human rights, electoral observation and peace-keeping operations. They were followed by the 2009 EU Concept on Strengthening Mediation and Dialogue Capacities and the 2020 New Concept on Mediation addressing peace mediation based on values such as human rights, democracy, rule of law, gender approach, religion, environment and climatic change. However, the EU is losing relevance in the context of polycrisis dominating the current international relations (pp. 198-207). Mediation activities carried out by other intergovernmental regional organizations (OAS, ASEAN, AU) and some non-governmental organizations (International Committee of the Red Cross, Center for Humanitarian Dialogue), are also described (pp. 208-231).

Professor Torres Cazorla concludes that the international mediation is always necessary and should be the rule rather than the exception in the international arena. Many disputes and conflicts discussed along the book proved that mediation may be a success. However, the emergency of non state actors, the proliferation of civil wars for long periods and the reiteration of the use of force in violation of the purposes and principles of the UN Charter without consequences, place the author in her conviction that mediators are the last chance (pp. 233-243). Even in times of crisis, the BRICS Summit held on 24 October 2024 showed regional emerging powers (i.e.: China, Brazil, South Africa, Türkiye and India) offering good offices and mediation to settle current and alarming armed conflicts.

Alternatively, we should consider that the current proliferation of armed conflicts (the Secretary-General quoted more than one hundred in 2023) is fueled by the alarming increase of the world military expenditure (according to SIPRI, 2,4 billion dollars in 2023); in the same year, FAO reported 2.330 million people suffering from grave or moderate food insecurity. The Pact for the Future, adopted by the GA on 22 September 2024, proved that reform of the obsolete UN Charter shall not be possible. World polycrisis, including the dramatic climatic change, make urgent the adoption of bold measures in the international arena. Therefore, we propose the refoundation of the World Organization on a more democratic basis; less co-operation and more integration and solidarity among states and world people; full recognition of justiciable solidarity rights such as the rights to development and to environment, the human right to peace and the right to disarmament. The future World Parliament should integrate tripartite delegations from all states (i.e.: government, parliament and civil society). The World Executive, also tripartite, should be able to enforce its decisions to prohibit wars and impose peaceful means to settle any dispute, including international mediation. And the World Court of Justice must be compulsory to all states, including a new permanent chamber on human rights, and its decisions to be enforced.

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