Peaceful Settlement of Disputes within the CSCE: Bridge over Troubled Water

Gerard J. Tanja

Introduction
Geneva will become the seat of the new Court established by the Convention on Conciliation and Arbitration within the CSCE. With the agreement among the CSCE participating States on Geneva as the seat of the newly established Court, Switzerland was, to a certain extent at least, (politically) rewarded for almost ten years of campaigning with regard to the development of a CSCE dispute settlement mechanism based on the mandatory involvement of a third party.

In 1973 Switzerland had already submitted the so-called 'Bindschedler-Draft' on dispute settlement, but in the years between 1973 and 1975 — the year that the Helsinki Final Act was finalized — the contents of the Swiss proposals proved to be too ambitious. Hence, under the chapeau "Peaceful Settlement of Disputes" Principle V reiterates in rather traditional terms the obligation to settle disputes peacefully, on the basis of international law and by applying mechanisms such as negotiation, enquiry, mediation, conciliation, arbitration, or judicial settlement.

In the light of this, rather non-committal formulation it was decided to convene a further meeting of experts, after the Belgrade Meeting in 1977. The Belgrade Meeting did result in a meeting of experts to be convened at Montreux on 31 October 1978. That meeting was charged with the task of pursuing "the examination and elaboration of a generally acceptable method for peaceful settlement of disputes aimed at complementing existing methods".

Montreux, however, did not produce the results everyone had hoped for and, consequently, the Concluding Document of the Madrid Follow-up Meeting (11 November 1980 - 9 September 1983) repeated almost ad verbatim the recommendation to convene a further meeting of experts in order to pursue "on the basis of the Final Act, the examination of a generally acceptable method for the peaceful settlement of disputes aimed at complementing existing methods."

1. The author has written this article in his personal capacity. The views expressed herein do not necessarily represent those of the Netherlands Government.
4. CSCE Final Act, Principle V, Helsinki, 1 August 1975. The principle largely echoes Article 33 of the UN Charter.
existing methods".\(^6\) The meeting took place in Athens and commenced on 21 March 1984. Compared to Montreux, the results produced were even more disappointing: the Soviet Union and certain Eastern European States refused any mandatory third-party involvement.\(^7\)

The prospects for agreeing on a generally acceptable method for the peaceful settlement of inter-state disputes therefore proved, on the brink of the tenth anniversary of the signing of the Helsinki Final Act, not very bright. This changed, however, during the course of the third Follow-up Meeting in Vienna (4 November 1986 - 19 January 1989), following the far-reaching political changes in Eastern Europe and the fundamental change in the attitude of the Soviet Union concerning mandatory third-party involvement.

**The Vienna Concluding Document and the Paris Charter**

Compared to the earlier Follow-up Meetings and expert meetings devoted to peaceful settlement of disputes, the Vienna Concluding Document contained an explicit reference to "the acceptance by the participating States of the mandatory involvement of a third party when a dispute cannot be settled by other peaceful means".\(^8\)

As a first step it was agreed to convene a (third) Meeting of Experts, this time in Valletta (Malta) from 15 January to 8 February 1991, with the task of examining the above-mentioned "mandatory involvement (...) in the settlement of certain categories of disputes".\(^9\) Furthermore, that Meeting was given as its task to "establish a list of such categories and the related procedures and mechanisms" and to "consider the possibility of establishing mechanisms for arriving at binding third-party decisions".\(^10\)

Because of the profound and historic political developments in Eastern Europe and the conviction that "a new era is dawning in Europe", the States participating in the csce decided to organize a special summit meeting in Paris (19-21 November 1990). The Summit resulted in the much heralded 'Charter of Paris for a New Europe', which may be characterized by the following four, closely interrelated features:

---


7. See also P.H. Kooijmans, "The Mountain Produced a Mouse. The csce Meeting of Experts on Peaceful Settlement of Disputes, Valletta, 1991", *Leiden Journal of International Law*, vol. 5, no. 1, February 1992, pp. 91-92. According to Kooijmans: "Both meetings were a complete failure as the only conclusion which could be drawn was that no consensus had been achieved on any specific method of dispute settlement".


9. Ibid.

10. Ambitions were high as it was also foreseen that the list to be developed in Valletta "would be subject to subsequent gradual extension". Ibid.