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**La risoluzione delle controversie
internazionali tra Stati e la proliferazione
dei tribunali internazionali**

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ABSTRACT

The international relations are often built out of conflicts of interest, strategic problems, and many more controversial issues. All these elements constantly make diplomacy a not sufficient means to solve conflicts, which frequently involve several States and different forms of government. In these circumstances, the international public law intervenes, in order to achieve the highest level of global calmness and concordance.

A judgment, which dates back 1924, given by the Permanent Court and named "Mavrommatis Affair", establishes that a controversy is "*a disagreement on the object of the controversy from the perspective of the current regulations or from the perspective of a reconstruction and evaluation of the development of the object of the controversy.*" Moreover, "*a controversy results to be a conflict or an opposition between juridical theories concerning legal subjects supervised by international law.*"

Hence, the controversy may manifest two significant components. An authority belonging to International Law may claim and the pretense may be contested by a different power of the International Law. Otherwise, a situation may be characterized by a protest for having damaged an interest towards an authority of the International Law by another one. Just one of the two elements, where applicable, makes the controversy "executable", which means "solvable by the International Law".

An older tenet differentiated two assortments of disputes: a *political* one, and a *juridical* one. A juridical dispute was bounded in relation to the invocation of the International Law demanded by the parties in order to support their positions. A dispute was defined political whether the parties involve political reasons. The existence of crucial international agreements, fixes that juridical

disputes must be exposed to the jurisdiction of the Court. Nevertheless, the Court itself, in regards to the dispute between Nicaragua and the US, has overruled the objection, raised by The US, concerning the political nature of the dispute. Indeed, as much as the dispute may have a political nature, it can be settled through juridical tools.

Therefore, all disputes can be considered “executable”. Different methods of resolution are applied referring to two fundamental principles. The first principle concerns the concept of sovereignty and its strict interpretation: the States are not obliged to be subjected to any judicial authority. The second principle involves the legal obligation for the states to find a solution to the disputes by committing the governments to peaceful means. The UN Declaration, since its approval, has introduced a ban on the utilization of the war, interpreted as a means of resolution of disputes.

We should logically ask ourselves which tools available can be considered as “peaceful means”. These tools comprehend the petition to an agreement or to a judgment, which are respectively achievable through *diplomatic proceeding* and by *binding procedures*.

A diplomatic proceeding refers to a political action by the States in question, and this kind of proceeding requires the approval of the parties on the result of the proceeding. Moreover, this judicial model involves an acknowledgment of both parties on the result of the diplomatic proceeding. Several diplomatic proceedings are also increasingly be used in the process of solving disputes, such as *negotiation*, *good offices*, *investigation*, *mediation* and *settlement*. Among the specified proceedings, solely negotiation is being performed exclusively by diplomacy; the others, imperatively demand the participation of a mediator.

On the other hand, a binding proceeding refers to the willing of the parties to be subjected to arbitration. Furthermore, the parties must agree on empowering a judge in order to solve the dispute. If the State does not have any intention to empower a judge, it cannot be subjected to the judgment produced. The parties involved in the judgment will establish, by mutual agreement, composition rules and ways of functioning of the above-mentioned judicial body.

Understandably, States mainly resort to diplomacy, because of the legal weight carried by the parties on the result of the agreement. However, nowadays, International Law is inclined to institutionalize the judicial function, equipping itself with standing judicial bodies, which have general substance. These bodies operate on firm rules, and they primly apply International law, guaranteeing the two principles of *impartiality* and *independence*. The increasing institutionalization of the International judicial function, leads to asymmetries, strengthened by remained forms of private justice. Why does private justice persist? This phenomenon survives because, although International Law tends to centralize the judicial function in the process of resolving disputes, by settling bodies and procedures intended to resolve conflicts, the judicial function operates on a decentralized structure. Once assumed this trend, appears clear that the power of the judicial power is founded on the agreement of the States regarding the dispute, and not on general international rules.

In my dissertation, I will focus on various tools used by the International Law to resolve conflicts, such as *agreements*, *judgments*, and *binding decisions* delivered by permanent courts with sectorial competence. In the matter in question, I will analyze the system in terms of resolving International conflicts by World Trade Organization, as it consists of most of the members of the international community -except of the Russian Confederation-, because of the fact that it has rapidly become a universal system to be understood.

Continuing along that path, I have taken account of the fact that International Law increasingly tends to create new judicial bodies and different authorities in charge of solving international conflicts. While this process contributes to a *proliferation of tribunals* and a consequent *fragmentation of the International Law*, on the other hand the disjunction results in an expanded objectivity of the judgments, as it has been explained in depth by Ugo Villani.

The decentralized and inorganic structure of the International Community, where the States lack of a higher-lever authority, affects the inability to authoritatively impose a given solution to the parties involved in an international conflict. Therefore, a institutionalized judicial function does not exist, it means that a judge who should be pre-established respect to the rise of the dispute, provided of the expertise to issue a judgment, which has the power to decide on the merits of the claim raised by the opposing parties does not exist.

Even if the proliferation may produce a wide distribution of judgments, in fact, it allows the parties to identify and choose the most suitable means and procedures in relation to the problems that the case raises. It often involves a more efficient examination of the issues, depending on their nature (economic, geographic, or political) and it strictly requires more specific arrangements to comprehend the causes that originated the conflicts. Moreover, this trend also permits to the opposing parties to modulate the type of procedure depending on the attitude of the parties demonstrated during the course of the dispute.

A “globalized” level tends to create more specific Courts, rigidly specialized in certain areas. The homogeneity that, in several aspects, characterizes such groups of Courts, results in a greater mutual trust among States, which favors their willingness to submit the settlement of disputes to permanent Courts, and,

more broadly, to ensure an increased compliance in the context of competencies of the organization, or in the matter of the agreement. Hence, the plurality of competences, in some way, may ensure the correct interpretation and the fair application of the treaties and agreements.

In conclusion, this phenomenon is certainly commendable, because it multiplies the proceedings and the opportunity to resolve an international conflict through peaceful and compulsory means. So, the increasing proliferation of Courts, collaborates to provide conformity to the law -in the field of international relations-, and also in the cases between individuals, whether the matter is the protection of their fundamental rights and, eventually, the ascertainment of their responsibility in criminal proceedings and their punishment.