RESOLVING SOVERIGN DISPUTES
(with special emphasis on peace mediation)

Dispute has a wide range of meanings. Sovereign disputes may mean disagreement between two or more states with claims and counterclaims concerning a matter of fact, law and policy. If not properly handled, it frequently leads to armed conflicts.

Dispute is a constant fixture in international relations. We do not live in a world of peace.

However, there is no lack of effort and mechanism to resolve sovereign disputes.

Article 33 (1) of the Charter of the United Nations stipulates that *"[t]he parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a resolution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."*

Broadly speaking, these methods of dispute resolution can be categorized into:

1. Diplomatic means;

2. Judicial means, namely, arbitration and adjudication leading to a legally binding third-party decision; and

3. Dispute settlement procedures among member states of international organisations.

Diplomatic means

On diplomatic means, one immediately brings to mind the Saudi-Iran rapprochement brokered by China in March 2023 with an exchange of ambassadors. Saudi Arabia and Iran severed ties in 2016 after Saudi diplomatic missions in Iran were attacked during protests over Saudi's execution of a Shia cleric.

Iran and Saudi Arabia have backed opposing sides in conflict zones across the Middle East for years. Since the March 2023 rapprochement, Saudi Arabia has restored ties with Iranian ally Syria and intensified a push for peace in Yemen.

Hopefully the rapprochement reached through mediation will usher in a new period of peace in the Middle East.

According to Marzena Żakowska ("Mediation in Armed Conflict" (2017) 17(4) *Security and Defence Quarterly 74*), mediation is one of the most commonly used methods for solving armed conflicts.

The history of mediation intertwines with interstate conflicts. As pointed out by Molly M. Melin ("When States Mediate" (2013) 2 *Penn State Journal of Law and International Affairs* 78), the first recorded mediation took place in 209 B.C., "when Greek city-states helped the Aetolian League and Macedonia produce a truce in the first Macedonian war".

Mediation has produced many important historical peace settlements. Some cases in point are:

(1) The Camp David Accords, a pair of political agreements signed by Egyptian President Anwar Sadat and Israeli Prime Minister Menachem Begin on 17 September 1978, following twelve days of secret negotiations at Camp David mediated by US President Jimmy Carter. The second of these frameworks (*A Framework for the Conclusion of a Peace Treaty between Egypt and Israel*) led directly to the 1979 Egypt–Israel peace treaty;

(2) The Good Friday Agreement or the Belfast Agreement, a pair of agreements signed on 10 April (Good Friday) 1998, mediated by US Senator George Mitchell, that ended most of the violence of the Troubles, an ethno-nationalist conflict in Northern Ireland since the late 1960s; and

(3) The Algiers Accords of January 19, 1981, a set of obligations and commitments undertaken independently by the United States and Iran to resolve the Iran Hostage crisis, mediated by the Algerian government and signed in Algiers on 19 January 1981.

According to Melin, there have been, since World War II, 1,334 mediation attempts by states in 333 interstate and civil conflicts.

In contrast to the other common forms of third-party intervention into armed conflicts – notably military intervention and sanctions – mediation emphasises peaceful intervention based on communication and dialogue, rather than force or coercion. Unlike sanctions and military intervention, mediation is based on the consent and acceptance of all parties concerned.

Furthermore, as pointed out by Żakowska, the willingness of parties to engage in mediation derives from (i) the ability of the disputing parties to retain control over the extent of their participation; (ii) control over procedural details such as the choice of mediator and the observance of confidentiality; and finally, (iii) whether to accept the conditions of conflict resolution established during the mediation process.

The defining characteristics of mediation, namely, being voluntary,

consent-based, flexible and non-binding, appeal to states as they so jealously guard their sovereignty.

Apart from the above, one may consider and analyse the scenarios leading to states choosing mediation.

The utilitarian theory propounded by Constantine Ruhe ("Anticipating Mediated Talks: Predicting the Timing of Mediation with Disaggregate Conflict Dynamics" (2015) 52(2) *Journal of Peace Research*" 243) states that essentially, parties would only resort to mediation if "the expected utility of mediation exceeds the expected utility of conflict". Even in a situation of a party's perceived likelihood of winning the war and is prepared to incur more significant costs related to the intensification of its military operations, it must consider in its calculus the growing civilian fatalities which carry a high risk of reducing popular support.

The other scenario is a mutually hurting stalemate (MHS) when the costs of conflict for both sides are significant without a high chance of victory. According to J. Michael Greig and Patrick M. Regan ("When Do They Say Yes? An Analysis of the willingness to Offer and Accept Mediation in Civil Wars" (2008) 52(4) *International Studies Quarterly* 759), when a conflict reaches MHS, "as both parties are just aimlessly expending resources and incurring losses to no end, disputants are likely to experience a shift in mentality and begin contemplating mediation as an alternative settlement mechanism."

Peace mediation brings hope to a world troubled by armed conflicts.

China, in its aspired role as a peacekeeper, is determined to play an active role in brokering peace. Towards this end, China will establish in Hong Kong the International Organisation for Mediation ("IOMed").

Former Foreign Minister Qin Gang said at the inauguration of the Preparatory Office of IOMed on 16 February 2023 as follows:

"*The IOMed will be the world's first intergovernmental legal organization dedicated to resolving international disputes through mediation. It will transcend the limit of litigation and arbitration in which one side wins*

and the other loses, and it aims to realize win-win cooperation between disputing parties, which is of high significance for promoting world peace, security and development as well as stability of the international order. Being an important effort to practice the principle of settling international disputes by peaceful means enshrined in the UN Charter, the IOMed will further enrich the mechanisms and means of resolving international disputes. It will also be a global public good for rule of law that we founding members provide to the international community, to advance the development of the global governance system. We are confident that the IOMed will fully leverage its unique strengths of being flexible, cost-effective and convenient and present a new option to all countries for peaceful resolution of international disputes."

The Preparatory Office has been established to carry out the preparatory work and to conduct the negotiation of an international convention for the establishment of the IOMed (IOMed Convention). The IOMed, once established, will be an international inter-governmental organization that provides friendly, flexible, economical and efficient mediation services for international disputes and will be a useful supplement to the existing dispute resolution institutions and means of dispute resolution, providing a new platform for the peaceful settlement of international disputes.

It is anticipated that the IOMed will provide much needed services for resolving sovereign disputes through mediation. However, to properly advance peace mediation, comprehensive and innovative research on the subject is becoming imperative.

As Peter Wallensteen and Isak Svensson point out in their article on "Talking Peace: International Mediation in Armed Conflicts" (51(2) *Journal of Peace Research* 315 and 316), "[t]he research question is under what conditions international mediation may bring about peaceful change: in other words, when is mediation effective in transforming destruction conflicts into constructive pursuits? … The study of international mediation is therefore an important research endeavour. By comparison with other foreign policy tools – economic sanctions, intervention, peacekeeping, and development aid – international mediation has been scrutinized and explored to a far

lesser extent. Mediation represents a type of engagement that is not passive. It does not require expensive resources as could be the case in peacekeeping, humanitarian assistance or sanctions enforcement. If the international research community were able to develop better ways of understanding – that is, describing and explaining – the role of international mediation in the context of armed conflicts, then there would undoubtedly be great opportunities to develop and refine mediation uses. … There exists a discussion on whether 'mediation with muscle' is more effective than other types of mediation. It seems premature, however, to make use of violence by a third party an element of the definition. It is preferable to treat this as a separate dimension, and thus one may see more value in asking if peaceful mediation attempts are enhanced or undermined by the use of third-party military force."

Research is needed to identify findings on mediation frequency, strategies, bias, and coordination as well as on trends in defining success.

More work and resources should therefore be poured into practice and research to make peace mediation more available and effective.

Judicial means

If a dispute cannot be settled by peaceful negotiation, an impartial third party may have to intervene. Member states of the United Nations are subject to the jurisdiction of the International Court of Justice (the "Court" or "ICJ"), the principal judicial organ of the United Nations established in June 1945 by the Charter of the United Nations.

The seat of the Court is at the Peace Palace in The Hague (Netherlands).

The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.

The Court has handled many cases. A topical one relating to the Russo-

Ukraine War is the complaint of genocide lodged with the Court in 2022 by Ukraine under the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention"). This was after armed conflicts between Russia and Ukraine broke out.

The ICJ took less than a month to respond to Ukraine's request for indication of provisional measures. It ordered Russia to immediately suspend the military operation in the territory of Ukraine. Russia did not accept such order, instead it raised preliminary objections to the ICJ's jurisdiction and argued that the case was inadmissible. A counter-claim was further made by Russia that the invasion of Ukraine in 2022 was for humanitarian reasons since Ukraine was committing genocide against Russians in eastern Ukraine.

On 6 February 2024, the ICJ rendered its judgment, rejecting all but one preliminary objection that Russia made. By a fourteen-to-two majority of the judges (including in the majority the judge from Ukraine), the Court upheld that it lacked jurisdiction *ratione materiae* under Article IX of the Genocide Convention to rule on whether Russia had violated the Genocide Convention by making a false genocide claim against Ukraine, an argument put forward by Ukraine.

While the ICJ indicated that Ukraine had made a plausible argument that Russia relied on a false genocide claim to start a war, it had to agree with Russia that the scope of the Genocide Convention, and thus the Court's jurisdiction, did not prevent a party from misusing or abusing it. While it is a principle of good faith that a state shall not abuse international treaties and laws, it was not stated so in the Genocide Convention itself.

It is important to note that according to the ICJ's view, the Genocide Convention shall be interpreted strictly and what is not stated expressly shall not be arbitrarily read into the Genocide Convention, as it is "*not consistent with the principle of good faith to invoke a treaty abusively, by claiming that there is a specific situation falling within its scope when it is clearly not the case, or by deliberately interpreting the treaty incorrectly for the sole purpose of justifying a given action*".

Dispute settlement procedures among member states of international organisations

Some international organisations provide their own dispute resolution mechanisms. In commercial and trading, member states of the World Trade Organisation ("WTO") can resort to the built-in dispute resolution system. The system is based on clearly defined rules, with timetables for completing a case. First rulings are made by a panel and endorsed by the WTO's full membership.

An international trade dispute between Hong Kong and the US arose when Hong Kong lodged to a WTO Dispute Panel its case against the US. Hong Kong has been a separate entity in the WTO from China since it became a member of the WTO and GATT in the last century. In 2020, Trump, the former President of the US, decided that products imported from Hong Kong had to be labelled "Made in China". It was a response to China's imposition of the national security law in Hong Kong, which the US considered a "highly concerning action" that threatens US national security interest.

After written and oral submissions from both parties, the Panel concluded in a decision handed down on 22 December 2022 that the human right situation in Hong Kong had not escalated to a threshold of requisite gravity to constitute an emergency in international relations that would provide justification for taking actions that are inconsistent with obligations under the GATT 1994.

According to the rules of WTO, a losing respondent state has to bring its policy into line with the ruling. However, Washington has no intention to comply. The US Trade Representative "strongly rejects the flawed interpretation and conclusions" of the Penal and does not plan to remove the labelling requirement. The US has indicated its intention to appeal, but due to the inactivity of the appeal board now, the proceedings are currently suspended until further notice. Meanwhile, the US has not dropped the marking requirement.

There is no doubt that WTO needs reform.

On the afternoon of 27 September 2023, the Political Bureau of the Communist Party of China Central committee convened its eighth group study session on the rules of WTO and the reform of the organisation. President Xi Jinping stressed that China will firmly defend the authority and efficacy of the multilateral trading system with the WTO at its core in its involvement in the reform of this trade organization, so as to actively promote the resumption of the normal operation of the WTO dispute settlement mechanism.

Conclusion

James G. Ballard once said: “We live in a world ruled by frictions of every kind.” Our world is indeed far from peaceful. We are never so vulnerable to apocalypse. We must therefore find a way to peace.

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