Peaceful Settlement of Disputes

Historically, International Law has been regarded by the international community as a means to ensure the establishment and preservation of world peace and security. The maintenance of international peace and security has always been the major purpose of the International Law. It was the basic objective behind the creation of the League of Nations in 1919 and the United Nations in 1945.

Since the direct cause of war and violence is always a dispute between States, it is therefore in the interest of peace and security that disputes should be settled. Methods and procedures for the peaceful (pacific) settlement of disputes have been made available in the International Law.

States have concluded a great number of multilateral treaties aiming at the peaceful settlement of their disputes and differences. The most important treaties are the 1899 Hague Convention for the Pacific Settlement of International Disputes which was revised by the Second Hague Peace Conference in 1907, and the 1928 General Act for the Pacific Settlement of Disputes which was concluded under the auspices of the League of Nations. Furthermore, there are regional agreements, such as the 1948 American Treaty on Pacific Settlement (Bogotá Pact), the 1957 European Convention for the Peaceful Settlement of Disputes, and the 1964 Protocol of the Commission of Mediation and Arbitration of the Organization of African Unity. In addition to such general treaties on dispute settlement, there are many bilateral and multilateral agreements which include specific clauses related to dispute settlement.

The Charter of the United Nations devotes Chapter VI to the methods and procedures for the pacific settlement of disputes. Paragraph 1 of Article 33 of the Charter states the methods for the pacific settlement of disputes as the following: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements. This paragraph obliges States parties to any dispute, the continuance of which is likely to endanger the

maintenance of international peace and security, to seek a solution by any of the listed methods or other peaceful means of their own choice.

The methods of peaceful settlement of disputes fall into three categories: diplomatic, adjudicative, and institutional methods. Diplomatic methods involve attempts to settle disputes either by the parties themselves or with the help of other entities. Adjudicative methods involve the settlement of disputes by tribunals, either judicial or arbitral. Institutional methods involve the resort to either the United Nations or regional organizations for settlement of disputes.

Diplomatic Methods of Dispute Settlement

Diplomatic methods of dispute settlement are negotiation, enquiry, mediation, conciliation, and good offices.

1. Negotiation

"Negotiation" is the oldest, most common, and the simplest methods of settling international disputes. It is recognized by the great majority of treaties of pacific settlement as the first step towards the settlement of international disputes. Most of the treaties make a failure to settle a dispute by negotiation a condition precedent to compulsory arbitration or judicial settlement. It is, therefore, not surprising that negotiation comes first in the list of means of pacific settlement of disputes stipulated in Article 33(1) of the Charter of the United Nations.

Negotiation consists of discussions between the concerned parties with a view to understand the opposing positions and opinions and reconcile the differences. It is very suited to the clarification and elucidation of the opposing contentions. It is the most satisfactory means to settle disputes since it is a voluntary bilateral and self-help means; the parties are directly engaged in the process; intervention by any third party in the process is not necessary.

Negotiations, however, do not always succeed in reaching solutions to disputes or differences between the parties. Thus, third parties interventions are needed to help the parties in reaching a settlement to their disputes and differences; here comes the importance of the other diplomatic methods of dispute settlement.

2. Enquiry

One of the common obstacles preventing the successful settlement of a dispute by negotiation is the difficulty of ascertaining the facts which have given rise to the differences between the disputants. Most international disputes involve an inability or unwillingness of the parties to agree on points of

facts. Herein lays the significance of the procedure of inquiry as a means of pacific settlement of disputes.

Many bilateral agreements have been concluded under which fact-finding commissions have been set up for the task of reporting to the parties concerned on the disputed facts. In addition, the procedure of inquiry has found expression in treaties for the pacific settlement of disputes.

The two Hague Conventions of 1899 and 1907 established commissions of inquiry as formal institutions for the pacific settlement of international disputes. They provided a permanent panel of names from which the parties could select the commissioners. The task of a commission of inquiry was to facilitate the solution of disputes by elucidating the facts by means of an impartial and conscientious investigation. The report of a commission was to be limited to fact-finding and was not expected to include any proposal for the settlement of the dispute in question.

With the establishment of the League of Nations, the means of inquiry took on a new significance. Inquiry and conciliation were viewed as integral parts of a single process for bringing about a pacific settlement to a dispute. It is in the light of this background that the Charter of the United Nations specifically lists "enquiry" as one of the methods of pacific settlement of international disputes.

Enquiry as a separate method of dispute settlement has fallen out of favor. It has been used as part of other methods of dispute settlement. Its purpose is to produce an impartial finding of disputed facts and thus to prepare the way for settlement of dispute by other peaceful methods. The parties are not obliged to accept the findings of the enquiry; however, they always do accept them.

The utilization of enquiry has been evident in the practice of international organizations, such as the United Nations and its specialized agencies. Enquiry has been used as part of other methods of dispute settlement in the context of general fact-finding.

3. Mediation, Conciliation and Good Offices

Mediation, conciliation and good offices are three methods of peaceful settlement of disputes by which third parties seek to assist the parties to a dispute in reaching a settlement. All involve the intervention of a supposedly disinterested individual, State, commission, or organization to help the parties. When the parties are unwilling to negotiate, or fail to negotiate effectively, assistance by a third party through its mediation, conciliation, or good offices may be necessary to help in procuring a settlement. This assistance may be requested by one or both of the parties, or it may be voluntarily offered by a third party.

Although there is no distinction in the general features of mediation, conciliation, and good offices, a theoretical and practical distinction can be made among them according to the degree of third party participation, and the extent to which the disputants are obliged to accept the outcomes of the procedures.

Mediation is a process through which an outside party (third party) endeavors to bring the disputants together and assists them in reaching a settlement. The third party offers his assistance to the parties to a dispute. The consent of the disputants is not necessarily required initially, but no mediation proceedings can be commenced without their consent. The mediator actively and directly participates in the settlement itself. He does not content himself with making negotiations possible and undisturbed. He is expected to offer concrete proposals for a solution and a settlement of substantive issues related to a dispute. However, his proposals represent nothing more than recommendations. They have no binding force on either disputant. The parties to a dispute are free to accept or reject his proposals.

Conciliation is a process of settling a dispute by referring it to a specially constituted organ whose task is to elucidate the facts and suggest proposals for a settlement to the parties concerned. However, the proposals of conciliation, like

the proposals of mediators, have no binding force on the parties who are free to accept or reject them. As in the case of mediation, conciliators may meet with the parties either jointly or separately. The procedures of conciliation are generally instituted by the parties who agree to refer their dispute to an already established organ, commission or a single conciliator, which is set up on a permanent basis or *ad hoc* basis; third parties cannot take the initiative on their own. The conciliators are appointed by the parties to a dispute. They can be appointed on the basis of their official functions or as individuals in their personal capacity.

Conciliation is described by some as a combination of enquiry and mediation. The conciliator investigates the facts of the dispute and suggests the terms of the settlement. But conciliation differs from enquiry in that the main objective of the latter is the elucidation of the facts in order to enable the parties through their own accord to settle their dispute; whereas the main objective of conciliation is to propose a solution to a dispute and to win the acceptance of the parties to such solution. Also, conciliation differs from mediation in that it is more formal and less flexible than mediation; if a mediator's proposal is not accepted, he can present new proposals, whereas a conciliator usually present a single report.

When the parties to a dispute reach the point of not being able to solve it by negotiation, or the point where they have broken off diplomatic relations, but they are convinced that a settlement is important to them, the utilization of the technique of good offices may be helpful. Good offices may be utilized only with the agreement or the consent of both disputants. A third party attempts to bring the disputants together in order to make it possible for them to find an appropriate settlement to their differences through their negotiations. In this regard, the function of the third party is to act as a go-between, transmitting messages and suggestions in an effort to create or restore a suitable atmosphere for the parties to agree to negotiate or resume negotiation. When the negotiations start, the functions of the good offices come to an end. The procedure of good offices, in contrast to mediation, has a limited function which is simply bringing the disputants together. In mediation, the mediator takes an

active part in the negotiations between the disputants and may even suggest terms of settlement to the disputants. Method of good offices consists of various kinds of action aiming to encourage negotiations between the parties to a dispute. Also, in contrast to the case of mediation or conciliation, the profferer of good offices does not meet with the disputants jointly but separately with each of them. Seldom, if ever, the profferer attends joint meetings between the parties to a dispute. Normally, the role of the profferer of good offices terminates when the parties agree to negotiate, or to resume negotiation. However, the profferer may be invited by the parties to be present during the negotiations. As in case of mediation, an offer of good offices may be rejected by either or both parties to a dispute.

The use of mediation, conciliation, and good offices has a long history. These methods have been the subject of many bilateral and multilateral treaties. However, with the establishment of the League of Nations, permanent organs were set up to perform the functions of these methods of pacific settlement of disputes. In this context, the Charter of the United Nations lists in Article 33(1) mediation and conciliation, but not good offices, as methods of pacific settlement available to the parties to any dispute. Notably, in the practice of the United Nations, the terms “mediation”, “conciliation”, and “good offices” have been used with considerable looseness, flexibility and little regard to the distinctions which exist between them.

Mediation and conciliation have both advantages and disadvantages as compared to other methods of dispute settlement. They are more flexible than arbitration or judicial settlement. They leave more room for the wishes of the disputants and the initiatives of the third party. The disputants remain in control of the outcome. Their proceedings can be conducted in secret. However, there are disadvantages to mediation and conciliation. Their proceedings cannot be started and be effective without the consent, cooperation, and goodwill of the disputants. The proposed settlement is no more than a recommendation with any binding force upon the disputants.