

The Peaceful ways for solving the international disputes "the negotiations as a model"

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الطرق السلمية لحل النزاعات الدولية المفاوضات أنموذجاً



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Abstract

It is well known that the international relations are not constantly in a permanent stability, because of the conflict of interests, which frequently leads to disputes between the States, and it is wise in such cases, that they seek to settle their disputes amicably. And, should not resort to violent means unless it is necessary.

The efforts of peace-loving politicians, since the end of the last century, have been directed towards replacing the power with using the peaceful means in settling the international disputes, and for this purpose, major conferences, such as The Hague Conference of 1899 and 1907 were held. A series of provisions for the peaceful resolution of the international disputes were established, and subsequently added to those dictated by the League of Nations, the conventions under which they were concluded, and the final determination of the Charter of the United Nations in accordance with its 33 article.

The most important of these peaceful ways of resolving the international disputes is through negotiations, which makes it imperative that we take note of the ambiguities of this concept, without overplaying its effectiveness in resolving the international conflicts?

Key Words: Disputes - amicable - negotiations - Charter – International

ملخص:

من المتعارف عليه أن العلاقات الدولية لا تتميز بالاستقرار الدائم، نتيجة تعارض المصالح الذي يؤدي في كثير من الأحيان إلى نشوب النزاعات بين الدول، والحكمة تقضي في مثل هذه الحال بأن تسعى هذه الأخيرة إلى تسوية نزاعاتها ودياً، وبالأخص إلى وسائل العنف إلا إذا دعت الضرورة إلى ذلك.

وقد اتجهت جهود السياسة محبي السلام منذ أواخر القرن الماضي إلى إحلال الوسائل السلمية محل القوة في فض المنازعات الدولية، وعقدت لهذا الغرض المؤتمرات الكبرى مثل مؤتمر لاهاي سنتي 1899 و1907، وفيها تقرر مجموعة من الأحكام لتسوية المنازعات الدولية بالطرق السلمية، ثم أضيفت بعد ذلك إلى هذه الأحكام تلك التي أقرتها عصبة الأمم، وما أيرم في ظلها من اتفاقيات، وبما تقرر أخيراً ضمن ميثاق الأمم المتحدة وفقاً للمادة 33 منه.

ولعل أهم هذه الطرق السلمية لفض المنازعات الدولية تلك المتمثلة في المفاوضات، الأمر الذي يحتم علينا الإحاطة بما يكتنف مفهومها من غموض، دون أن نهمل مدى فاعليتها في حل النزاعات الدولية؟

الكلمات المفتاحية: النزاعات – الودية- المفاوضات - ميثاق- الدولية.

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Introduction:

The international community has devoted a great importance to the resolution of the international conflicts, ensuring that they do not develop into wars, by resorting to the peaceful means.

This was the case during the Hague Conferences of 1899 and 1907, where many charters and conventions on world peacekeeping were reached. These two conferences are known as the two Hague Peace Conferences. The 1907 Conference stated The necessity to adhere to friendly means to address all international friction, by following all procedures and the provisions set forth for this purpose, such as mediation, investigation and arbitration .Shortly thereafter, the Statute of the International Court of Justice separated everything related to the judicial route, and the General Arbitration Treaty of Geneva 1928 has addressed the subject of conciliation as well as judicial and arbitral Proceeding.¹

The Charter of the United Nations urged the members of the United Nations body, through article II, paragraph 3, to resolve their disputes by peaceful means in such a way that international peace, security and justice are not endangered

², enumerating in the same context these methods under article 33 of the Charter. In the same vein, it stressed the need to resort to the regional and the international agencies and organizations, or other mechanisms that could keep the world peace³, and that the dispute should be brought to the attention of the international body, if the dispute cannot be resolved by one of the means mentioned above, to recommend what it deems appropriate.

The negotiations are one of the most recommended means by the United Nations General Assembly for dealing with international crises that threaten the emergence of wars, as expressed in the General Assembly resolution 40/9 of 6 October 1985. Which the General Assembly appealed to the conflicting States to resolve their differences through negotiations and peaceful means⁴.

In this article, we will address one of the ways to amicably resolving the disputes of a political or diplomatic nature, which is negotiations, a

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double-edged weapon, according to the function for which it was used. After reviewing the importance of negotiations in resolving conflicts in general, we will support this research with models for the role of negotiations in putting an end to occupation, and in the suppression of an international conflict, while at the same time establishing international control over the wealth of a sovereign State. In contravention with the right of the States to an economic independence, and finally those that have ended a conflict of a non-international nature, but have ultimately led to the division of a sovereign State.

I. the importance of negotiations in the resolution of disputes

Negotiation is one of the most important and effective diplomatic method in resolving the international political, economic and legal disputes, but its concept remains ambiguous, and there has not yet a comprehensive and permanent objective definition to the word negotiation in the field of international law⁵. A sharp debate is currently taking place in the legal and political arena in general over the concept of negotiations. In light of the peaceful efforts being made to develop the international relations.

Despite the contribution of the negotiations in the resolution of numerous issues facing the international community, such as disarmament, human rights, self-determination and independence, development, water and food, etc. In the future, negotiations are expected to be of great importance to the development and establishment of the rules of the international law⁶, but this lack of acceptance does not prevent us from searching for a definition to negotiations, and then we brief the course of negotiations, without overlooking its important role in conflict resolution.

1- Définition of négociations:

Since the foreign diplomacy concentration the design, preparation and the implementation of the foreign policy of the States. The most important instrument to achieve the objectives of this policy is the negotiation, whether public or private⁷, negotiations is :((the Exchange of opinions between two disputing States with the intention to reach a settlement for the dispute)⁸. There is a legal definition for the international negotiation: (a dialog between representatives of international persons in a private or public meetings or deliberations, with a view to reach an agreement, that would end the existing dispute, establish or reorganize the economic and political relations among themselves, or to reach an international agreement)⁹. It is also: (to discuss with another party, with a view to consent or agree)¹⁰.

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Negotiations also may be a prerequisite before recourse to the arbitration or the international justice, and its success depends on the position of the parties and the state of the international relations in general¹¹.

2- the course of négociations:

Negotiations are normally conducted by diplomatic envoys of the States in dispute¹², through contact, with each other's Foreign Minister. Unless the subject of the dispute is of particular importance, then it requires the appointment of specialized delegates to negotiate. The exchange of views between the negotiators is verbal, or in written notes or both ways.

If the dispute needs to be resolved by intervening in the delimitation of the borders between two neighboring States, the two States set up a mixed technical committee of representatives from each of them to study the subject of the dispute. A report must be drawn up in their opinion to guide the original negotiators¹³.

The negotiations may take place directly between the two conflicting States and in their own sphere. It also may be conducted through a conference that gathers the conflicting States. it usually resort to this last route in serious disputes that may affect the common interest of the International Community and disputes that are sought for adjudication by non-States parties to the conflict¹⁴. When an agreement is reached after the negotiations are over, the negotiating parties will resort to the page of a written agreement¹⁵.

3- The Role of negotiations in the resolution of the international disputes:

Historically, negotiations are one of the first political or diplomatic means of resolving international conflicts that humanity has known, as they are the oldest peaceful means, because they place the conflicting parties face to face to settle their dispute directly without the intervention of another party. It is the one that decides a settlement that satisfies the parties according to their own interests, and that its negotiations are completely secret. Some have said that if war is the art of coercion, negotiations are the art of persuasion. It has a political meaning and it can be used during peace as it could during war¹⁶. The examples that we will present may reflect the effectiveness of negotiations in putting an end to various international conflicts, including those that have lived for more than a century, or that have led to civil wars. Or those that have created a new kind of international sanctions or so-called smart sanctions, represented in oil-for-food solution.

II. Negotiations to end an occupation (Evian negotiations):

The Algerian-French conflict negotiations, or the Algerian-French conflict resolution negotiations, were the most sophisticated example of the crucial role of the negotiations. Six years after the Glorious Revolution of Liberation has erupted, when France revealed its intention to end the conflict, and recognize the FLN as a negotiating party¹⁷.

The start of these negotiations was at first meeting between the delegations of the two countries, in the French city of Multan, between 25 and 29 June 1960, in response to General de Gaulle's statement of 14 June 1960. The Algerian delegation included Mohamed Bin Yahya and Ahmad Boumendjel.

The second meeting between the delegations of the two countries took place in the city of Losran, Switzerland, on 20 February 1961, as head of the French delegation was "George Pompidou", and it was announced on 30 March 1961. In Tunisia and Paris, in both governments at the same time, that the two countries opened negotiations in the Swiss city of Evian on 07 April 1961, after the opening of these negotiations, they were suspended on 13 June 1961 at the initiative of the French negotiating side, with the contacts remaining open between the two sides.

The two delegations will meet again on 20 July 1961, in the French city of "Le Vrane" near the Swiss borders. The Algerian side in the negotiations was "Saad Dahlab", the representative of the interim Algerian government¹⁸.

Another meeting took place in the Swiss city of "Basle" on 28 and 29 October 1961, in which Mohamed Ben Yahia, Rida Malek, headed the Algerian delegation, and represented France: Bruno Dolos and Claude Chay, then a meeting between SaadDehlab and Loy Guox on 09 December 1961¹⁹.

Then, the "les Roux" negotiations were held on 11 and 19 February 1962 to review and conclude the terms of the Evian agreement in preparation for the declaration of the cease-fire.

The two parties will meet again on March 07, 1962 in Evian. The Algerian delegation was led by Deputy Prime Minister Karim Belkassem and the French delegation, represented by Loy Goux, and continued for 12 days to sign the ceasefire agreement that was signed by Karim Belkassim on 18 March 1962, to enter into force on 19 March 1962, known as Algerian Victory Day²⁰.

III. United Nations oil-for-food negotiations:

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The oil-for-food negotiations is the negotiations that took place between Iraq and the United Nations, which resulted in the conclusion of an agreement between the two sides, known as the oil-for-food agreement, as a result of a several international demands, which greatly contributed to putting an end to the suffering of the Iraqi people. Following the efforts of some official bodies, and some humanitarian organizations, that highlighted the pain of the Iraqi people²¹.

To address the effects of the economic sanctions, imposed on Iraq as a result of the grave living and health situation of the Iraqi civilian population, since the embargo imposed by the Security Council on Iraq, as a reaction to its occupation of Kuwait on August 02, 1990, through resolution 986 (1995), Based on Chapter VII of the Charter. The Council authorized under this resolution the sale of Iraqi oil and petroleum products for the purchase of foodstuffs, medicines, materials and necessary supplies. with a strict procedures and a strict control by the United Nations, both in terms of the sale and the distribution of its oil products, and in terms of needs and materials²².

Although the above-mentioned resolution did not amount to sanctions, the procedures contained in its texts and the Memorandum of Understanding between the Iraqi Government and the United Nations Secretariat, for the implementation of the resolution 986 (1995), constitute a severe penalty, because it stripped the Iraqi government of a certain sovereign rights, that give it the freedom to act with its own resources²³. The resolution included a more damaging condition for Iraq, which was set out in paragraph 8 (c) and provided for the transfer of the same percentage of funds deposited in the security fund to the Voluntary compensation Fund²⁴, under paragraph 2 of the resolution 705/1991²⁵.

Iraq also informed the Secretary-General of the United Nations in mid-May 1995. The refusal to implement this resolution due to the matters it contains, which once again, conflict with Iraq's sovereignty and territorial sovereignty.

The UN Secretary-General then called for holding a series of contacts with the Iraqi side, in light of Iraq's objections to the draft resolution, so the negotiations started on 06 February 1996. In this regard, specific directives were issued concerning the stages and the method of holding the talks with the Secretariat, giving the authority to distribute food and health needs throughout Iraq to the Iraqi authorities²⁶. After arduous negotiations, the Memorandum of Understanding was reached on 20 May 1996, which

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established a mechanism to implement this resolution, in order for the compensation Commission to continue its work with oil revenues²⁷.

According to the oil-for-food program, in the post-March 1997 period, the collapse in the development of the infrastructure of education systems, health and civil labor institutions, has not stopped, these collapses are harder than what the Iraqi people could endure for the next several years. Of course, this supports the critics' saying that comprehensive sanctions harm the social fabric, and cause the pain and suffering, more than the political goals or gains they could achieve²⁸.

IV-Negotiations to end the conflict in Sudanese Darfur region:

The rebel movements in Darfur have been dissatisfied with the African Union's leadership efforts to resolve the crisis, and have preferred a greater role for the European Union and the United States.

As for the African countries, they were not willing to be involved in the Western plan toward the developments of the Darfur problem. For two reasons, the first is its growing relations with Sudan, and the second is that any instability may hit many of the continent's countries. Sudan accepted the African intervention, considering that the African Union represents the only barrier between the Sudan and the foreign intervention²⁹.

As a reminder, the UN Security Council has passed several resolutions to resolve the crisis in Darfur, including the resolution 1556 of 30 June 2004 and the resolution 1564 of September 2004³⁰.

Several meetings have taken place between the conflicting parties, to negotiate a solution to the crisis in the region away from armed violence and foreign intervention, which have taken place at several points on the African continent, as we will explain:

1-Abeche negotiations:

Following the Sudanese government's response to the initiative of the Chadian President: Idris Deby. The Sudanese government entered into negotiations with the rebels, in a first round on 3 September 2003, which included three main parties: the Sudanese government, the arm carriers in Darfur, the Sudan Liberation Army, in addition to the Chadian government, the Justice and Equality Movement refused to participate in these negotiations. On the pretext, that the Chadian mediator is not neutral and biased towards Khartoum the signed agreement was aimed at establishing two basic principles³¹, establishing security in Darfur, and the cease-fire that came into effect on 6 September 2003, at the initiative of the Sudanese president³².

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After the failure of the first round, the second round of peace negotiations between the delegation of the Government of the Republic of Sudan and the delegation of the Sudan Liberation Army. Under the auspices of the Chadian government, was held in the Chadian city of **Abeche**, from October 26 to November 2003, as an extension of the agreement signed on September 3, 2003, between the two parties, and as an implementation of its seventh item. Based on The report of the Tripartite Commission on the field situation, because the SLA did not bring the annexes within the specified period, as a demonstration of good will and genuine desire, for peace between the two parties³³. However, the rebels surprised everyone with impossible demands that could not be considered, which led to the end of the negotiations before the start³⁴.

2. Ndjamenan negotiations:

Following the collapse of the Abechi negotiations, it was decided that the third round of talks would be held in N'Djamena, Chad's capital, on December 16, 2003, this is so canall the parties participate more effectively, but these negotiations collapsed before they start. Since the delegation of Sudan Liberation Movement raised new demands that were not mentioned before which led to the failure of these negotiations, the most important of which was the autonomy in the region³⁵.

However, this did not discourage the conflicting parties from continuing the negotiations in a new stage of talks on 21 April 2004, under the auspices of the Chadian President and the presence of observers from the United States and the European Union. On 4 June 2004, the Sudanese government signed an agreement with the African Union delegation, under which the Sudanese government agreed on a number of demands, including the approval of the deployment of 120 observers from the African Union, the European Union, the United States of America, the Sudanese government, the opposition and Chadian mediation movements in Darfur. Despite the arrival of 80 observers in Darfur, they were unable to perform their work as required because of their lack of proper support³⁶.

3-Addis Ababa negotiations:

In order to complement the international efforts to end the ongoing conflict in Darfur, a new round of negotiations was launched in July 2005, attended by a second-line delegation from the rebel movements. This raised the African Union's ire, and negotiations collapsed because the rebellion movements insisted on five conditions, including dismantling the Janja weed, conducting an international investigation and trials, it was clear from

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the speech of the rebel movements that the goal was to create a crisis and disagreements to torpedo the negotiations that had already collapsed³⁷.

4-Abuja negotiations:

Despite all the attempts to thwart these negotiations, the politicians did not give-upon the peaceful solution to the Darfur conflict. The African Union called on the disputing parties to hold a new round of negotiations in the Nigerian capital "Abuja" that took place between 23 and 18 September 2004, and it is about to ending signing the humanitarian affairs protocol, when the rebel movements refused in the last moments. This further increases the African Union's insistence on giving a new breath to these negotiations in its second round on 21 October 2004, leading to the signing of the security and humanitarian protocol.

After the tumble of third round on 11 December 2004, which was scheduled to discuss the political file. Against the backdrop of a wide escalation of the military situations between the two parties, the two sides exchanged accusations of violating the cease-fire agreement³⁸. A fifth round started in Abuja in 10 June 2005, and witnessed the signing of the declaration of principles between the Khartoum government, the two-armed movements (Sudan Liberation Army, Justice and Equality Movement) on 5 July 2005.

The sixth round started on 15 September 2005 between the African Union, the Sudanese government, Sudan Liberation Movement and the Justice and Equality Movement, it continued for a period of 4 weeks. In September 2005, the African Union presented a paper to reconcile the government with the armed movements in Darfur to negotiate and bring closer viewpoints on the different issues.

As for the seventh Abuja negotiations, it was in November 2005 between the same parties, provided that this round is the last to reach a peace agreement³⁹.

On May 5, 2006, the Sudanese government and the Sudan Liberation Movement the "Mona Erkou Menawi" wing, signed the Darfur peace agreement in Abuja in the presence of African mediators and a number of international figures⁴⁰.

Despite signing some peace agreements between the Sudanese government and some armed movements, and despite the relative calm prevailing in the region, reaching a final agreement that ends the conflict and returning the displaced and the refugees to their homes, is a demand that requires great efforts from all parties to the conflict.

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Conclusion:

That negotiation narrows or perhaps ends the differences that can arise between the states, due to conflicting objectives, which is the best way for the parties to achieve their interests in the international environment. Once the dialog and the debate has begun, this will ensure an exchange of views on various issues, subjects and problems, resolve differences and promote reconciliation, greater understanding and interaction, and balance the divergent interests. Therefore, negotiations are the easiest, shortest and most serious way to resolve the problems, that States may be involved in their pursuit of their own interests with other parties, while the State is counting on this method of ensuring and preserving its interests with a view to cooperating and integrating with others. At the same time, it should use the same method of settling the disputes and the principle of good faith, and in accordance with the principles of the international peace sought by the United Nations in its Charter, in which all Member States were committed to dealing and resolving their disputes with the rest of the States peacefully. Foremost among them negotiations.

Whatever the imbalance in the international relations, the exchange of views between the conflicting parties involved in the negotiations, often leads to a specific outcome that is divided between success and failure, and they may not reach an agreement on the issues at the negotiating table, in which case the negotiations have reached a negative conclusion. The result may be positive if the parties reach an agreement on the issues for which they have negotiated, in which case it is necessary to proceed towards the writing and codification of the agreed language in a specific formulation to be signed in order to take the form of a treaty.

It should be noted that the negotiations that are not culminating in the writing and signing of a treaty, do not restrict the States parties in which they participated, even with regard to the positions of principle that they had in the course of the negotiations on the issues at stake. They are not bound by what they have accepted, or have recognized in previous negotiations that have not been crowned by a final agreement that has been signed.

Perhaps the most important outcome that can be reached is the need to emphasize the resort to negotiations, for the resolution of the international disputes in order to achieve the lasting justice, away from everything that would go into the issues of dividing states, and giving priority to the oppressor's view of the oppressed, and empowering the tyrant to establish hegemony over the national capabilities, in a way that is contrary to the

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right of peoples to retain their natural resources, and to maintain their economic independence, even if it leads to a kind of stability and keeps the peace at the present. However, it will create a hidden conflict that will threaten the peace and security at any time.

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