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**Articles**

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# Mediation in the Legal System of the United Nations[1]

## *Mediacja w systemie prawnym Organizacji Narodów Zjednoczonych*

SUMMARY

The international law order is the first in which we can observe the use of mediation as a legal institution. The mediation activity conducted by the United Nations is a model for contemporary legal entities. The entity is characterized by a multitude of normative regulations and undertaking informational and promotional actions in the field of mediation. The areas of action of the United Nations include interventions in political, international and domestic disputes, trade disputes, and internal disputes thus determine the UN's promediation activities in three spheres of activity: 1) mediation activities under the direction of the UN Department of Political and Peacebuilding Affairs. It involves mediation with the UN Secretary-General as a mediator. The conduct of mediation is aimed at resolving international and domestic disputes; 2) activities of the United Nations Commission on International Trade Law (UNCITRAL), Working Group II: Arbitration and Conciliation / Dispute Resolution. It is the UN unit specialising in the use of mediation to settle trade disputes in a variety of entities; 3) the United Nations is an organization which employs tens of thousands of people of various nationalities, cultures and operating in different areas. This area is within the Ombudsman's responsibility as part of mediation services. The entity deals with the internal environment of the organization, resolves disputes, including those through mediation between UN employees.

**Keywords:** mediation; UN; UNCITRAL; DPPA; HLAB; Ombudsman

[1] The United Nations (UN) is an international organization, its headquarter is in New York City. UN established on 24 October 1945 under the Charter of the United Nations (UN Charter, UNC) signed on 26 June 1945 in San Francisco. Polish acronym: ONZ.

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## INTRODUCTION

Any organized community residing in certain territory or operating in a specific territory is characterized by the objectives of action which may offend the rights of other entities, breaching their sovereignty. The conflict of interests also exists within a community, it is an inevitable consequence of relations between people, including legal relations. Disputes of different backgrounds have their consequences in politics[2] and direct impact in such important aspects as ethnic affairs, commerce or migration policy, customs duties, etc. Undoubtedly, the man, adopting more and more crystallized organizational structures, has significantly formalized, by creating legal institutions, all the forms of conduct known for centuries[3]. It determines the norms of conduct and incorporates them into the legal system by including in the applicable law. The conduct described by law must be in line with the values of society or social groups[4]. Thus, it makes it possible for members of the group to be accepted and at the same time reduces the number of other behaviours that are contrary to the accepted value system. However, there are significant differences between societies and social groups in terms of the assessment of day-to-day relations, the need for superiority and territorial sovereignty. Dissension occurs due to the difference between particular value systems that often take the form of physical violence.

A response to this is the legal culture development, moving towards non-litigation forms of dispute resolution that allow effective influencing legal awareness[5]. This is manifested by the legal institution of mediation which is characterized by supporting by a third party of the conflicted parties to streamline the communication

[2] Politics is understood subjectively as "one of the spheres of human activity aimed at achieving goals, implementing plans, causing a specific result or bringing about a certain state of affairs, most often intended one. Therefore, it is a field of targeted activities, which are to lead to the emergence of supra-individual effects of a collective, group, social or public character" (S. Wróbel, *Polityka i proces polityczny*, [in:] *Wprowadzenie do nauki o państwie i prawie*, eds. B. Szmulik, M. Żmigrodzki, Lublin 2010, p. 244). The meaning of politics as a sphere of activity is linked with the decision-making situation of the decision-making entity. I adopt here the division of decision-making situations, as proposed by A. Korybski, Z. Szelig and M. Żmigrodzki, into: determined, partially defined, i.e. random, uncertain and conflict situations. See H. Komarnicki, *Decyzje polityczne i proces decyzyjny*, [in:] *Wprowadzenie do nauki…*, p. 293.

[3] For information on the centuries-long history of mediation, presented in tables, see A. von Hertel, W. Vovsik, R. Fischer, J. Wiese, *Verhandlungstechnik und Konfliktmanagement durch Roger Fisher*, www.mediation-dach.com [access: 18.09.2019].

[4] Groups formed due to the type of social relationships that bind the group members. See Z. Ziembiński, *Życie społeczne i jego formy*, [in:] *Kompendium wiedzy o społeczeństwie, państwie i prawie*, ed. M. Kordela, Warszawa 2011, p. 25.

[5] I also consider mediation as an educational process for the entities participating in mediation. Mediation participants acquire more competence, including in legal terms, which in consequence is supposed to lead to the increase in legal awareness.

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between them. The purpose of mediation is to understand the position of the other party's vs. one's own position and to constructively hold talks towards choosing the best solution for both parties. Discourse and the related ability to argue makes resolving antagonisms without the use of force possible. The receipt of mediation in legal orders has given an important instrument in expanding the tool package for dispute resolution in the light of applicable law. The participation in various negotiations of a third party not equipped with sovereign authority gave all the parties acceding to the talks the possibility to adopt an action plan and rules of conduct. The mediator, and it should be a person who is respectful among the negotiating parties, is to take care of the procedure and select topics of talks in such a way as to allow reaching a possible agreement.

This article is mostly a theoretical description with a large degree of generality. The aim hereof was to collect material concerning the mediation institution used by the UN in the three spheres listed below. The study was carried out using an analysis of scientific publications, the documentation disclosed on available UN websites starting from the United Nations Charter through a number of resolutions, reports, statistical data collections and guides issued by the UN over several decades.

## GENERAL REMARKS

The 20th century was the arena of two major armed conflicts of global scale and many smaller ones. It has also become a time when international organizations have been established to influence the international and Member States' internal policies towards peace. The activity of entities, first the League of Nations and then the United Nations, was to prevent the emergence of new and mitigate existing disputes and armed conflicts on the global stage, and the occurrence of famine and economic crises. Reading Article 1 of the UN Charter, we can notice that the fundamental objectives of the UN include peacekeeping and ensuring an appropriate level of cooperation between nations, including also economic and cultural issues. In the era of fast-paced technological development and changes in social and state structures, the United Nations, to achieve its objectives, must adapt its forms of activity to the requirements of successive periods[6]. The issues that form the basis

[6] The basic purposes of the UN are set out in Article 1 of the UN Charter (1 UNTS XVI), although they are firmly outlined first in the Preamble thereto: "We the Peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to regain faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, and for these ends to practice tolerance and live together in peace

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of the UN's activities include human rights, armed conflicts, international trade, health care, culture, education and many others.

The geopolitical situation of the modern world requires a response that adequately addresses emerging problems, such as climate change, new and changing political structures and artificial intelligence matters[7]. These problems will have a significant impact on the global situation in terms of objective priorities and subjective variability. There is a need for a legal institution with a high degree of effectiveness, the use of which will result in a probability of resolving the dispute[8]. When making strategic decisions, it should be affirmed that we are trying to resolve the dispute and not to decide it in a judicial way, thus contributing to the satisfaction of everyone involved in the dispute.

The UN has many means of influence, including the response of the Security Council of a military nature (peacekeeping missions). Nonetheless, in practice, due to the divergence of the political objectives of the permanent and temporary member states of the UN Security Council, the use of negotiating instruments is of fundamental importance. One of the forms of UN activity is mediation, the use of which facilitates the establishment of dialogue between the parties to the dispute and allows the adoption of mutually agreed solutions. It is a dialogue that is not subject to external observation and pressure thanks to the principle of confidentiality of mediation. The social inclination towards conciliatory forms of dispute resolution resulted in the intensification of UN activities aimed at the development

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with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples, have resolved to combine our efforts to accomplish these aims". According to Article 1 of the UN Charter, the purposes of the United Nations are: "1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace; 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace; 3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and 4. To be a centre for harmonizing the actions of nations in the attainment of these common ends".

[7] See G. Matteucci, *International commercial mediation 2019 challenges and opportunities*, www.academia.edu/38868145/International_commercial_mediation_2019_challenges_and_opportunities [access: 23.04.2019].

[8] Settlement of disputes in an amicable form accounts for approx. 95% of cases. Only 5% of them is concluded in a judicial form. See R. Cooter, T. Ulen, *Ekonomiczna analiza prawa*, Warszawa 2011, p. 539.

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of ADR in the second decade of the 21st century[9]. The United Nations was not an innovative entity, and the institution of mediation in international disputes is legally enshrined in the Hague Conventions of 1899 and 1907 for the Pacific Settlement of International Disputes[10].

The basis for providing assistance in resolving disputes is Article 33 of the Charter of the United Nations, where the authors explicitly referred to mediation and its use through peace processes has taken place almost since the beginning of the UN[11].

## THREE SPHERES OF THE UN ACTIVITY USING MEDIATION

### 1. The pro-mediation activity of the UN directed out of the organization

Mediation activities under the UN Department of Political and Peacebuilding Affairs (DDPA) covers mediation involving the UN Secretary-General as a mediator[12]. The conduct of mediation is aimed at resolving international and domestic disputes.

In the field of promotion of peace and security in the world, the UN was the first to launch mediation activities.

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[9] See Resolution of the UN General Assembly of 15 October 2012 "Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution" (A/RES/66/291); Resolution 65/283 of 22 June 2011 (A/RES/65/283) on strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution.

[10] Laws of War: Pacific Settlement of International Disputes (Hague I), 29 July 1899, Convention (I) for the Pacific Settlement of International Disputes (Hague I), 29 July 1899, Title II. On Good Offices and Mediation, Articles 2–8, http://avalon.law.yale.edu/19th_century/hague01.asp [access: 25.04.2019]; Laws of War: Pacific Settlement of International Disputes (Hague I), 18 October 1907, Convention for the Pacific Settlement of International Disputes, Part II. Good Offices and Mediation, Articles 2–8, https://avalon.law.yale.edu/20th_century/pacific.asp [access: 25.04.2019].

[11] Article 33 of the UN Charter: "1. The 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 solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. 2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means". These procedures may be considered comprehensive, as the term "mediation" may be interpreted as covering good offices (H. Kelsen, *The Law of the United Nations*, New York 1950, p. 376, after Z.B. Rudnicki, *Międzynarodowe komisje badawcze w nowoczesnym systemie pokojowego rozwiązywania sporów międzynarodowych*, „Zeszyty Prawnicze UKSW" 2011, no. 11.3, p. 290).

[12] UN Secretary General acts pursuant to Articles 11, 14, 98 UNC. Cf. P. Kowalska, *Pozycja instytucjonalno-prawna Sekretarza Generalnego ONZ*, „Zeszyty Naukowe Uniwersytetu Szczecińskiego. Acta Politica" 2009, no. 22, pp. 67–77, passim.

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> UN mediation offers several advantages. Based on its more than 60 years of work in this field, the United Nations has more institutional experience in mediation than any other organization. In addition, it has extensive expertise in the implementation of peace agreements through the deployment of multiple peacekeeping missions, as well as UN agency support for peacebuilding efforts. Although implementation of any mediated agreement rests upon the commitment of the parties, such support can provide powerful assistance and incentives to parties struggling to sustain their efforts […][13].

The UN Secretary-General and his representatives carry out mediation activities at the request of the parties to the dispute. Mediation may be initiated by the Secretary-General or in response to a request from the Security Council or the General Assembly[14]. It is possible to assume a supportive role as a facilitator in the organization and conduct of the mediation process. Mediation teams are created which select work tools adapted to an actual situation[15]. The report of Secretary-General A. Guterres states that as a result of the increase in the number of civil wars, related migrations, hunger and the spread of conflicts onto the international level, efforts should be directed towards conciliatory forms of dispute resolution because their results are future-oriented[16]. Mediation is a tool that must be used as part of diplomatic work. In his report, the Secretary-General pointed to five elements that facilitate mediation. These are: 1) an environment conducive to mediation; 2) designing the mediation which covers the adoption of an appropriate strategy and process components; 3) effective measures that concern logistical and administrative preparation. The possibility of carrying out effective activities is ensured by appropriate financial resources (funding); 4) assistance in the implementation and maintenance of peace arrangements; 5) capacity building, which consists of training for mediating entities and professionalization of mediation activities[17].

The formal establishment of the mediation body dates back to the establishment of the Department for Political Affairs (DPA) in 1992, although mediation was

[13] *A Manual for UN Mediators: Advice from UN Representatives and Envoys*, Geneva 2010, p. 2.

[14] The impartiality of a UN mediator in a situation where the organization simultaneously imposes sanctions on those involved in mediation is under consideration. Practice shows how complicated the problem is, and points to different attitudes during different mediation cases. See T. Biersteker, R. Brubaker, D. Lanz, *UN sanctions: liability or asset in mediation processes?*, 2018, www.hdcentre.org/publications/un-sanctions-liability-or-asset-in-mediation-processes [access: 28.02.2020].

[15] *Report of the Secretary-General, United Nations Activities in Support of Mediation*, A/72/115, 27 June 2017, https://peacemaker.un.org/sites/peacemaker.un.org/files/DPA%20Report%20REV9%20ENG%20WEB.PDF [access: 10.04.2020], p. 9.

[16] The activity of the current UN Secretary General is still evident. See *Conflict Prevention and Mediation Briefing*, www.whatsinblue.org/2019/06/conflict-prevention-and-mediation-briefing.php [access: 27.02.2020].

[17] *Report of the Secretary-General…*, passim.

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applied even before[18]. In 2019, DPA merged with the Peacebuilding Support Office (PBSO), thus creating a new unit, i.e. Department of Political and Peacebuilding Affairs (DPPA)[19]. This structure provides support to the High-Level Advisory Board on Mediation (HLAB), established by the Secretary-General A. Guterres in September 2017. The Board is composed of 18 members, current and former world leaders, senior officials and renowned experts[20]. DPPA has also developed and maintains an online mediation support tool – UN Peacemaker[21]. It has an extensive database of more than 750 peace agreements, information materials on UN mediation support services for peacemaking professionals[22]. Currently, the UN Department of Political and Peacebuilding Affairs mediates through the Mediation Support Unit (MSU) within the UN system, established in 2006. The unit was established to provide professional, cross-cutting support for mediation. MSU is a service provider for a wide range of entities, including those of the UN system, regional organizations, Member States and relevant peacemaking entities[23]. MSU manages the Standby Team of Senior Mediation Advisers ready to take action within 72 hours[24]. The United Nations mediates not only through its own personnel but also through the involvement of external mediators with appropriate knowledge

[18] See Manila Declaration on the Peaceful Settlement of International Disputes adopted on 15 November 1982, https://peacemaker.un.org/node/91 [access: 11.04.2020]. The Declaration emphasizes that the States shall settle any disputes using peaceful methods.

[19] The mediation support structure within DPA as early as in 2016. See E. Convergne, *Learning to Mediate? The Mediation Support Unit and the Production of Expertise by the UN*, "Journal of Intervention and Statebuilding" 2016, vol. 10(2), DOI: https://doi.org/10.1080/17502977.2015.1079959, pp. 181–199.

[20] See composition of the Board: *Secretary-General's High-Level Advisory Board on Mediation*, www.un.org/sg/en/content/sg/personnel-appointments/2017-09-13/secretary-general%E2%80%99s-high-level-advisory-board-mediation [access: 18.09.2019].

[21] The letter of a gratitude-expressing and reporting nature of 21 November 2019 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General addresses the increased role of technology for peace processes. This issue was addressed by one of the conference on mediation "International Peace Mediation: Taking Stock and Looking Ahead" held in Istanbul on 31 October 2019. The conference was supported by, among others, the UN DPPA. See United Nations Assembly, *Letter dated 21 November 2019 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General*, 25 November 2019 (A/74/561), https://peacemaker.un.org/sites/peacemaker.un.org/files/SummaryOfTheSixthIstanbulConferenceOnMediation.pdf [access: 20.04.2020].

[22] Political and Peacebuilding Affairs, *Prevention and Mediation*, https://dppa.un.org/en/prevention-and-mediation [access: 24.04.2019].

[23] *Mediation Support Activities & Services*, https://peacemaker.un.org/mediation-support/activities-and-services [access: 26.04.2019].

[24] K. Brown, *Mediation in the United Nations*, https://revistademediacion.com/en/articulos/mediation-in-the-united-nations [access: 27.02.2020]. As regards the powers and staff in 2019, see *Standby Team of Senior Mediation Advisers*, https://peacemaker.un.org/mediation-support/stand-by-team [access: 26.04.2019].

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and experience or by inviting a third country as a mediator[25]. To ensure global security as part of peacekeeping missions, the mediations being carried out are seen as an important instrument to be used in UN-led operations[26]. Examples of documents, guides, manuals, etc. are available on the UN website[27]. The number of mediations carried out under the umbrella of the UN is not public information. The documentation made public on the websites shows that senior officers of the Department of Political Affairs help to ease tensions between the parties through silent diplomacy. Once UN peacekeeping missions or peacebuilding offices have been set up, heads of mission and mission staff often establish mediation offices to ensure the progress of the peace process. Employees of the United Nations system are involved in negotiations/mediation at many different levels. To consolidate the mediation awareness, expand and strengthen the staff used in mediation, collect and popularize the knowledge on mediation, as well as to strengthen the participation of women the Group of Friends of Mediation was set up in 2010[28]. UN mediation activities are also promoted by establishing a network of cooperation between organizations, predominantly non-governmental[29].

Activity of the United Nations Commission on International Trade Law (UNCITRAL), Working Group II: Arbitration and Conciliation / Dispute Resolution. This is the UN unit specializing in the use of mediation to settle trade disputes in various configurations of subjects[30].

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[25] K. Brown, *op. cit*. Mediations of an international nature where the state acts as a mediating entity are already well established in efforts to resolve international disputes. Their examples include the disputes: Chile – Argentina in 1985, mediated by Vatican; USA – Iran in 1981, mediated by Algieria; USA – Vietnam in 1978, mediated by France. See M. Tabernacka, *Negocjacje i mediacje w sferze publicznej*, Warszawa 2009, p. 96.

[26] See UNIC Warsaw. Ośrodek Informacji ONZ w Warszawie, www.unic.un.org.pl [access: 24.04.2019].

[27] For example, see United Nations Department of Political Affairs, *Mediation Start-up Guidalines*, 2011, https://peacemaker.un.org/sites/peacemaker.un.org/files/MediationStartupGuidalines_UNDPA2011.pdf [access: 24.04.2019]; United Nations Department of Political Affairs, *Natural Resources and Conflict: A Guide for Mediation Practitioners*, February 2015, https://peacemaker.un.org/NRC_MediationGuide_2015 [access: 26.04.2019]; United Nations, *Guidance for Effective Mediation*, 2012, https://peacemaker.un.org/sites/peacemaker.un.org/files/GuidanceEffectiveMediation_UNDPA2012%28english%29_0.pdf [access: 24.04.2019]; *Guidance for Mediators: Addressing Conflict-Related Sexual Violence in Ceasefire and Peace Agreements*, 2012, https://peacemaker.un.org/node/1447 [access: 24.04.2019].

[28] K. Brown, *op. cit*. See also *Group of Friends of Mediation*, https://peacemaker.un.org/friendsofmediation [access: 6.03.2020].

[29] *Mediation Support Network*, https://peacemaker.un.org/mediation-networks/MSN [access: 6.03.2020].

[30] Under the current conditions of global economy, there are entities of different origin, such as e.g. states, international corporations, entities involved in public-private partnerships, natural persons.

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The United Nations Commission on International Trade Law is the main legal body of the United Nations in the field of international commercial law. UNCITRAL has specialized in reforming commercial law around the world for over 50 years. The activity of UNCITRAL consists in the modernisation and harmonisation of rules on international business[31]. The research on specific problems is entrusted to working groups (teams) that develop issues under the assigned topic. The group working on mediation is Working Group II: Arbitration and Conciliation / Dispute Resolution[32]. In 2018, the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation was adopted. The change was made by supplementing the model law adopted in 2002 as the Model Law on International Commercial Conciliation[33]. In 2018, the new section on international settlement agreements and their enforcement was added[34]. The Model Law aims to support states in reforming and modernising legislation on the institution of mediation. It provides for uniform rules for the mediation process and aims to encourage the use of mediation and to provide greater predictability and certainty in its use. To avoid uncertainty arising from the lack of statutory provisions, the Model Law addresses the procedural aspects of mediation. This includes the appointment of mediators, the commencement and termination of mediation, conducting mediation, communication between the mediator and the parties to proceedings, confidentiality of mediation and admissibility of evidence obtained during the procedure in other proceedings. Moreover, issues that may occur after mediation are addressed, such as the mediator acting as an arbitrator

[31] United Nations Commission on International Trade Law, https://uncitral.un.org [access: 27.04.2019].

[32] *A Guide to UNCITRAL: Basic facts about the United Nations Commission on International Trade Law*, Vienna, 2013, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/12-57491-guide-to-uncitral-e.pdf [access: 27.04.2019], p. 7, 46.

[33] The legislative work that is the subject of this article took place earlier. The UNCITRAL conciliation rules adopted on 23 July 1980 constitute a comprehensive set of procedural rules with which the parties may agree on the conduct of conciliation proceedings resulting from their commercial relations. The rules cover all aspects of conciliation, contain a model conciliation clause, specify when conciliation is deemed to be initiated and completed, and addresses procedural aspects related to the appointment and role of mediators and the overall conduct of the procedure. See Resolution 35/52 adopted by the General Assembly on 4 December 1980, Conciliation Rules of the United Nations Commission on International Trade Law, www.uncitral.org/pdf/english/texts/arbitration/conc-rules/conc-rules-e.pdf [access: 26.04.2019].

[34] See United Nations Commission on International Trade Law, https://uncitral.un.org [access: 27.04.2019]. See also Resolution adopted by the General Assembly [on the report of the Sixth Committee (A/57/562 and Corr. 1)] 57/18. Model Law on International Commercial Conciliation of the United Nations Commission on International Trade Law, A/RES/57/18, 24 January 2003, https://core.ac.uk/download/pdf/11165469.pdf [access: 10.08.2019].

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or the enforceability of the settlement[35]. In the years 2002–2017, the mediation model adopted by the United Nations was incorporated into the legal systems by 33 countries, including France, Belgium, South Africa, Hungary, the USA (certain states), Canada, Malaysia and Montenegro[36]. This demonstrates the similarities between specific legislative solutions in various legal orders and universalistic tendencies in the field of mediation.

In the context of the UNCITRAL's area of activity, the enforceability of mediation agreements, the conclusion of which is a private legal competence of the stakeholders, plays a very important role[37]. Enforcement possibilities determine the "marketability" of mediation in transnational and international trade relations. That is why the UNCITRAL's actions aim at achieving relative uniformity in national legislative solutions[38]. The possible enforcement of a mediation settlement depends on rules of the legal order within which the mediation agreement is concluded, while the subjective criterion is irrelevant[39]. The need to regulate the approval and enforcement of the mediation settlement stems from the fact that the legislation in the UN Member States is not uniform[40].

[35] In previously adopted texts and relevant documents, UNCITRAL used the term "conciliation" assuming that the terms "conciliation" and "mediation" are interchangeable. By amending the Model Law, UNCITRAL decided to use the term "mediation" to adapt to the actual and practical use of terms, expecting that this change would facilitate promotion and increase the visibility of the Model Law. This change of terminology has no substantive or conceptual consequences. See United Nations Commission on International Trade Law, https://uncitral.un.org [access: 27.04.2019].

[36] *Status: UNCITRAL Model Law on International Commercial Conciliation (2002)*, https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_conciliation/status [access: 27.04.2019].

[37] J. Kaczor, *Prywatnoprawny kontekst wykonywania kompetencji*, [in:] *Z zagadnień teorii i filozofii prawa. Kompetencja ze stanowiska teorii i filozofii prawa*, ed. W. Jedlecka, Wrocław 2004, p. 129. At the same time, the author stresses that associating legal powers with the relationship of authority may be explained by the specificity of public law. *Ibidem*, pp. 34–35.

[38] Singapore Convention, 6–7 August 2019 (Convention on International Settlement Agreements Resulting from Mediation), www.singaporeconvention.org [access: 13.03.2020].

[39] M. Žukauskaitė, *Enforcement of Mediated Settlement Agreements*, "Vilnius University Press" 2019, vol. 111, DOI: https://doi.org/10.15388/Teise.2019.111.12, p. 207.

[40] Countries whose law does not require the enforceability clause to confirm a mediation settlement agreement include, e.g., Israel, New Zealand, Japan, and to some extent the Czech Republic. The enforceability of a mediation settlement agreement is legally ensured for court mediation or endorsement by a court (e.g. China, Singapore, Brazil, Poland, India). Certain legal systems lack the possibility to append an enforceability clause. To enforce such a settlement, there is a need to file the case before the court (e.g. Cambodia, Liban, South Africa). See *ibidem*, p. 207. An ambiguous situation with regard to endorsing mediation settlement agreements takes place in the US. See K.S. Hobbs, *Mediation Confidentiality and Enforceable Settlements: Deal or No Deal?*, www.mediate.com/articles/hobbsk1.cfm [access: 13.11.2019]. On the lack of uniformity of mechanisms of endorsing mediation settlement agreements in the US, see S.F. Ali, *Court Mediation Reform: Efficiency, Confidence and Perceptions of Justice*, Cheltenham 2018, p. 152.

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## 2. Pro-mediation activity of the UN directed into the organization

The United Nations is an organization which employs tens of thousands of people of various nationalities, cultures and operating in different areas. This area is within the Ombudsman's responsibility as part of mediation services. This entity deals with the internal environment of the organization, resolves disputes, including through mediation, between UN employees[41].

The United Nations is an entity employing tens of thousands of people[42]. The cooperation between such a large number of people on many levels may raise many conflicts and therefore requires action to minimise the effects of potential disputes. Pursuant to the Resolution of the UN General Assembly 62/228, the Mediation Service was established in 2007 and the institution of Ombudsman was established in 2008[43]. This was related to the administrative reform of adjudication in matters. The UN Dispute Tribunal was established as the first instance. The powers to hear appeals are vested in the UN Appeals Tribunal. These entities are competent to conduct mediation in all labour cases[44]. The Ombudsman's responsibility is to conduct mediation for persons employed with the UN and associated institutions. On 22 June 2016, the Terms of reference for the Office of the United Nations Ombudsman and Mediation Services were issued[45]. According to the UN Ombudsman and Mediation Services website, the definition of mediation is:

> Mediation is a voluntary process conducted confidentially in which a trained neutral person, known as a mediator, assists parties in working towards a negotiated agreement of a dispute or

[41] United Nations Ombudsman and Mediation Services, www.un.org/en/ombudsman [access: 13.03.2020].

[42] The total number of UN staff (both the Secretariat-General and subordinated units) as of 31 December 2017 was 75,903 as reported for the period January 1 to December 31, 2017. See United Nations General Assembly, *Composition of the Secretariat: Staff demographics – Report of the Secretary-General*, A/73/79, 12 April 2018, https://digitallibrary.un.org/record/1627944 [access: 28.04.2019], Table 3, p. 15.

[43] Resolution adopted by the General Assembly on 22 December 2007 [on the report of the Fifth Committee (A/62/597)] 62/228. Administration of justice at the United Nations, A/RES/62/228, 6 February 2008, https://undocs.org/pdf?symbol=en/A/RES/62/228 [access: 28.04.2019]. Also, see a historical overview of the Office of the United Nations Ombudsman and Mediation Services at www.un.org where the origins of mediation services are dated at 1993.

[44] W. Kilarski, *Nowy system sądowego rozstrzygania sporów pracowniczych w Organizacji Narodów Zjednoczonych*, „Przegląd Prawa i Administracji" 2010, vol. 83, pp. 54–60. See also R. Leighton, *Free advice and representation for staff members: The roles of the Office of Staff Legal Assistance in the United Nations internal justice system*, [in:] *Best Practices in Resolving Employment Disputes in International Organizations: Conference Proceedings*, ed. A. Talvik, Geneva 2015.

[45] *Terms of reference for the Office of the United Nations Ombudsman and Mediation Services*, ST/SGB/2016/7, 22 June 2016, https://hr.un.org/content/office-ombudsman-appointment-and-terms-reference-ombudsman [access: 28.04.2019].

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difference, with the parties themselves remaining in control of the decision to settle and the terms of any resolution[46].

The Ombudsman may informally inquire into a number of employment issues at the United Nations. For example, the Ombudsman may review the following issues: compensation and benefits (including, but not limited to, issues related to remuneration, pensions, holidays, health insurance and various other entitlements); evaluation relationships (matters between supervising bodies relating to interpersonal differences, respect, treatment, communication, team spirit and performance management); human relationships (including the issues of differences in human characters, respect, treatment, communication, teamwork climate); work and career (issues related to recruitment application and selection processes, career progress and development, contract terms, loan, secondment, transfer, rotation, retirement process); issues related to harassment, discrimination, waste and abuse of funds, investigative and disciplinary proceedings, retaliatory action; safety, health, welfare, stress and work/life; services/administration (HR, pension fund, tax unit, etc.); organization, leadership and governance (including issues related to organizational climate, morale, culture, communication, organizational leadership and styles of management); values, ethics and standards (issues related to the United Nations core values and code of ethics)[47].

The website of the Ombudsman and Mediation Services office emphasizes the satisfaction of the parties to the proceedings and the promptness and related time efficiency. The informality of the proceedings and the reduction of stress for all the participants in the proceedings are also important. The control of the process is entrusted to the parties, which gives opportunities to shape its outcome and the content of the settlement, if any. A wide variety of settlement options can be achieved in mediation over and above monetary settlements[48]. The rules of mediation are modeled on the Code of Ethics of the International Ombudsman Association[49].

## CONCLUSION

Carrying out mediation by the UN has a legally established basis in the form of provisions in the Charter of the United Nations and legislative acts issued throughout the lifetime of the organization. The pro-mediation activity of the

[46] www.un.org/en/ombudsman/medservices.shtml [access: 28.04.2019].

[47] www.un.org/en/ombudsman/issues.shtml [access: 24.04.2019].

[48] *What is mediation? How does mediation work?*, www.un.org/en/ombudsman/medservices.shtml [access: 25.04.2019].

[49] www.un.org/en/ombudsman/principles.shtml [access: 24.04.2019]; International Ombudsman Association, *Code of Ethics*, www.ombudsassociation.org/assets/IOA%20Code%20of%20Ethics.pdf [access: 24.04.2019]; International Ombudsman Association, *Standards of Practice*, www.ombudsassociation.org/assets/docs/IOA_Standards_of_Practice_Oct09.pdf [access: 24.04.2019].

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UN, manifesting itself in the legislative dynamism, has been very noticeable for a dozen-or-so years and translates into the real commitment of the entity's structures, which may be observed in the Internet sphere, especially in activities of the DDPA and the UN Secretary-General. The organization is seeking, with the experience gained, to strengthen its pro-mediation activities, thus indicating the directions for development in the field of dispute response. The UN organizes and carries out mediation in three main spheres of activity, supervised by: the Department of Political Affairs and Peace Building, the UN Commission on International Trade Law (UNCITRAL) and the Ombudsman's mediation activities. This is how it meets the objectives provided for in the UN Charter. Due to the presence of the confidentiality principle, I assume that the mediation practice of the UN is more complex than it may be concluded based on official documents.

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STRESZCZENIE

Międzynarodowy porządek prawny jest pierwszym, w którym możemy zaobserwować zastosowanie mediacji jako instytucji prawnej. Wzorem dla współczesnych podmiotów prawa jest działalność w przedmiocie mediacji prowadzona przez Organizację Narodów Zjednoczonych. Podmiot charakteryzuje się mnogością regulacji normatywnych oraz podejmowaniem akcji informacyjnych

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i promocyjnych w zakresie mediacji. Płaszczyzny działania ONZ obejmują m.in. interwencje w spory polityczne, międzynarodowe i krajowe, spory handlowe, spory wewnętrzne, determinując tym samym promediacyjną działalność ONZ w trzech sferach działalności: 1) działalność mediacyjna pod kierunkiem Departamentu Spraw Politycznych i Budowy Pokoju ONZ. Obejmuje prowadzenie mediacji z wykorzystaniem osoby Sekretarza Generalnego ONZ jako mediatora. Wykonywanie mediacji jest ukierunkowane na rozwiązywanie sporów międzypaństwowych i wewnątrzpaństwowych; 2) działalność Komisji ONZ ds. Międzynarodowego Prawa Handlowego (UNCITRAL), Zespół II: Arbitraż i koncyliacja / Rozwiązywanie sporów. To komórka ONZ specjalizująca się w wykorzystywaniu mediacji do opanowywania sporów handlowych w różnych konfiguracjach podmiotowych; 3) Organizacja Narodów Zjednoczonych zatrudnia dziesiątki tysięcy ludzi wywodzących się z różnych narodowości, kultur i działających na różnym terenie. Ten obszar jest właściwy dla działalności Ombudsmana w ramach świadczonych usług mediacyjnych. Podmiot zajmuje się środowiskiem wewnętrznym organizacji, rozwiązuje spory, w tym w drodze mediacji pomiędzy pracownikami ONZ.

**Słowa kluczowe:** mediacja; ONZ; UNCITRAL; DPPA; HLAB; Ombudsman