CHAPTER 5

The Peaceful Settlement of International Disputes

5.1 The Principle

The obligation of the subjects of international law to settle their disputes by peaceful means is the logical corollary of the prohibitions of the threat or use of force and the interdiction of intervention. These principles may be seen as the inscriptions on the two sides of the same coin. States resorted to coercion in order to prevail over their adversaries in conflicts. The gradual ban on force and other forms of pressure has not, however, eliminated international disputes caused mainly by the scarcity of goods or contradictory values. Therefore, conflicting parties must be obligated to seek a non-violent solution to their controversies.

The terms ‘settlement’ or ‘solution’ are usually employed interchangeably. Their meaning is usually taken for granted without further discussion. However, two definitions that vary in scope seem possible. They can either refer to the elimination of the root causes of a dispute; or they may at least signify the agreement of the parties not to pursue their claims anymore, even if their differences of opinion have not completely disappeared.

The slow development of the principle of the peaceful settlement of international disputes followed the above logic and went in parallel with that of the non-use of force. Thus Article 1 of the Hague Conventions for the Pacific Settlement of International Disputes of 1899 and 1907 set out: ‘With a view to obviating as far as possible recourse to force in the relations between States, the

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Contracting Powers agree to use their best efforts to insure the pacific settlement of international differences.' The cautious wording short of a firm commitment should be noted: even the use of their best efforts by the contracting parties may fail.\textsuperscript{664}

The member states of the League of Nations were bound to choose between three procedures – arbitration, adjudication by the PCIJ or enquiry by the Council\textsuperscript{665} – for settling disputes likely to lead to a rupture and not to go to war against members which complied with an arbitral award, a judgment of the PCIJ or the recommendations in a unanimously adopted report of the Council.\textsuperscript{666}

A general duty (merely) to seek to settle disputes opposing them to each other by pacific means was accepted by the parties to the 1928 Briand-Kellogg Pact.\textsuperscript{667}

This obligation was also enshrined and further specified in the UN Charter. Thus one of the purposes of the new World Organization in Article 1(1) of its constituent treaty is to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment\textsuperscript{668} or settlement of international disputes or situations which might lead to a breach of the peace. Moreover, the third principle included in Article 2 imposes on all members the obligation to settle their international disputes in such a manner that international peace and security, and justice, are not endangered.

The wording of these two provisions refers to a crucial problem which may arise in a conflict where the more powerful party renounces the use of force in favour of a non-violent solution. Quite significantly, the draft of the Charter drawn up by the great powers at Dumbarton Oaks in 1944 did not mention the duty of dispute settlement in conformity with justice and international law or not endangering international peace and security, and justice. It was the small and medium-sized countries that insisted on the insertion of these additional requirements at the founding conference of the UN in San Francisco in 1945. These states also agreed that the main task of the new organization ought to be the maintenance and restoration of international peace and security, but not at the price of imposing a non-violent but inequitable solution on the less

\textsuperscript{664} The same is true of the avoidance of the recourse to force 'as far as possible'.

\textsuperscript{665} The term ‘enquiry’ was a misnomer, since the Council actually engaged in conciliation by also making recommendations for a solution. See infra 184.

\textsuperscript{666} See supra 19.

\textsuperscript{667} See supra 21.

\textsuperscript{668} Another undefined term that adds to the terminological confusion.