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LEGAL INSTRUMENTS OF CONFLICT PREVENTION: PEACEFUL SETTLEMENT OF DISPUTES

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I

1. In assessing how peaceful settlement of disputes can contribute to conflict prevention, it must first be pointed out that a controversy is in itself a conflict. On the notion of legal disputes, judicial decisions usually quote the dictum of the Mavrommatis case in which the PCIJ gave the following definition of a dispute: "a disagreement on a point of law or fact, a conflict of views or of interests between two persons". As we shall see law's contribution to conflict prevention consists in the fact that the Charter of the United Nations requires disputes (i.e. conflicts) to be peacefully solved. Writers of international law often make a distinction between legal and political disputes and giving the impression that the conflicts to be prevented are almost always those of a political nature - with the consequence that law is unable to solve them. However the distinction between political and legal disputes has become obsolete, notwithstanding that the Charter makes a reference to legal disputes in stating that the Security Council should take into consideration that "legal disputes" should, as a general rule, be referred to the ICJ (Article 36.3). From time to time the notion of political disputes is invoked to claim that they cannot be solved through a court decision, as Judge Schwebel said in connection with the dispute concerning illegal activities by the United States in Nicaragua (ICJ, Reports 1986). Actually, law can solve any kind of dispute and the *non liquet* should not be part of international jurisprudence.

One more premise is required. The law concerning dispute settlement has mainly or exclusively developed in connection with international (i.e. interstate) disputes. For a long time intrastate disputes have been considered as falling within the domestic competence of States. This state of affairs changed in recent times in so far as international law now regulates matters which were once considered within the domestic jurisdiction. One example is non international armed conflicts: article 3, common to the 1949 Geneva Conventions, is a convention *in nuce* providing elementary norms for that kind of conflicts. Decolonization wars are no longer considered as falling under article 2.7 of the United Nations Charter and human rights instruments have internationalized matters once pertaining to state's internal affairs. This list is not exhaustive. One has only to point out that today even the form of government has ceased to be considered as falling within the domestic jurisdiction of States as proven by the OSCE documents (Moscow Declaration) or by the US and other States' intervention in Haiti with the support of the United Nations.

2. There are two main modes to solve international disputes: peaceful and forceful modes. The law provides a panoply of peaceful means and they are today indicated in article 33 of the United Nations Charter. Forceful means include measures short of war (e.g. intervention, peaceful blockade, reprisals involving the use of armed force) and war itself. Nowadays the use of force for settling disputes is forbidden by the United Nations Charter and Article 2(3) embodying that obligation is to be regarded as declaratory of customary international law. Article 2(3) has to be read in conjunction with Article 2.4 prohibiting the threat or use of force in international relations. States have renounced resorting to war, since

they should live under the shield of the UN security collective system. Force is available only in self-defence when an armed attack has occurred, as stated under article 51 of the Charter.
As is well known, the UN collective security system has not developed as framed by the founding fathers of the Charter. This notwithstanding, the obligation to settle disputes peacefully has been reaffirmed many times, even by the ICJ. Consequently, the argument of those writers who say that the obligation contained in article 2(3) is conditional upon the functioning of the UN collective security system under Chapter VII of the Charter is to be rejected. In the Corfu Channel case (1949), the ICJ condemned the British intervention in the Albanian territorial waters to secure evidence that Albania had laid mines in the Corfu Channel to impede the passage of the British ships, and stated that a policy of force was inexcusable "whatever be the present defects in international organizations".

3. As said before, means for disputes settling are listed in Article 33 of the United Nations Charter. They can be divided into diplomatic means (i.e. negotiations, good offices, mediation, conciliation, enquiry or fact finding) and means which consists of a compulsory settlement of a controversy (i.e. arbitration and jurisdiction). Another classification is between means which do not require the interposition of a third party (negotiations) and means which, on the contrary, can be set in motion only if a third party is available (good offices, mediation, conciliation, enquiry, arbitration and jurisdiction). This is not the place to examine the contents of such means (a recent review has been made by M. Bothe, "The Various Dispute Settlement Procedures - General International Law and OSCE Practice", in M. Bothe, N. Ronzitti, A. Rosas, The Osce in the Maintenance of Peace and Security. Conflict prevention, Crisis Management and Peaceful Settlement of Disputes, Dordrecht, 1997, pp. 367-379). It must only be said, firstly, that the list embodied in Article 33 of the Charter is not exhaustive, since it affirms that parties can choose other peaceful means; secondly, that the role of international organizations is recognized, since recourse to international organizations is listed among the peaceful means listed in Article 33.
To be set in motion, all the means mentioned above require the consent of the parties. Since consent is not easily obtained, a dispute can be transformed into a violent conflict and the legal instruments cannot operate as a tool for conflict prevention. The object of the disagreement might be the method for settling the dispute (for instance arbitration or conciliation) and not the will to solve the dispute peacefully. Since the dispute is pending, external factors can exacerbate it and there is a danger of the dispute becoming violent. One example can illustrate this assumption: the apportionment of the Aegean continental shelf. Greece would like to have the dispute solved by the ICJ, while Turkey prefer other means, for instance negotiations. The controversy is still pending. External factors, for instance, the Cyprus conflict or the limits of the Greek air space, can ignite the dispute and the fact that it is still unresolved represents a danger.
International law provides a number of mechanisms for obliging States to resort to peaceful means before a dispute arises: for instance, a compromissory clause in a treaty giving a party the power to initiate proceedings without the consent of the other party to the dispute (requête). However States often make a reservation to the provision containing the compromissory clause or do not ratify a treaty which provides for a compulsory settlement of disputes. As far as the law of the sea is concerned, Turkey is a case in point.

4. State practice shows that the means listed in Article 33 of the UN Charter are often employed together in the sense that there is a mix between the various methods. The best known mix is between conciliation and fact-finding (enquiry): this mix is for instance widely employed in the framework of the Commission on Human Rights (European Convention on Human Rights). Enquiry might also be mixed with a judicial means, as proven by the Gabcikovo dam dispute, where for the first time, I believe, the ICJ made recourse to an enquiry.

Another example is negotiation/judicial means. Usually negotiation precede recourse to third party involvement in dispute settlement. The parties try to negotiate a solution to the dispute among themselves. If they are not successful, they go for arbitration or a judicial means. It may happen that the parties institute proceedings before the ICJ while continuing negotiations for solving the dispute; if the negotiations are successful, the judicial proceedings are discontinued. The maritime controversy between Guinea Bissau and Senegal is a case in point. They started proceedings before the ICJ in 1991. Yet they never stopped negotiating among themselves. Negotiations were successful and in 1993 they concluded an agreement on the delimitation of their maritime frontier. Once the agreement became operational, the proceedings before the Court were discontinued as "the dispute" was terminated.

The Brcko Area arbitration is one of the most striking - and also the most imaginative examples - of a mix of different methods. The arbitration was set up under the Dayton Agreement, which provided that it should be delivered under the UNCITRAL Rules. The procedural history of Brcko arbitration is very illuminating as to the possibility of preventing a resurgence of conflict. Since the two arbitrators, respectively for the Federation of Bosnia and Herzegovina and for the Republika Srpska were unable to agree on the name of the third party, the third arbitrator was appointed by the President of the ICJ. The third arbitrator, who acted as president of the arbitration tribunal, exerted pressure and diplomatic skill in order to secure the participation of the other two arbitrators (namely the participation of the Republika Srpska arbitrator). The tribunal rendered an award which was signed only by the President, since the other two arbitrators refused to sign. However the award is valid, according to UNCITRAL rules. The award rendered is very peculiar. Instead of drawing an inter-entity boundary line, it established "a program" dictating a detailed implementation strategy and establishing an interim international supervision in the Brcko Area, with the involvement of OSCE organs. In other words it established an international administration. Therefore Brcko Area arbitration ended with a political settlement rather than with the adoption of a classical arbitral award. It should be pointed out that the work of the Tribunal is not complete, since it is expected to render another decision by 15 March 1998. It is stated that "any such further decision shall form part of this Award", i. e. of the award rendered on 14 February 1997.

The Brcko Area arbitration deserves two remarks. The first is that UNCITRAL rules, which are very popular nowadays among US legal advisors, are more suited to commercial arbitration than territorial disputes. The second is that the Brcko arbitration is a reminder of the so-called political arbitration that was considered popular for some time at the time of the League of Nations. One wonders, however, how political arbitration can serve the cause of justice.

5. Means indicated in Articles 33 of the UN Charter are the classical methods for settling international controversies. These means are also suitable for solving disputes arising from a breach of a treaty or its interpretation. The most developed system in the field calls for the insertion of a compromissory clause in a treaty and the possibility of initiating proceedings before the International Court of Justice through unilateral application (requête). Modern practice shows that judicial mechanisms (or other dispute settlement mechanisms) often coexist with systems aimed at ensuring that a treaty is complied with. In these cases a kind of self-contained regime is established, in which the organs created by the treaty are empowered to take action in order to have the treaty applied. For instance, the organ is entitled to make recommendations and/or decide sanctions against a member State which has committed a serious treaty violation. Examples of mechanisms aimed at ensuring treaty compliance can be found in a number of fields, such as human rights treaties, environmental law (even though in perspective) and, more recently, disarmament treaties. The potential contained in a system aimed at ensuring treaty compliance should be carefully evaluated. The system should prevent treaty violations. Moreover, if a violation is committed, this is dealt with not as a bilateral affair between the wrongdoer and the affected State, but, on the contrary, as a matter concerning the community of States parties to the treaty. A social reaction which, in principle, should prevent an aggravation of the international delinquency and the likelihood that a violent conflict erupts. Since in a system of treaty compliance disputes are no longer a "private matter" between two or more parties, dispute settlement mechanisms should be employed only for strict "legal" disputes such as those concerning the interpretation of legal provisions.

6. In recent times we are witnessing a new phenomenon which was not easy to foresee during the cold war or at least was not foreseeable in its current (and future) magnitude: the concurring competence between political and legal organs, as is manifested by the litispendence between the UN Security Council and the ICJ. It sometimes happens that proceedings are instituted before the ICJ and that the Security Council is invested at the same time. One of the examples to be quoted here is the Hostage case. The United States initiated proceedings before the World Court but at the same time asked the UN Security Council to pass a resolution introducing sanctions against Iran. The resolution was not adopted because of the Soviet veto, but supposing it had been, would it have helped to solve the dispute and to impede the use of armed force? (when the Court was about to deliberate the United States unsuccessfully made recourse to armed force to recover the hostages). Other examples can be drawn from the Lockerbie case and the Bosnia Herzegovina/Serbia Montenegro controversy. Let us concentrate on the Lockerbie issue. The Security Council ordered that two Libyan citizens suspected of having provoked the aerial incident (res. 731/1992; 748/1992) surrender to the US and UK courts. Libya asked the ICJ to say that it is the competent country to judge the two suspects under the Montreal Convention. If the Security Council waits for the Court’s decision, the effectiveness of the Council order will be undermined, since the Court's judgment involves a lengthy procedure. At the same time, how can the Security Council pass a binding resolution impinging upon such a sensitive issue as extradition of citizens without any judicial review of the legitimacy of the acts adopted ? The observation that the Security Council is a political institution while the Court is a legal institution cannot be a decisive factor. The theory according to which each institution must do its own job cannot help to eliminate the possible inconsistency between

a resolution adopted by the Security Council and a judgment by the ICJ. In the case under consideration, the very fact that Libya did not comply with the Security Council resolution led to the adoption of mandatory sanctions against the Mediterranean state, with the consequence that the concurring competence of the two UN bodies helped to escalate the conflict instead of quelling it.

7. The enforcement of international judgments offers examples both of successful stories of violent conflicts peacefully solved and of judgments not executed by the loser. The Libya/Chad case is a success story. The border dispute, which had involved a violent clash between the two countries and the Libyan occupation of the border region with Chad, was settled by the ICJ in 1994. After the Court judgment, Libya withdrew its troops from the territory which was adjudicated to Chad. The Hostage case and the United States/Nicaragua case belong to the category of unsuccessful stories. Both involve the non-appearance of a party to the dispute before the ICJ. Iran did not comply with the ICJ judgment ordering the release of hostages and the "affair" was solved thanks to Algerian mediation and the stipulation of the Algiers settlement. The United States contested the 1996 ICJ judgment which contained, *inter alia*, the "obligation to make reparations to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under customary international law...". The list of unsuccessful stories could continue.
The winner has a remedy, under the Charter, for obtaining the execution of a judgment that the loser has failed to comply with. para. 2 of Article 94 offers the possibility of activating the Security Council, "which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment". I will not dwell on the lack of effectiveness contained in that provisions, as it is well known. Suffice to say that if the party responsible for the non execution of the judgment is a permanent member of the Security Council, the likelihood that mandatory measures will be adopted is very small and depends on the non exercise of veto power.

8. Does the ICJ advisory competence have any bearing on the prevention of violent conflicts? Let us leave aside opinions such as the one recently given on the legality of the threat or use of nuclear weapons, which do not help greatly in solving problems. On the contrary, those opinions which have contributed to creating the conditions for a political settlement deserve being taken into consideration.
The first example to be quoted is the 1971 advisory opinion on Namibia. The Court stated the illegality of the occupation by South Africa of the Namibian territory and declared the mandate on the territory terminated. The Court's opinion represents the foundation of the subsequent action taken by the United Nations, including the institution of the UN Council for Namibia.
The second example is the 1975 advisory opinion on the status of Western Sahara. The Court stated that the territory of Western Sahara did not have at the time of the Spanish colonization any tie of territorial sovereignty with the Kingdom of Morocco and the Mauritanian entity and consequently reaffirmed the Western Saharan people's right to self-determination. Therefore the presence of both Mauritania and Morocco in the Western Sahara was deemed illegal and the 1975 opinion paved the way for the implementation of the right of self-determination of the Western Sahara and the involvement of the United Nations.

9. The Special Committee entrusted by the International Law Commission to establish a draft Statute of an International Criminal Court has almost completed its work and the idea of an international criminal jurisdiction is gaining currency. Genocide and other odious crimes prodded the Security Council to adopt two resolutions, establishing, respectively, the International Tribunal for the Former Yugoslavia and the Tribunal for Rwanda.
In his speech before the Aspen Institute 1996 Conference on Conflict Prevention, Richard Goldstone said that "..without the Tribunal [the Tribunal for the former Yugoslavia] I believe it would have been more difficult for the Dayton Peace Accords to have been signed. If Mr. Karadzic, in particular, had not been indicted, the Bosnian government would not have participated in the Dayton negotiations, and it is very likely that he would have still been in political office" (Richard Goldstone, "The Role of Justice in Conflict Prevention", in Conflict Prevention: Strategies to Sustain Peace in the Post-Cold War World, Report of the Aspen Institute Conference, July 30-August 3, 1996, Aspen, Colorado, p. 91). This might be true. However I see two potentials for international criminal tribunals. The first is the deterrence they exert against the repetition of war crimes and crimes against humanity. To have this effect, an international tribunal must be effective. Since its institution (1993), the Tribunal for the former Yugoslavia has issued 78 indictments, but only 8 persons have been arrested; only two judgments delivered and two trials are still pending. This is not enough to play a deterrent role! The major criminals (those who planned and executed genocide and ethnic cleansing) are still at large and a German court recently sentenced to life imprisonment a Bosnian Serb living in Germany, who was not handed over to the Hague Tribunal since the Tribunal said that for the moment it could not take up other cases because of the heavy burden of criminal proceedings still pending (International Herald Tribune, September 27-28, 1997). This leads to a rather unenthusiastic conclusion about the experience of international criminal tribunals. The opinion that such tribunals are able to administer criminal justice only in an occupied territory of a defeated State should be attentively considered (the reference is obviously to the Nuremberg Tribunal). The second potential of international criminal tribunals is related to peace. Peace cannot have a solid basis if it does not rely on justice. In this connection, justice is instrumental to peace: if those who are responsible for having resorted to unlawful use of force go unpunished, a true and durable peace will never be achieved.

10. Human rights deprivation is a major source of violent conflicts, particularly when deprivation affects groups of persons, such as minorities. As a rule, the conflicts which come under consideration are internal conflicts. However they can turn into international ones, for example if a parent State becomes a violent supporter of a minority.
International law has provided a number of conventions dealing with the protection of human rights and international institutions have been established, both at the universal level (for instance the Committee on Human Rights under the 1966 UN Covenant on civil and political rights) and at the regional level (for instance the Commission and the Court on Human Rights under the European Convention on Human Rights). The OSCE with its panoply of organs directly involved with human rights protection invites to consider further how human rights deprivation should be avoided. While the Human Dimension Mechanism seems to have lost its importance after the end of cold war, the High Commissioner on National Minorities and the Long-term Missions are gaining currency. A major

shortcoming is that these two latter mechanisms are not employed to remedy situations occurring in Western countries (for instance: minorities), but are usually taken into consideration when a question of human rights falls under the domain of Eastern countries. Is the access of individuals to international organs a way of combating human rights deprivation and avoiding violent conflicts? This is difficult to say. As a rule, individual complaints, even if they are successful, cannot impede violence. Peru is a good example. This country has accepted the competence of the Committee on Human Rights to examine complaints lodged by individuals. However the few cases brought before the Committee have not avoided the structural violence permeating most Peruvian regions.

II

Every dispute (in the legal meaning of the term) can become a violent conflict if it is left unsettled. An example is the Aegean conflict. The delimitation of the continental shelf between Greece and Turkey has still not been accomplished nor has a clear understanding of the delimitation of the territorial sea and the superadjacent air space been gained. The consequence is that from time to time the relations between the two countries worsen and the possibility of armed clash becomes real. The list of unsettled disputes can continue. In this chapter we will tackle those disputes which risk turning into violent conflicts if dispute settlement mechanisms are not applied. The selection made here is merely illustrative. Our task is to indicate the instruments that the parties can refer to in order to avoid a worsening of the situation or to reduce the risk of a sudden confrontation.

11. A serious violation of arms control/disarmament treaties can create a military imbalance. The risk is that the violation be perceived as threatening the life and security of another State and that the threatened State react in kind (by committing the same violation), withdraw from the treaty or resort to violent countermeasures. Arms control/disarmament treaties have developed various techniques to preserve the integrity of the treaty. The most simple are the joint commissions established under the US-USSR bilateral treaties and the recognition of the legitimacy of technical means of verification. The most complex are those contained in recent conventions, such as the 1993 Chemical Weapons Conventions or the 1996 CTBT. As noted above (para. 5), arms control/disarmament treaties rely more on mechanisms for ensuring their compliance (e.g. on site inspections; measures taken by the organs of the organization established by the disarmament treaty) than on classical means of dispute settlement. Often a system of CSBMs is envisaged as a corollary to the mechanism aimed at treaty compliance (as in the CTBT).

12. When an armed conflict occurs, it is obviously violent. However, violence should be constrained within the limits (in reality very soft) dictated by the law of war (humanitarian law). Disputes concerning violations of the law of war are not usually the object of a third party settlement. Belligerents prefer to have recourse to reprisals in order to compel the enemy to abide by the law of war and to try enemy soldiers who are responsible for violation of the law of war. This way of ensuring compliance with the law of war can result in conflict escalation. The relations between belligerents and neutrals should also be considered, since they are still covered (at least in part) by the law of neutrality.

While the notion of settlement of disputes is unknown to the Hague law, the 1949 Geneva Conventions set out the possibility of having an enquiry procedure at the request of a party to the conflict. This system has found a development in the I Additional Protocol of 1977 and is envisaged in Article 90, which however requires a special declaration of acceptance since it is an optional clause. Article 90 combines two methods, i.e. enquiry and conciliation (and even good offices) and establishes an International Fact-Finding Commission to carry out the tasks assigned under the Protocol.

13. As a rule, disputes concerning the use of force are excluded by a general treaty of arbitration or other instrument (for instance unilateral declaration under Article 36 of the ICJ Statute) on which the competence of ICJ is grounded. In order to substantiate the Court's competence the party which is willing to initiate proceedings is obliged to cope with a preliminary objection by the defendant claiming the lack of competence. Even though this preliminary phase is won by the applicant, the other party often prefers not to take part in the proceedings. This happened with Albania in the Corfu Channel case, with Iran in the Hostage case and with the United States in the Nicaragua case (merits). The non-appearance of the "defendant" undermines the value of the judgment, at least from a political point of view. It is, on the other hand, difficult to conceive that once the Court had been invested of a case, the submission will give rise to a suspension of hostilities. Referral to the Court is not an armistice!

14. Territorial disputes are a promising field for arbitration, judicial settlement or any other peaceful means listed under Article 33 of the UN Charter. If a third party obligatory settlement means is chosen, the method usually selected is arbitration. Arbitration allows the parties to choose judges and to establish the rules of procedure, while judicial settlement does not have this flexibility. Recent arbitrations includes the Taba arbitration between Egypt and Israel and the Hanish Islands arbitration between Eritrea and Yemen, which is still going on. In terms of conflict prevention, arbitration is a valid method in alternative to resort to force, which is forbidden by the UN Charter. Since arbitration requires the consent of the parties, good offices or mediation is often exerted to induce the parties to negotiate. This is the case of the Hanish Islands, where the agreement to establish the arbitral tribunal was reached thanks to the efforts of France.
It must be taken into account that not all arbitrations are successful. Problems arise when a party fails to comply with the award. The arbitration between Argentina and Chile on the delimitation of the Beagle Channel and on the sovereignty of adjacent islands was concluded by an award rendered by Queen Elizabeth II on 1977. The award was, however, declared void by Argentina. The armed forces of the two countries where mobilized and the tension could have turned into armed conflict, but an offer by the Pope to conduct a mediation saved the situation from worsening. The compromise accepting papal mediation also reaffirmed the principle not to use force between the two States.
Arbitration is a method to which Latin America countries often make recourse in order to solve their frontier disputes. The latest arbitration is the one defining the border delimitation between Argentina and Chile: the "Laguna del Desierto" award, rendered on 21 October 1994 by a tribunal consisting for the first time of Latin America arbitrators only.

15. The number of maritime disputes is rather high. Their contents vary, since maritime disputes can have, as an object, the delimitation of maritime areas (mainly continental shelf), navigational or fisheries claims. Practice shows that this kind of dispute is often solved through arbitration or judicial settlement. The Law of the Sea Convention offers a panoply of means in this respect, including the newly created International Tribunal for the Law of the Sea. The principle according to which all disputes fall within the dispute settlement mechanism applies and the parties have a free choice as to the method of settlement. However, a State can declare at the moment of ratification of the Law of the Sea Convention that a certain category of controversies cannot be submitted to a third party binding solution at the party's request: boundary delimitation or delimitation involving historic bays; military activities; law enforcement activities in matter of fisheries.
Maritime disputes often generate violent conflicts or crises. One can recall fisheries incidents (the cod war between Iceland and the United Kingdom) or the exercise of navigational claims (the passage through the Corfu Channel by a British squadron; the Gulf of Sidra incident involving both the United States and Libya). The submission of the dispute to a peaceful method of settlement should prevent the use of force or, if force has already been used, the repetition of it. It is important that the mechanism be triggered unilaterally by the concerned State.
However the solution is not simple. There are instances of excessive claims which might impede the exercise of other States' rights if a proper method is not found. Take for example the case of the Gulf of Sidra and the Libyan claim that the waters lying behind the long baseline drawn by Libya are internal waters, where navigation can be carried out only with prior Libyan consent. However, if a State is to abstain from navigating through Sidra waters before the nature of the Gulf of Sidra is clarified by an international tribunal, its rights could be jeopardized by the length of the court proceedings unless a provisional order is delivered.

16. The problem with peace settlements (including armistice agreements and other forms of cessation of hostilities) is their durability and it is important to find mechanisms that can promptly solve disputes when they occur. For instance the 1947 Peace Treaty with Italy stipulates, in Article 83, a clause according to which controversies concerning restitution of properties belonging to nationals of Allied and Associated Powers should be solved through conciliation. Other special provisions have been inserted, for instance, as to the Free Territory of Trieste. The Declaration of Principles on Interim Self-Government Arrangements between Israel and the PLO (1993) contains an Article XV on dispute resolution, indicating the following methods: negotiation, conciliation and arbitration. The Dayton Agreement provides in Annex 5 that all disputes between the Republika Srpska and the Federation of Bosnia and Herzegovina should be solved through arbitration. However recourse to settlement of disputes in peace settlement is very scarce. Armistice agreements often establish armistice commissions, which can consist of representatives of the parties involved (practice followed in connection with armistices of the two world wars) or of representatives of neutral countries (as happened in the 1954 Indochina settlement and the 1973 Paris agreement on the cessation of hostilities in Vietnam). When the settlement consists in a UN resolution, as in the case of Iraq (res. 687-1991), the material activities to be conducted are dominant: demarcation of the border, destruction of weapons of mass destruction under the monitoring of the UNSCOM, etc.

17. Intrastate disputes are often more intractable that interstate ones. The parties do not have at their disposal the tools provided by international law for international disputes. In effect intrastate disputes should be solved through mechanisms set out at the domestic level and States, as a rule, are not very enthusiastic about letting international organs deal with matters they consider within their domestic jurisdiction. On the other hand, States are unwilling to exercise remedies provided by international instruments in case of infringement of human rights standards by another State. A few cases can be traced in this connection within the practice of the European Commission on Human Rights. As already noted, the Human Dimension Mechanism under the OSCE was frequently employed during the cold war and seems now to have lost its appeal.

The other mechanisms provided by the OSCE for conflict prevention are employed in a situation of crisis or conflict *in statu nascendi*. In this connection one may quote the function of preventive diplomacy and the action exerted by the High Commissioner of National Minorities.

A preliminary conclusion is that up till now international law and international institutions have provided mechanisms for quelling an internal conflict rather than for finding a solution for conflict prevention.

The case of Cyprus does not deviate from the above pattern. The equilibrium between the Greek and the Turkish populations should have been ensured by the Constitution whose main provisions were contained in the Treaty that gave birth to the new State and should have been preserved by the Treaty of guarantee, allowing intervention by the guarantor States (Greece, Turkey and the United Kingdom). These instruments could not prevent conflict between the two communities from becoming violent and the United Nations intervened after a serious intercommunal strife. After the Turkish intervention in 1974 and the creation of the Turkish State of Northern Cyprus, the Cyprus question has been completely internationalized and the instruments employed to bring the crisis to an end are those employed in international disputes (good offices, mediation). Recent territorial settlements follow this pattern. For instance in the Dayton Agreement the Republika Srpska and the Federation of Bosnia and Herzegovina have taken up the obligation "to engage in binding arbitration to resolve disputes between them" (Annex 5 to the Dayton Agreement).

III

18. A few conclusion may be inferred from the above considerations.

- International law is more equipped for mechanisms aimed at the prevention of international conflicts that for mechanisms to be used to prevent internal violence. The history of dispute settlement mechanisms is the history of means employed in connection with international disputes.
- In principle settlement of dispute mechanisms are not employed for preventing internal conflicts. They are employed to bring internal conflicts to an end once the violence has blown up.
- It is difficult to indicate a specific method to prevent a violent (international) conflict. From the point of view of conflict prevention, the means indicated by Article 33 of the UN Charter are rather neutral. What matters is that a method be employed and the parties abstain from recourse to threat or use of force to settle the controversy.

- The combination of different methods for dispute settlement has the merit of flexibility. It exploits the potential connected with the various methods and does not confine the parties within the narrow limits of a specific method.
- From the perspective of conflict prevention, means for ensuring treaty compliance are in general more effective than means for dispute settling. These two methods, however, might coexist, provided that dispute settlement mechanisms are not preclusive of treaty compliance mechanisms (see for instance Article XIV, par. 6 of the 1993 Convention on Chemical Weapons).