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NEGOTIATION AS A LEGAL TOOL OF DISPUTE SETTLEMENT IN INTERNATIONAL RELATIONS

By

Uchechukwu Eshter Oloworaran*

Abstract

Negotiation, as one of the peaceful means of settling disputes, is most often resorted to by States for solving contentious issues. This is because negotiation offers a veritable prospect of a continued harmonious co-existence between nations who may have common goals but divergent interests. Again, negotiations are usually done on the basis of equal status, fair treatment and mutual quest for peace. Adopting the doctrinal research method, this work examined the concept of negotiation and traced the evolution of negotiation in international relations; its importance to diplomacy as a means of influencing foreign governments through dialogue, and other means short of war and violence. The work also discussed, amongst others, the advantages and disadvantages of the process; the obligation or otherwise of nations to negotiate their disputes and instances where negotiations was successfully used to stop the breach of international peace and security, or prevent the outbreak of war. The paper found that even though there are no compulsive obligation to negotiate international disputes, except for directives contained in treaties; owing to the efficacy and importance of negotiation in maintaining international peace, there is the need to interpret the extant provisions of the United Nations (UN) Charter, particularly Articles 2 and 33 thereof the liberally to compel negotiation in all instances where disruption of the world peace is a possible outcome of an existing dispute.

1. Introduction

Disputes in international relations are the norm rather than the exception.[1] Agitations that start as small complaints may snowball into civil and guerrilla warfare.[2] Conflicts between states have also, at various times, resulted in regional, international and even world wars. Wars are not only destructive (in terms of lives and properties lost) but also disruptive in human advancement.[3] In view of the above, the importance of amicable resolution of conflicts so as to maintain healthy relationship becomes a primal objective of the international community.

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[1]L.M., BL, Executive Director, Institute of Human Capacity Development and Continuing Education, Port Harcourt, 08055143857, Uchenwanji@yaoo.com. The author is grateful to Professor M.C. Ogwezzy and Dr. Jerry Amadi for their valuable contributions to this papers.
J Von Elbe, 'The Evolution of the Concept of the Just War in International Law,' [1931], (33) (4) The American Journal of International Law 665–688 <www.jstor.org/stable/2192879> accessed 21/08/2021; S Lazar, 'War,' Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu/entries/war> accessed 12/08/2021; J McMahan 'Rethinking the 'Just War,' Part 1,' The New York Times <https://www.berfrois.com/2012/11/the-origin-of-just-war-theory>, accessed on 12/08;2021; A Moseley, 'Just War Theory,' Internet Encyclopaedia of Philosophy, <https://iep.utm.edu/justwar> accessed 12/08/2021;

[2] C R King, 'Revolutionary War, Guerilla Warfare, and International Law' [1972] (4) (2) *Case Western Reserve Journal of International Law*, 91-123; S Kalyanaraman, Conceptualisations of Guerrilla Warfare <www. researchgate.net> accessed on 26/8/2021, Cain, Maureen, and Kulcsar K, 'Thinking Disputes: An Essay on the Origins of the Dispute Industry,' [1981] (16) (3) *Law & Society Review* 375-402

[3]Ellen Policinski, Jovana Kuzmanovic, 'Protracted Conflicts: The Enduring Legacy of Endless War' [2019] (101) (912), International *Review of the Red Cross*, 965–976

In pursuit of this objective, States have concluded a great number of multilateral treaties detailing methods and procedures for the peaceful (pacific) settlement of disputes.[4] These include negotiation, enquiry, mediation, conciliation, arbitration or judicial proceedings as well as resort to international agencies.[5] Negotiation however, owing to its versatility, is one of the prominent and preferred means of pacific settlement, and also features in some of the other known processes.

Historically, international relations have been regarded by the international community as a means to ensure the establishment and preservation of world peace and security,[6] the result of which was the evolution of diplomacy as an integral part thereof. Notwithstanding the various instruments directing state parties thereto to use any of the peaceful means recognised in international law in the resolution of their conflicts, there have also been instances where the court had chosen to suspend its judicial powers in favour of amicable settlement or even directed states in dispute to explore settlement.[7] However, it would appear that there is still no means of assuring that state parties to a dispute of such magnitude as may likely endanger international peace and security would always resort to the use of such peaceful means without a parallel directive to do so embodied in a treaty, convention or agreement to which they are signatories as *per* the principle of *pacta sunta servanda* (otherwise privity of contract). It does also appear that there is no obligation on nations either in customary or conventional international law to negotiate their differences as they arise.

2. Conceptual Clarification

These key words occur frequently in this work: diplomacy, dispute, dispute settlement, negotiations and international relations. It therefore becomes necessary to define or at least describe these words in the context of this paper so as to enhance the reader's appreciation of the usage.

a. Diplomacy

Kissinger[8] observes that diplomacy in the classical sense represents the "the adjustment of differences through negotiation." Diplomacy has been defined as the art and practice of conducting negotiations between national governments.[9] According to René Albrecht-

[4] Examples include 1899 and 1909 Hague Convention for the Pacific Settlement of International Disputes, 1919 Treaty of Versailles, 1948 American Treaty on Pacific Settlement, 1957 European Convention for the Peaceful Settlement of Dispute; the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, 1982 United Nations Convention on the Law of the Sea etc.
[5] The United Nations Charter, Article 33
[6] A M Hamza and Miomir Todorovic, 'Peaceful Settlement of Disputes', [January-February, 2017] (6) (1) *G.J.C.M.P.*, 11-17
[7] *F.R.G. v Den.; F.R.G. v Neth.*, 1969 I.C.J. 3; 47, 53-54 (Feb. 20) and *U.K. & N. Ireland v Iceland*), 1974 I.C.J. 3, 32 (July 25) respectively
[8] H A Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812–1822.* (Boston, MA: Houghton Mifflin, accessed on 26th August, 2021) pp. 1–2
[9] B A Garner, *Black's Law Dictionary*, (9th edn), (St. Paul, Min.: Thomas Reuters, 2009).

Carrié,[10] diplomacy in the modern sense represents "the management of relations among sovereign entities through negotiations conducted by the appropriate agents." Gasiokwu viewed diplomacy as the management of international relations through the application of intelligence and skill by the representatives of States and other subjects of international relations, for the purpose of achieving desired goals through peaceful means.[11]The general purport of diplomacy is the management of international relations.[12] Diplomacy has been viewed as the "best means of preserving peace that a society of sovereign states has to offer.'[13]

b. Dispute

Black's Law Dictionary defines dispute as a "conflict or controversy, especially one that has given rise to a particular law suit." [14] It has been defined as "a specific disagreement concerning a matter of fact, law or policy in which a claim or assertion of one party is met with refusal, counter-claim or denial by another[15]." From a national perspective, dispute may occur domestically or involve foreign nation(s), such that even two friendly states may have a dispute on issues.[16] Judicially, international dispute has been defined as "a disagreement on a point of law or fact, a conflict of legal views or interests between two persons (States)."[17] A dispute is therefore a disagreement or contention, clash of interest or controversy involving more than one person; and for a dispute to be considered international; it must involve a specific disagreement on a cognisable subject matter between different states.

c. Dispute settlement

This is the act of resolving issues in controversy between parties in disagreement using any means known to man or law. International dispute settlement consists of the techniques, institutions, and mechanisms established on permanent or ad hoc basis for solving international disputes and conflict involving state parties. This could be by means of pacific resolution[18], that is, peaceful engagement of the disputing parties in any of the procedures set out in Article

[10]R Albrecht-Carrié, *A Diplomatic History of Europe since the Congress of Vienna* (London: Methuen, 1970) pp. 3–5

[11] M O U Gasiokwu and C J Dakas, *Diplomatic and Consular Law: Selected Essays* (Enugu: Chengio Ltd, 2006) 3

[12]C Jönsson and K Aggestam, 'Diplomacy,' in J Bercovitch, V Kremenyuk, IW and Zartman, (eds), *Handbook on Conflict Resolution*, (London: Sage, 2009)

[13] H J Morgenthau, (1967) *Politics among Nations: The Struggle for Power and Peace.* (New York, NY: Alfred A. Knopf, 4th edn) 549.

[14]B A Garner, *Black's Law Dictionary*, (9th edn), (St. Paul, Min.: Thomas Reuters, 2009) 540.

[15]J G Merrills, *International Dispute Settlement* (5th ed. Cambridge University Press, 2011).

[16]N Sunday, 'Settlements of International Disputes,' [2013], available at: https://www.grin.com/document/233214, accessed 12/08/2021.

[17]*Mavrommatis Palestine Concessions* (*Greece v U.K.*), 1924 P.C.I.J. (ser. A) No. 2, at 11 (Aug. 30) 545.

[18] E O Oguno and C Okafo, 'Dispute Resolution Methods available in International Institutions (ECOWAS): A Critical Analysis,' [2019] (1) (1) (1) American Journal of Law<https://ajpojournals.org › AJL › article› download, https://www.ajpojournals.org/journals/index.php/AJL/article/view/397>, accessed 12/08/2021.

33 of the Charter of the United Nations (UN Charter) or deployment of force[19] such as imposition of sanctions, restrictions, economic blockades, political isolation *et cetera*.

d. International Relations

International means something that takes place between nations.[20] Relation is the way in which two or more people or things are connected; it is the relevance, influence and interconnectivity between a thing and another; a person and another.[21] International relations therefore deals essentially with the interactions and sovereign states especially as it relates to trade, foreign policies, diplomacy, conflict or war.[22] In modern diplomacy, the word 'international relations' has been used to describe relationships between states and supranational bodies, intergovernmental organisations, international non-government organisations, international legal bodies and even multinational corporations.[23]

e. Negotiation

Etymologically, *negotiation* may be traced to the old French word, *negociacion* which in turn came from the Latin word *negotiation*, which could be traced to the compound words *neg* meaning 'no' and *otium* meaning 'leisure.'[24] Though the use of negotiation became popular in the Middle Ages, it was by the late 1570s that negotiation gained the meaning, 'to communicate in search of mutual agreement.'[25] Moore and Pessoa, although dissenting in the *Mavrommatis' case*, respectively defined negotiation as the 'legal and orderly administrative process by which governments, in the exercise of their unquestionable powers, conduct their relations one with another and discuss, adjust and settle their differences[26]' and as 'debate or discussion between the representatives of rival interests, discussion during which each puts forward his arguments and contests those of his opponent.'[27] Ikle[28] described negotiation as 'a process in which

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[19]S Dhar 'Settlement of International Disputes using Coercive means,' <https://www.legal service. india.com/ legal/article-2516-settlement-of-international-disputes-usingcoercive-means.html> accessed 12/08/2021

[20]*Webster Dictionary*, <https://www.merriam-webster.com/dictionary/international> accessed 2/08/2021.

[21]*Cambridge Dictionary*, <https://dictionary.cambridge.org/dictionary/english/relation>, accessed 2/08/2021.

[22]*Webster Dictionary*, <https://www.merriam-ebster.com/dictionary/international%20relations>, accessed 12/08/2021.

[23]E Köksal, 'The Impact of Multinational Corporations on International Relations-A Study of American Multinationals,' A Thesis Submitted to the Graduate School of Social Sciences of Middle East Technical University in Partial Fulfilment of the Requirements for the Degree of Master of Science in International Relations, December 2006, < https://etd.lib.metu.edu.tr › upload>, accessed 14/08/2021; J S Nye, 'Multinational Corporations in World Politics,' [1974] (53) (1) Foreign Affairs 153-75; D S L Jarvis, 'Multinational Enterprises, International Relations And International Business: Reconstituting Intellectual Boundaries For The New Millennium'[2005] (59) (2) *Australian Journal of International Affairs* 201-203

[24]*R Fisher, W Ury, B Patton, Getting to Yes: Negotiating agreement without giving in (New York: Penguin, 2012 <www.etymonline.com.*> accessed 19 August 2021.

[25] P Meerts Diplomatic Negotiation Essence and Evolution, <https://www.clingendael.org/publication/diplomatic> accessed 19 August 2021.

[26] *Mavrommatis Palestine Concessions* (*Greece v U.K.*), 1924 P.C.I.J. (ser. A) No. 2 at 62-63 (Aug. 30) (Moore J., dissenting).

[27] *Ibid* at 91 (Pessoa, J., Dissenting).

[28]F Iklé, *How Nations Negotiate*, (New York: Harper & Row, 1964)

explicit proposal are put forward ostensibly for the purpose of reaching agreement on an exchange or on the realisation of a common interest where conflicting interests are present.' With respect to international relations, negotiation consists of discussion between officially designated representatives with the object of achieving the formal agreement of their government to a way forward on an issue that has come up in their relations.[29] Diplomatic negotiation is thus an 'exchange of concessions and compensations in a framework of international order accepted by sovereign entities'[30].

3. Theoretical framework

The theoretical framework which forms the basis for this study encompasses the natural law, sociological and positivist theories of law. In the early civilisation of man, wars and violence were the preferred means of settling disputes between nations. This is because, war naturally is a show of power and the policy of most nations was based on conquest which resulted in territorial expansion and increased human resources in terms military might, intelligence, forced and cheap labour force, population explosion amongst others. Any other means of settling dispute was viewed as a sign of weakness and time consuming. This resulted in several wars within the international communities, most of which went unnoticed or unacknowledged in other parts of the world. However, the outbreak of the First World War and subsequently the Second World War which engulfed the then known world revealed the folly of treading this path. With the development of atomic missiles, biological weapons and other weapons of mass destruction and the devastating losses that followed these two wars in terms of lives and property, the need to find pacific means of settling international conflicts became apparent.[31]

The sad reality that wars promote anarchy and gross violation or suspension of human rights, destruction of property and loss of valuable resources which include time paved way for the acceptance of pacific settlement as an alternative dispute settlement mechanism. Proponents of the natural law such as Aquinas, Locke and Finnis believe that law emanates from God who is not the author of confusion, the Giver of life who has warned man not to take life and to love one another. It was also their view that the law should serve the common good of man. The adoption of negotiation in the circumstances thus mitigated the incidences of wanton destruction of lives and property.

The sociological school of thought views law as instrument of social control or engineering to resolve conflicting interests in society. Thomas Hobbes belonged to this school. He was a proponent of social contract and was of the firm belief that no man can be subjected to the

[29] G R Berridge, *Diplomacy Theory and Practice* (5th edn, Palgrave Macmillan, 2015) 25; D Hanschel, 'Assessing Institutional Effectiveness: Lessons Drawn from the Regimes on Ozone Depletion and Climate Change' in Riedel E. and Hanschel D. (eds), *Institutionalization of International Negotiation Systems: Theoretical Conceptsand Practical Insights,* (Mannheim: Universität Mannheim, 2005) 24

[30] P W Meerts, *Diplomatic Negotiation, Essence and Evolution*. (The Hague: Clingendael Institute, 2015) <www.clingendael.nl/publications> accessed 19/8/2021

[31] R A Walker, *Multilateral Conferences: Purposeful International Negotiation* (London: Palgrave Macmillan, 2004)

principal power of another without his consent. This theory translates to the principle of *pacta sunct servanda* (privity of contract) well entrenched in international law and adhered to in international relation. It is the basis upon which bilateral and multilateral agreements are freely consented to by States, negotiation is voluntary and done on the basis of equality, fairness and mutual benefit.

Proponents of the positivist school of thought such as Roscoe Pound, John Austin and Jeremy Bentham postulate that law is the command of determinate sovereign which must be obeyed and backed up with sanction. Granted that there is no one sovereign in the international sphere who has the right, power or influence to dictate to the rest of the world what to do or refrain from doing in any particular situation, the evolution of international conferences, adoption of resolutions on issue of international concern, codification of international treaties and giving assent thereto by States became a binding force on member states to refrain from going to war at will. The establishment of international and supranational bodies such as the international court of justice, international court of justice, the United Nations Security Council amongst others became the needed boost for the enforcement of the provision of the law, coupled with the ability of some of these bodies to impose sanctions on member States. Accordingly, the positivist school became the foundation for the codification of international agreements and imposition of sanctions for their violation.

4. Nature of and Requirements for Negotiation

Negotiation is indeed as old as the human history[32] and one that can apply to every kind of dispute or disagreement irrespective of whether it is technical, economic, legal or political. Basically, negotiation is an interactive process involving two or more negotiators or parties in their bid to find common ground on issues of mutual interest and to reach an agreement is that is mutually acceptable to them.[33] According to Zartman and Berman,[34] negotiation is:

> A process in which divergent values are combined into an agreed decision, and it is based on the idea that there are appropriate stages, sequence, behaviours, and tactics that can be identified and used to improve the conduct of negotiations and better the chances of success.

It is a direct or indirect communication among two parties where they have opposite interests but are desirous to settle their differences on the principles of fairness, mutual benefit and maintenance of a working relationship. Negotiations can either be used to settle an existing difference or lay the groundwork for a better relationship among two parties or more for the future. It may be aimed at conflict management, conflict transformation or conflict resolution depending on how the relations of power, value and interest of the disputants are affected

[32] J L Graham, L Lawrence, W H Requejo, *Going Forward to the Past: A Brief History of Negotiation,* (New York: Palgrave Macmillan,2014), < https://doi.org/10.1057/9781137370167_2> Retrieved 19 August 2019
[33] J L Graham, L Lawrence, W H Requejo, *Going Forward to the Past: A Brief History of Negotiation,* (New York: Palgrave Macmillan,2014), < https://doi.org/10.1057/9781137370167_2> accessed 19/8/2021
[34] I W Zartman, and M R Berman, *The Practical Negotiator*, (New Haven, CT and London: Yale University Press, 1982)

following the process.[35] Conflict management allows parties to continue to work together even while the dispute subsists while conflict resolution usually seeks to eliminate or mitigate the conflict. Conflict transformation on the other hand aims at bringing about a fundamental change in the relationship between the parties through restructuring of the social institution and redistribution of powers. Every negotiation is distinct in itself depending on the process used, personalities involved and even the subject matter in issue.

Diplomatic negotiation is an 'exchange of concessions and compensations in a framework of international order accepted by sovereign entities.'[36] It is used to refer to negotiations between states and could be bilateral or multilateral, private or public. Bilateral negotiations are usually done by direct discussions held between the representatives of the parties involved[37], or through written correspondences and have been greatly facilitated in modern times by the development of telecommunications and means of transportation.[38] Such discussion between parties to a dispute is negotiation in its purest form. However, where the positions of the parties are quite polarised, third parties could be brought in as mediators or facilitators.

Multilateral diplomatic negotiations are much more complex. This is because the dispute may involve several state parties and the negotiations usually include other stakeholders who, though not necessarily parties to the dispute, have an interest in the issue and negotiation process at hand.[39] Stakeholders, in this case, may be countries and concerned parties such as intergovernmental and non-governmental organisations.

Hanschel[40] lends credence to this view and proffers a logical reason for this complexity when he stated thus:

> Negotiations are the art of consensus building and the more political the subject matter is, the less formal the formats of the negotiating process will be to prepare for the best possible outcome. Why? Because of the heterogeneity of the various interests involved in that process.

In such circumstances, international conference may provide the framework for the negotiating process for the purpose of studying the dispute and making proposals for its settlement.[41] An

[35]Hall Gardner, 'International Negotiation and Conflict Resolution,' (Oxford University Press 2011) <https://www.oxfordbibliographies.com/view/document/> accessed 19/8/2021
[36]P W Meerts, *Diplomatic Negotiation, Essence and Evolution.* (The Hague: Clingendael Institute, 2015) < www.clingendael.nl/publications> accessed on 19/8/2021
[37]Michael Waibel, 'The Diplomatic Channel,' in James Crawford *et al,* (eds), *The Law of International Responsibility*, (2010) pp 1085- 1090
[38]Ibid
[39]L Crump, and I W Zartman, 'Multilateral Negotiation and the Management of Complexity', [2003] (8) *International Negotiation*
[40]D Hanschel, 'Assessing Institutional Effectiveness: Lessons Drawn from The Regimes on Ozone Depletion and Climate Change' In E Riedel and D Hanschel (eds) Institutionalisation of International Negotiation Systems: Theoretical Concepts and Practical Insights (Mannheim: Universität Mannheim, 2005) 24
[41]H Kissinger, *World Order* (New York: Penguin Press, 2014)

example of such institution is the United Nation. Where the recommendations are accepted by the parties, it brings the dispute to an end.

Lewicki *et al*[42] have identified the distinctive characteristics of negotiation which are that:

(i) there are two or more parties;
(ii) the parties must have a conflict of needs and desires;
(iii) they must choose to negotiate because they think it is in their interest to do so;
(iv) the parties should expect 'give and take' in their dealings;
(v) they must prefer negotiation over open fighting;
(vi) successful negotiation involves the management of tangibles and the resolution of intangibles.

Lewicki thus succinctly highlights the importance of voluntariness, compromise and the skills of the negotiators in the possible outcome of the negotiating process. The role of negotiators in the successful resolution of any conflict cannot be over-emphasised. The negotiator must therefore have certain qualities and be ready to take the following steps.[43]

a. Adequate preparation

This involves real efforts made at understanding the interests, values and positions of the parties, working out a negotiation strategy, trying to predict possible barriers to a successful outcome, working out alternatives and determining in advance what the Best Alternative to a Negotiated Agreement (BATNA) would be in the event of a failed negotiation.[44] An effective negotiator would have to (1) realise his own interests; (2) influence the power balance; (3) promote a constructive climate; and (4) obtain flexibility.[45]

b. Effective communication

Effective communication during negotiation means passing across the intention of the party in clear and concise words, being persuasive and answering any questions put forward with confidence and certainty. It also involves active listening which is paying close attention to and reflecting on what the other person is saying. It is important to use appropriate verbal cues and body language, ask for clarifications where in doubt and have something reasonable to say when called upon to respond.

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[42] R J Lewicki, D M Saunders, and B Barry, *Negotiation: Readings, Exercises, and Cases*, (New York: McGraw-Hill, 2006) 6-8.
[43] Indeed Editorial Team, '12 Important Negotiation Skills: Definition and Examples' <https://www.indeed.com/negotiation> accessed on 16/8/2021
[44] Boma Toby, Social Relations and Alternative Dispute Resolution Mechanisms for Effective Justice Delivery in L O Nwauzi and G O Akolokwu (eds), *General Principles of Nigerian Customary Law* (Port Harcourt, Faculty of Law Rivers State University, 2019) pp. 145-180
[45] W F G Mastenbroek, *Negotiation as Emotion Management* (Heemstede: Holland Business Publications, 2002) 433-454

c. Openness to collaboration

The goal of negotiation is to come to an agreement that is mutually beneficial to both parties. Thus, viewing the process as a collaborative effort puts the negotiator in the right frame of mind for effective deliberations, builds confidence in the process and enhances successful outcomes. It also helps him to separate the persons from the problem in the course of negotiations, and to focus on interest rather than position.

d. Emotional intelligence

This is the ability to control one's emotions and recognize those of others. The ability to remain calm even when things are not going according to plan cannot be over emphasized as one who is upset cannot think through properly. It also helps the negotiator to recognize opportunities that he can take advantage of.

e. Conflict management skills

This is the ability of the negotiator to douse tension, downplay individual differences and trivialise extraneous issues which may arise in the course of negotiations and which is capable of creating distractions or resulting in deadlocks. It is also the ability to adapt in different circumstances and to be accommodating thus promoting a conducive environment for deliberating on the core issues before the negotiators.

5. Negotiation Strategies

Various scholars, both in the field of social sciences and law, have explored the theme on negotiation styles otherwise referred to as negotiation strategies though they are not agreed on the number. Toby[46] identified three; Professor E. Wertheim[47] highlighted five while most insist on two.[48] Negotiation strategy refers to the style of negotiation or the approach adopted by the negotiator. There are basically two types of strategies used in international negotiations. These are

a. Competitive negotiation

This style of negotiation is also as known as competitive bargaining[49], distributive approach, zero sum, win-lose or claiming value[50]. In this style of negotiation, the parties to the

[46] Boma Toby, Social Relations and Alternative Dispute Resolution Mechanisms for Effective Justice Delivery in L O Nwauzi and G O Akolokwu (eds), *General Principles of Nigerian Customary Law* (Port Harcourt, Faculty of Law Rivers State University, 2019) 145-180

[47] E Wertheim 'Negotiations and Resolving Conflicts: An Overview' <https://www.europac.org> accessed on 25/8/2021

[48] Office of Legal Affairs Codification Division 'Handbook on the Peaceful Settlement of Disputes between States', < > accessed on 12/8/2021

[49] Model United Nations, 'Competitive Bargaining vs Co-operative problem solving' <https://www.un.org> accessed 21st August, 2021

[50] Wertheim E, Negotiations and Resolving Conflicts: An Overview <http://www.cba.neu.edu/~ewertheim/> accessed on 12th August, 2021

disagreement are not concerned about mutual benefit but compete to maximize their own profit through the loss of the other party. This style of negotiation breaks the mutual trust among the parties and promotes a sense of competition between them. Using this approach, the negotiator is bent on wining all even at the expense of colossal loss to the other party. He is usually unwilling to make any compromise or concession and would leverage on anything including tricks, threats, position to gain undue advantage over the other party.

b. Collaborative negotiation

This type of negotiation is otherwise known as co-operative problem solving[51], integrative or value creating strategy[52]. It is commonly referred to as the win-win approach where each party goes home satisfied, even if not all of their demands are met. In this style of negotiation, there is no sense of competition. The focus is co-operation (establishing and strengthening relationships without compromising core/best interests) with a view to attain mutual benefit based on mutual respect and fairness among the parties, and to come up with an agreement that is mutually acceptable to the parties.

Some authors have written about other negotiating styles; although not as well known or widely accepted as the two mentioned above. Both Cochran and Wertheim have, in addition to the two styles already discussed, identified three others namely compromise, avoidance and accommodative[53]. According to them, although the compromise approach adopts the 'I win and lose some, you win and lose some' approach common to the collaborative style, it is unduly concerned with pleasing the adversary and thus tends to make unnecessary and unreasonable concessions. The avoidance style takes on the 'I lose, you lose' approach, avoids confrontation and has no real motive to negotiate even while at it. It works best only where the matter involved is trivial to both parties and they can afford to lose. Accommodative, on the other hand, follows the 'I lose, you win' model.

Fisher however viewed negotiation styles from a different perspective, which is the hard and soft style. He thus propounded a third one referred to as principled bargaining.[54]

6. Advantages and Disadvantages of negotiation

There are many advantages attached to negotiation, which accounts for its adoption as a preferred means of dispute resolutions even at the international level. Despite the laudable

[51] Wertheim E, Negotiations and Resolving Conflicts: An Overview <http://www.cba.neu.edu/~ewertheim/> accessed 21st August, 2021
[52] Model United Nations, 'Competitive Bargaining vs Co-operative problem solving' <https://www.un.org> accessed 21/8/2021
[53] Jeff Cochran 'What are the Five Negotiations Styles' <shapironegotiations.com> accessed 21st August, 2021; Wertheim E, Negotiations and Resolving Conflicts: An Overview <http://www.cba.neu.edu/~ewertheim/> accessed 21/8/2021
[54] Roger Fisher, on a Better Way to Negotiate <https://fs.blog> accessed 16/8/2021

attributes of negotiation herein referred to as advantages and which advantages are not exhaustively discussed, there are also some disadvantages which could be observed in the process. Some advantages of negotiation include:

a. Flexibility[55]

Negotiation is the most flexible method of conflict resolution as the disputing parties are at liberty to deliberate on their own terms, without external interference (in terms of intervention or pressure). They determine where (place), when (timing of sitting/time frame for reaching an agreement), how (negotiation style, public/private), who (representatives) and what (subject matter/interest) they want to discuss. In other words, they play by their own rules, thereby controlling the process and the outcome. As a result, there is always likelihood that issues would be resolved.

b. Voluntariness

Negotiations require active participation by both parties and as such, both parties must voluntarily agree to participate. This is because there can be no successful negotiation without the mutual cooperation of the disputants since any agreement concluded through threat or the use of force in violation of the principles of international law is void.[56]

c. Bindingness[57]

Negotiated agreements are binding on the parties to the negotiation. Although either party to a negotiation may opt out before its conclusion; once concluded, none of the parties thereto can unilaterally repudiate the agreement entered into or fail to meet any obligations thereunder without consequences.

d. Priority of Parties' Interest[58]

The decision to negotiate is based on a party's needs and interests and not necessarily on the position of the parties. This encourages creative solutions. Negotiation allows the parties to design the agreement in such a way that it would reflect the interests of both the parties in good faith.

e. Cost effective

Successful negotiation saves time, being a fast-track procedure. This is especially true when chosen over litigation which is sometimes uncertain owing to technicalities and likely to suffer

[55]Canada Department of Justice 'Dispute Resolution Reference Guidelines' Negotiations' <www.justice.gc.ca> accessed on 26/8/21

[56] UN General Assembly Resolution 53rd Session Agenda item 149 "Principles and Guidelines for International Negotiations' <https://undocs.org.pdf.RES. pdf> accessed on 26/8/2021

[57] Blaney Mc Mutry, 'Advantages and Disadvantages of Dispute Resolution Processes' https://www. Barney.com pdf> accessed on 26/8/2021

[58] Comparative Analysis of the ADR Methods with Focus on their Advantages and Disadvantages <https://www.mondaq.com> accessed on 26/8/2021

undue delay before the final determination of the matter. The process does not depend much on professional expertise and so money that could have been used in engaging lawyers, witnesses, filing processes etc is saved. Furthermore, the process itself is reconciliatory in nature and thus preserves relationships.

f. Enforceability

A negotiated agreement is enforceable as a contract and the disputants will more than likely fulfil their promises. Such agreements are usually reduced into writing and create rights, obligations, liabilities as well as legal and/or equitable reliefs in the interests of the parties. They define the terms of the relationship and are thus enforceable in law against the party in default.

We have already alluded to the fact that negotiation that negotiation also has some disadvantages, depending on how it is carried out. These disadvantages in themselves, however, do not detract the merits of negotiations as the weight tilts towards the advantages when the two are put in the imaginary scale of balance. Some of the disadvantages of negotiation[59] are highlighted below:

a. A weaker party may be disadvantaged, even when negotiation was successful if it had to willy nilly accept the proposals advanced by the stronger party.
b. The disputing parties may be unable to reach an agreement, in the absence of an impartial third party, due to willingness to make concessions in crucial issues of interest.
c. The negotiation process can be terminated at will by either party thus resulting in waste of money, effort and time put in by the parties.
d. Failure to reach an agreement may further strain the relationship between the parties and result in violence.
e. Diplomatic negotiation becomes more complicated with more actors around the tables and increased number of issues to deliberate on especially in view of the relative strength of the countries and the relative weakness of the intergovernmental and non-governmental organisations.
f. Although structures and procedures are necessary instruments to direct the processes into closure[60], bureaucracy enhances loss of effectiveness as a consequence of loss of flexibility.

7. Evolution of the Use of Negotiations in International Relations

The practice of diplomatic negotiations is indeed as old as the international system itself. From the birth of sovereign units in China, the Indian subcontinent and the Middle East, the desire

[59] Jill Harnes, 'What are the Disadvantages of Negotiation' <https://bizfluent.com.info861338> accessed on 26/8/ 2021; Ariskikta Chattopadhyang 'Negotiation: Meaning, Scope, Advantages and Disadvantages' cons<https://www.legalbites> accessed on 26/8/2021

[60] J Kaufmann, *Conference Diplomacy,* (London: Macmillan, 1996); R A Walker, *Multilateral Conferences: Purposeful International Negotiation* (London: Palgrave Macmillan, 2004)

to establish official relations had existed.[61] At that time, political and diplomatic negotiations were done through bilateral meetings held directly between absolute rulers or the councils of city-states, or the envoys of the respective parties. The antiquity of negotiation as the means of conduct in international relations is attested to by records dating back to at least the middle of the third millennium BCE.[62] The relationship between ancient kings portrayed an elaborate system of law, protocol and finance. For example, there were trained scribes, designated ambassadors and messengers in places like the ancient Babylonian Empire, who negotiated treaties written on cuneiform tablets in Old Babylonian language.[63] Dynastic marriages, commercial activities, military alliances, settlement of boundaries and exchange of gifts were common features between sovereign kings.

From the well preserved royal archives of Mari, documented accounts of peace negotiations between King Zimri-Lim of Mari and the Babylonian King Hammurabi sheds light on many features of early international relations in terms of the forms, conventions and substance of negotiations.[64] Diplomatic correspondence dating to the 1760s tells how at some point, Zimri-Lim's ambassador, Abu-Machin, presented Hammurabi with the draft text of a peace treaty between the two countries, after which ensued long negotiations over possession of the town of Hit, captured from Eshnunna by the allied kings. Upon Zimri-Lim's refusal to concede the land on the instructions of the gods, Hammurabi proposed third-party arbitration to break the impasse which Abu-Machin resisted.[65] Towards the end of the negotiation, drafts of the treaty were exchanged in the form of a 'small tablet' brought by visiting delegations passing to and fro between the two capitals, and the kings - who never met - pledged themselves to its contents while still debating on other details to be included.[66] Final drafts of the treaty in the form of a 'great tablet' were then exchanged. In separate ceremonies at which solemn oaths were sworn to the gods, the kings and accompanying ambassadors each divided an ass and walked between the two halves. Over time, procedures and substance of negotiations evolved where astrologists and soothsayers had little or no say and sacred oaths and sacrifices were no longer part of treaty signings although such occasions were still marked with an aura of solemnity and treaties are held to be sacrosanct anyway.[67]

Also the diplomatic correspondences from the famous El-Amarna archives (fourteenth century BCE), documenting the diplomatic and military relationships of five major powers in the ancient Middle East: Pharaonic Egypt of Ramses II; Hittitian Hatti of Muwatalli; and Mesopotamian Babylonia, Assyria and Mittani showed that gathering of intelligence on

[61] A Kuhrt, *The Ancient Near East, c. 3000-330 BC* (vol. 1), (London:Routledge Kuhrt, 1998), 40-44
[62] *Ibid*
[63] *Ibid*
[64] W F G Mastenbroek, *Negotiation as Emotion Management*, (Heemstede: HollandBusiness Publications, 2002)
[65] D Elgavish, *The Diplomatic Service in the Bible and in Documents from the Ancient Near East [in Hebrew]* (Jerusalem: The Magnes Press, 1998) *62-71*
[66] Ibid
[67] (n65)

diplomatic and military matters, extravagant opening bids, drawn-out middle-games, fallback positions, trade-offs, deadlines, last-minute demands, face-saving compromises etc were tactics used in negotiation. [68]

In Renaissance Italy, the city-states did not only use special representatives, but also established more or less permanent diplomatic posts in each other's cities. With time, diplomacy became more regulated, a development which was necessary for effective negotiation. Diplomacy also assumed more complexity with the myriads of conflicts that were prevalent. In the nineteenth century, multilateral negotiations introduced as a method to regulate the international power structure, thereby facilitating successful outcomes as an alternative to warfare assumed more prominence. By the 20th century, diplomatic practices pioneered in Europe had been adopted throughout the world and diplomacy had expanded to cover summit meetings and other international conferences of supranational and sub national entities, unofficial diplomacy by nongovernmental elements and the work of international civil servants.[69] Accordingly, the use of negotiation in international diplomacy becomes two-pruned. First, it is utilised to achieve mutual agreement in international relations, to that extent, most international agreements, treaties, covenants, and other instruments are achieved by means of negotiated agreements. Second, negotiation could also be used as a means of dispute settlement in international diplomacy. The second usage becomes very necessary when there is a statement, threat of war or break out of hostilities. Thus, one may safely say that diplomatic negotiation entered the world stage some five millennia ago; conference diplomacy has been around for 300 years, while its established organisational format emerged only in the last 100 years.

Amongst the earliest known treaty was the *Peace Treaty of Westphalia* concluded in 1648. This represented two pieces of agreements signed in the cities of Munster and Osnabruck following a series of bilateral negotiations which ended the 30-years war (1618-1648) and 80-years war (1568-1648) that ravaged the Holy Roman Empire claiming about 8 million lives. The said Treaty was signed by the Holy Roman Emperor, Spain, France, Sweden and United Province (Netherlands), although it had many other delegates who did not all participate. It declared for the first time that all countries were legally equal.[70]

Westphalia is thus widely seen as the mother of all diplomatic conferences and the beginning of the era of procedural frameworks, because it helped to create more effective negotiation

[68] W L Moran, *The Amarna Letters,* (Baltimore, MD: Johns Hopkins University Press, 1992); R Cohen, and R Westbrook (eds) *Amarna Diplomacy: The Beginnings of International Relations,* (Baltimore, MD and London: Johns Hopkins University Press, 2000)
[69]00000
[70]Patton Steven, 'The Peace of Westphalia and its Effects on International Relations,' [2019] (10) (1) *Diplomacy and Foreign Policy: The Histories,* 1-9

processes as an alternative to warfare.[71] Two hundred years later, the *Congress of Vienna*[72] (1814-1815) became the first truly multiparty negotiation, although not a fully universal one, as the number of real negotiating parties was kept at five: Russia; Austria; Prussia; Great Britain; and France. The objective of the international diplomatic conference was to reconstitute the European political order after the downfall of Emperor Napoleon and provide a long-term peace for Europe settling the critical issues arising from the Napolenic and French Revolutionary wars. With its conclusion, there came an end to the 23 years of nearly continuous wars between the parties. This formed the framework for European international politics until the outbreak of the First World War in 1914.

Then came the *1899 Hague Peace Convention of 1899*[73] which was *revised by the Second Hague Peace Conference in 1907.* These were Conventions for the Pacific Settlement of International Disputes. Both conferences included negotiations concerning disarmament, the laws of war and war crimes which resulted in three main treaties: Convention with respect to laws, Customs of war on land and Convention for the adoption of maritime warfare of the Principles of the Geneva convention 22/8/1864. The Hague Convention also produced some declarations prohibiting the use of asphyxiating gases, expending bullets (dumdum) and discharge of projectiles/explosive and was responsible for the creation of the Permanent Court of Arbitration.

The *Paris Peace Conference* of 1919, concluded by the Treaty of Versailles that ended the First World War, became a major event in the history of diplomacy. As with the Vienna conference, representatives of hundreds of sovereignties presented their credentials in Paris, but only five were included in the inner circle: the United States; France; Great Britain; Italy; and Japan. However, the conference paved way for the creation of the League of Nations and five peace treaties signed with the defeated States. It also rearranged the map of Europe and parts of Asia, Africa and imposed financial penalties.[74]

With the emergence of The *League of Nations* (1919-1946) came the first full-fledged multilateral negotiation process as it symbolised an international forum and international collective security arrangement. It did some good work in resolving territorial questions after

[71] K J Holsti, *Peace and War: Armed Conflicts and International Order, 1648-1989,* (Cambridge: Cambridge University Press, 1991)
[72] Paul Meerts 'Persuasion through Negotiation at the Congress of Vienna 1814-1815, <https://www.diplomacy.edu/resources/general/persuasion-through-negotiation-congress-vienna-1814-1815> accessed 21/08/2021
[73] The 1899 Convention for the Pacific Settlement of International of International Disputes- PCA-CPA, <https://docs.pca-cpa.org > 2016/01 > 1899-Conve...>, accessed 23rd August 2021
[74] The Paris Peace Conference: The Aims of the Participants <https://www.tumwater.k12.wa.us > lib > Domain>, accessed 23rd August, 2021

the First World War,[75] amongst which was the *1928 General Act for the Pacific Settlement of* Disputes.

It was only with the San Francisco Conference in 1945, which created the *United Nations* that a reasonably effective multilateral diplomatic conference came into existence.[76] Its strong multiparty nucleus, the United Nations Security Council, helped to reduce complexity and enhance efficiency. There were also regional agreements, such as the 1948 American Treaty on Pacific Settlement; the 1957 European Convention for the Peaceful Settlement of Dispute; and the 1964 Protocol of the Commission of Mediation and Arbitration of the Organization of African Unity.

Following the already established precedent as outlined above, most multilateral agreements include specific clauses related to dispute settlement. The different means, processes or mechanisms enumerated under the statute has been classified as either diplomatic (involving negotiation, enquiry, mediation, conciliation), adjudicative (involving settlement by tribunals, arbitration, or judicial proceedings), or institutional (involving resort to regional agencies or arrangements such as United Nations).[77]

A comparative study of the proto-diplomacy of the great kings of eighteenth-century BCE Mesopotamia and the sophisticated diplomacy conducted by the great kings of eighteenth-century CE Europe shows striking similarities such as to infer that these ancient civilizations begot modern diplomacy. In the light of this, Meerts[78] concluded that "key ideas that are central to our civilization- such as the state, sovereignty, boundaries, diplomatic relations, war, peace, treaties, ratification, ambassadors, delegations, passports, diplomatic notes, inviolability, and so on - were not invented by the ancient Greeks, let alone by the Italians of Renaissance Italy, but were handed down from Sumer and Akkad."

8. The Obligation to Negotiate in International Law

It would seem that there is presently no obligation on states, applicable in all situations of dispute or disagreement, to enter into negotiations as a matter of customary or conventional international law, in the absence of such directive in any particular treaty.[79] However, where the will to resolve a dispute through negotiation is present on the part of national leaders,

[75] League of Nations Covenant, Arts. 12-17
[76] History of the United Nations <https://www.un.org/aboutus> accessed on 14th August, 2021
[77] Laurence Boisson de Chazournes and others 'Diplomatic and Judicial Means of Dispute Settlement' (Martinus Nijhoff Publishers, 2012) 11-24; 25-45 and 71-86
[78] P W Meerts, *Diplomatic Negotiation, Essence and Evolution.* (The Hague: Clingendael Institute, 2015) < www.clingendael.nl/publications> Retrieved 19 August 2019
[79] M A Rogoff, 'The Obligation to Negotiate in International Law: Rules and Realities', [1994] (16) *MICH. J. INT'L L.* 141, <https://repository.law.umich.edu/mjil/vol16/iss1/2> accessed on 26/8/2021

agreement on procedures and substance, while usually protracted and arduous, is likely to follow.[80]

A number of multilateral agreements include specific clauses related to dispute settlement and place on the States Parties thereto an obligation to carry out "negotiations", "consultations", or "exchanges of views" whenever a controversy arises in connection with the treaty concerned.[81] One of such treaties is the Charter of the United Nations[82] (UN Charter) aimed at maintenance of international peace and security through effective collective measures for the prevention and removal of threats to the peace; and suppression of acts of aggression or other breaches of the peace using peaceful means which conform with the principles of justice and international law for the adjustment or settlement of international disputes or situations which might lead to a breach of the peace.[83] Article 2(3) thereof provides that "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." It furthermore provides, in Article 33, paragraph 1 (under Chapter VI) that:

> 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.

Accordingly, disputing parties may choose to use any one or a combination of two or more of these processes[84] in settling particular disputes as they arise, or this may be determined in advance, through a compromissory clause in a treaty that dictates particular means and modalities of dispute settlement. Article 34 of the Charter guarantees the inviolability of such choice when made when it provides that the Security Council, the body responsible for the implementation of the Treaty, must take into cognisance the pacific mechanism adopted by an nation in the resolution of its dispute while carrying out any investigation aimed at determining the extent of a dispute.

Other examples of such treaties are the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies[85], the 1975 Vienna Convention on the Representation of

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[80] *Ibid*
[81] Arthur S Lall, 'International Law, Mediation and Negotiation' in *Multilateral Negotiations and Mediation Instruments and Methods* (International Peace Academy: Pergamon Press, 1985) 183-195
[82] United Nations, Charter of the United Nations 24 October 1945 1 UNTS XVI <https: www.on,org> accessed 16/8/2021
[83] UN Charter (n86), Article 1, para. 1
[84] Robert Barnidge, 'The International Law as a Means of Negotiation Settlement,' [2013] (36) (3) *Fordham International Law Journal* 545-550
[85] General Assembly Resolution 34/68, annex, art. 15, para. 1)

States in their Relations with International Organizations of a Universal Character[86], the 1982 United Nations Convention on the Law of the Sea[87] and the 1959 Antarctic Treaty[88]. Under some of those treaties, parties to a dispute arising from the interpretation or application of the treaty are under an obligation to start the consultation or negotiation process without delay.[89]

By virtue of Article 2(2) of the UN Charter, all member states are enjoined to fulfil in good faith the obligations assumed by them in accordance with the Charter so as to assure all of the rights and benefits resulting from being members. In the *North Sea Continental Shelf cases*[90] and *Fisheries Jurisdiction cases*[91], the International Court of Justice (ICJ) stated the view that once it is determined that customary or conventional international law creates rights for more than one state with respect to a particular matter, then, in case of a dispute involving that matter, the states concerned are obliged to enter into negotiations to resolve their differences. In the first case, the court directed parties "to conduct their negotiations on the basis that each must in good faith pay reasonable regard to the legal rights of the other". In the light of this provision, the decision in *North Sea Continental Shelf cases* remain sacrosanct. However, the view has been expressed that such good faith is only applicable where the parties have opted for negotiation and that good faith does not in itself amount to an obligation to negotiate.[92] In the latter case, the court held that "The obligation to negotiate thus flows from the very nature of the respective rights of the Parties; to direct them to negotiate is therefore a proper exercise of the judicial function in this case. This also corresponds to the principles and provisions of the Charter of the United Nations concerning peaceful settlement of disputes." Accordingly, parties may be directed to negotiate by a judicial decision binding upon them.

In resolving the poser as to whether the obligation under Article 33 of the Charter extends to all disputes between states, imposes a general obligation on states or an obligation only within the context of the pacific settlement procedures of Chapter VI; Rogoff construed conjunctively the wordings of Articles 2(3), 2(7) and 33. Article 2(3) expressly employed the term 'international' in relation to dispute, while Article 33 purports that the obligation to settle disputes by peaceful means is not applicable to all disputes, but only to those disputes "the continuance of which is likely to endanger the maintenance of international peace and security." He highlighted the argument of Goodrich, Hambro, and Simon[93] which asserts that

[86] Article 84
[87] Article 283, para. 1
[88] Article VIII, para. 2
[89] Art. 283, para. 1, of the United Nations Convention on the Law of the Sea; art. 15, para. 2, of the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies; and art. VIII, para. 2, of the Antarctic Treaty).
[90] F.R.G v Denmark, FRG v Netherlands 1969 ICJ 3, 47, 53-54 (Feb 20)
[91] UK & N. Ireland v Iceland 1974 ICJ 3, 32 (July 25)
[92] M A Rogoff, 'The Obligation to Negotiate in International Law: Rules and Realities', [1994] (16) *MICH. J. INT'L L.* 141, <https://repository.law.umich.edu/mjil/vol16/iss1/2> accessed on 26/8/2021, Border and Transborder Armed Actions (*Nicar v Hond*) 1988 ICJ 69, 105 (Judgment on Jurisdiction, Dec. 20)
[93] L M Goodrich *et al.,* Charter of the United Nations: Commentary and Documents 43 (3rd rev edn, New York: Columbia University Press 1969)

the word 'international' was inserted in order to exclude domestic dispute of whatever magnitude, even those that could endanger the maintenance of international peace and security. This argument is anchored on the provision of Article 2(7) of the Charter which does not require member states to submit matters which are essentially within the domestic jurisdiction of any state to settlement under the Charter. The above interpretation of Article 2(7) as against Article 2(3) of the Charter is rather restrictive and likely to undermine the objectives of the Charter, particularly as it relates to Chapter VI. Rogoff, therefore, contended that the current interpretation of the term 'domestic jurisdiction' would seem not to apply to every dispute which could endanger international peace and security and submitted that Article 33 should be read as imposing the obligation of peaceful settlement on states involved in any serious dispute.

Put differently, this obligation should still prevail even when the cause of conflict falls within the domestic jurisdiction of a nation once it is such that its effects is likely to go beyond the country's territory or control. The position of Rogoff[94], if given universal acceptance, would settle in perpetuity the question of the obligation of parties to embark on peaceful settlement of their disputes as antecedent to other legal means available to them and put the answer resolutely in the affirmative. Indeed, relying on the literal rule of interpretation by which the word 'shall' is mandatory, one may argue that negotiation enjoys a place of priority over the other pacific procedures enumerated under Article 33. It states that parties to any dispute "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. The implication would therefore be that pacific step ought to be taken in the order provided under the Charter and it is only upon the failure of one that the next step must necessarily be taken. This was also the opinion of Rogoff. Such a position will strengthen the force of negotiation in settlement of international dispute, such as to make it uneasy for parties to renege at will.

9. Instances of Use of Negotiation to Settle International Disputes

There have been a number of instances in which negotiation has been utilized in settling international disputes. Two of such instances are considered below.

9.1 The Iran nuclear deal[95]

The Iran nuclear agreement, formally known as the Joint Comprehensive Plan of Action (JCPOA)[96], is a landmark accord reached between Iran and several world powers, including

[94] M A Rogoff, 'The Obligation to Negotiate in International Law: Rules and Realities', [1994] (16) *MICH. J. INT'L L.* 141, <https://repository.law.umich.edu/mjil/vol16/iss1/2> accessed on 26/8/2021; Paul D. Friedland, 'Negotiation or Mediation as a First Step before Arbitration' in *Arbitration Clauses for International Contracts* (2nd edn, JurisNet, LLC 2007)

[95] Arms Control Association 'Timeline of Nuclear Diplomacy in Iran'<www.armscontrol.org> accessed 18/8/2021

[96] The Joint Comprehensive Plan of Action (JCPOA) at a Glance <www.armscontrol.org> accessed 18/8/2021

the United States, in July 2015. Under its terms, Iran agreed to dismantle much of its nuclear program and open its facilities to more extensive international inspections in exchange for billions of dollars' worth of sanctions relief.[97]

Although there have been challenges that have frustrated the sustainability of this agreement; the adoption of the agreement marked a positive approach to the Iran Nuclear issue. Prior to the JCPOA, Iranian economy suffered recession because of sanctions on its energy sector. The agreement following the negotiations saw sanctions lifted, inflation slowed, exchange rates stabilized, and exports grew.

Even though escalating tension between the United States of America and Iran between 2018 to 2020 saw the agreement jettisoned,[98] the agreement serves as a pointer to the fact that negotiation can be used to solve complicated international disputes and that negotiation can result in agreement between parties.

One must also appreciate that Iran and the United States of America are not the only two member states to the agreement; hence, since it is these two states that presently pulled out of the talk, there has been renewed effort by other party states to get them back to the negotiation table. There is no doubt that with renewed quest for negotiation, the agreement could be back on track.

9.2 South China Sea Negotiations

The South China Sea has been an object of contention between several Asian States; and who had made competing territorial claims over it at a proportion that made the dispute to be regarded as Asia's most potentially dangerous point of conflict.[99] This has led to the utilizing of negotiation to resolve it. The negotiation is between China and the ten members of the Association of Southeast Asian Nations (ASEAN), and which led to a "Code of Conduct" in the South China Sea. The sea with its estimated 11 billion barrels of oil, 190 trillion cubic feet of natural gas has been the object of heavy disputes between China, the Philippines, Vietnam, Indonesia, Malaysia, Taiwan, and Brunei for almost 5 decades.[100] In 2016, the Permanent Court of Arbitration at The Hague ruled against China in favour of the Philippines as regards

[97] BBC News, 'Iran Nuclear Deal: Key Details' <http://www.bbc.com> accessed 18/8/2021
[98] CNBC 'Iran nuclear deal talks are stuck after substantial progress, negotiator says' <www.cnbc.com> accessed 18/8/2021
[99] Shigeki Sakamoto, 'The Global South China Sea issue' <the diplomat.com> accessed 18th August, 2021
[100] Khalid Zaka 'A Summary of the South China Sea Conflict' <https://straight.com/news/khalid> accessed on 20/8/2021

certain portions of the sea.[101] China however refuses to accept the court's authority. Despite escalating tension in the region, especially between the United States and China, the continuous positive quest by the States directly involved in the dispute to negotiate.

10. Conclusion

The researcher finds that much ink has been spilled on the theme of negotiation as an effective means of resolving conflicts of all nature and magnitude provided the parties involved have the necessary will and enough incentives. However, there are paucity of literature especially in terms of textbooks, journals and such like materials detailing the frequency at which negotiations is resorted in settlement of international disputes, the instances and the rate of successes or otherwise recorded. Snippets of such accounts are rife in newspapers and sometimes the social media; most of which are largely incomplete, inaccurate and unreliable.

Available studies and statistical data collection on negotiation as a tool of settlement of dispute in international relations do not appear to have investigated the level of compliance by nations to embrace negotiation as a pacific means of settlement as a matter of first resort. Such investigations also have not considered the extent to which negotiation has successfully demilitarised the world or taken more than a cursory look on the obligations of states to negotiate any dispute of whatever nature or magnitude that has the potential of threatening international peace and security.

Negotiation is not only key and important to the maintenance of international peace, it is a crucial tool in international dispute settlement and remains one of the few mechanisms that is used for both peaceful settlement of dispute and for negotiating mutual international standards for the protection of international peace, prevention of hostilities and wars and for settling international standards and harnessing mutual relationships.

Negotiation was key in ensuring peaceful transition of power during decolonization. Negotiations inside and outside diplomatic conferences are the most effective tool for dealing with the opposing and concurring needs of all the parties involved in any dispute. Diplomatic negotiation is a legitimate and inclusive mode of international governance and conflict resolution due to the level of representation. It has become of prime importance since it helps to peace and security globally and prevents any kind of threat of violence or war.

[101] Permanent Court of Arbitration, 'The South China Arbitration (The Republic of Philippines v. The People's Republic of China' <https://pca-cpa.org> accessed on 20th August, 2021; Robert D. Williams 'The Tribunal Issues Landmark Ruling In South China Sea Arbitration' <www.lawfareblog.com> accessed on 20/8/2021