

MEDIATION AS A LEGAL MECHANISM FOR DISPUTE SETTLEMENT IN INTERNATIONAL RELATIONS

By

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Abstract

The adoption of mechanisms for pacific settlement of disputes as standards for diplomacy and international relations grew out of the necessity to prevent war and preserve international peace and cordial interrelationship amongst sovereign states. Mediation, that is, the structured and interactive process by which a third party assists the disputing parties in resolving their conflict is a distinctive and confidential dispute resolution tool that has been used to settle international disputes for ages. Generally, the war of aggression is committed by superpowers against less powerful countries; and despite the use of international sanctions, isolation and blockade to weaken nations that engage in the war of aggression, the recent outbreak of war between Russia and Ukraine demonstrates the failure of international sanctions and institutions in totally preventing aggressive tendencies of superpowers. Utilizing the doctrinal approach, the paper looks at the meaning of mediation, its growth and utilization by various international institutions and supranational institutions in settling international disputes. The paper considers the use of mediation generally as a mechanism for dispute settlement in international relations and with particular reference to the Russia-Ukraine war, observes that mediation is most relevant to resolving the lingering issues underlining the war. The paper however finds that even though mediation has been effective in settling international disputes, the fact that mediation is not binding and cannot be imposed on parties constitute a major hindrance to its efficacy.

1. Introduction

Disputes are as old as the history of humanity. Commencing from the killing of Abel by Cain his brother,¹ in a fatal dispute, several ancient violent conflicts in places like Jabel Sahaba in modern day Sudan² and lethal disputes in Nataruk, in modern day Kenya³ and other places in

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¹Holy Bible, King James Version, Genesis Chapter 4.

²D Antoine and others, 'Revisiting Jebel Sahaba: New Apatite Radiocarbon Dates for One of the Nile Valley's Earliest Cemeteries,' [2013] (56) *American Journal of Physical Anthropology* 68; R C Kelly, 'The Evolution of Lethal Intergroup Violence,' [2005] (102) (43) *Proceedings of the National Academy of Science of the United States of America (PNAS)* 24.

³Robin Seemangal, 'The Earliest Evidence of Violent Human Conflict Has Been Discovered,' Available on: <https://observer.com/2016/01/the-earliest-evidence-of-violent-human-conflict-has-been-discovered> accessed 12/08/2021; M M Lahr and others, 'Inter-group Violence Among Early Holocene Hunter-gatherers of West Turkana, Kenya,' [2016] (529) (7586) *Nature* 394; contrast, C M Stojanowski and others, 'Contesting the Massacre at Nataruk,' [2016] (539) (7630) *Nature* E8-E10.

Europe⁴ have been discovered and evaluated through archaeological analysis. Starting from the birth of city states to modern sovereign states, disputes amongst states, territorial entities and sub-regional bodies are common and have been settled through litigation, mediation, arbitration, negotiation,⁵ reparations,⁶ and sanctions⁷ and in extreme cases, wars.⁸ The concept of just war⁹ was developed to excuse or rather justify hostilities and wars between states. However, the devastating effect of wars became so terrifying that the option of diplomacy and peaceful international relations became a quest longed for. This resulted in the adoption of mechanisms for pacific settlement of disputes as standards for diplomacy and international relations.¹⁰

Several dispute resolution mechanisms have emerged through centuries of usage, redefinition and refining. Such mechanisms include adjudicatory means as litigation and arbitration; and non-adjudicatory ones like mediation and negotiation. Mediation, which is the focus of this paper, became one of the most recognized dispute settlement mechanisms in international relations and has been a major means of ensuring international peace. The paper traces the growth of mediation as a dispute resolution mechanism in international diplomacy, discusses its advantages and significance and demonstrates how it is relevant for the prevention or resolution of aggressive wars and invasive tendencies of powerful states such as is ongoing in the Russia-Ukraine war. The paper considers some major examples of successful mediation and the challenges of mediation in international diplomacy and thereupon makes recommendations to better enhance mediation in international diplomacy.

2. Conceptual Clarification

The thematic relevance of this paper will be enhanced with the clarification of certain terms that are used in the paper. Whereas, in-text definition and description is used for terms less

⁴C Meyer and others, 'The Massacre Mass Grave of Schoneck-Kilianstadten Reveals New Insights into Collective Violence in Early Neolithic Central Europe,' *Proceedings of the National Academy of Sciences*, Available at <https://www.pnas.org/content/112/36/11217>, accessed 12/08/2021.

⁵A M Hamza¹ and M Todorovic, 'Peaceful Settlement of Disputes' (6) (1) *Global Journal of Commerce and Management Perspective*, 11-17, <: <https://www.longdom.org/articles/peaceful-sett...>> accessed 12/08/2021.

Available on: www.ohchr.org accessed 12/08/2021, B Condoch, 'Sanctions in International Law,' <https://www.oxfordbibliographies.com/view/document/>

⁷R Little, 'The Impact of Sanction in International Arbitration,' Available at <https://www.tradefinanceglobal.com/posts/eversheds>. accessed 12/04/2022

⁸S Dhar, 'Settlement of International Disputes using Coercive means,' Available at: <https://www.legalservice.india.com/legal/article-2516-settlement-of-international-disputes-using-coercive-means.html> accessed 12/08/2021; G H Benson and V Adzahlie-Men, 'Reflections on International Sanctions as Conflict Management Tools Within The Collective Security System,' (2018) (6) (7) *Global Journal of Arts, Humanities and Social Sciences* 53-66, Available at: <http://www.eajournals.org/wp-content/uploads/> accessed 12/08/2021.

⁹A Moseley, 'Just War Theory' *Internet Encyclopaedia of Philosophy* <<https://iep.utm.edu/justwar/>> accessed 12/08/2021; J Von Elbe, 'The Evolution of the Concept of the Just War in International Law,' *The American Journal of International Law*, 665-688. <www.jstor.org/stable/2192879>, accessed 21/08/2021; S Lazar, 'War,' [1931], (33) (4) *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 Available at <https://www.berfrois.com/2012/11/the-origin-of-just-war-theory>> and <<https://opinionator.blogs.nytimes.com/2012/11/12/rethinking-the-just-war-part-2/>>, accessed 12/08/2021.

¹⁰R Mani and R Ponzio, 'Peaceful Settlement of Disputes and Conflict Prevention,' in T G Weiss and S Daws (eds) *The Oxford Handbook on the United Nations* (2nd edn Oxford University Press, 2018); E Temelkovska-Anevska 'Peaceful Means for Settlement of Inter-State Disputes: Reflections, Advantages and Disadvantages,' (2017) (III) (7) *International E-Journal of Advances in Social Sciences*, (IJASOS) 6-20.

technical and recurrent, it is apposite to define and consider in a detailed form, the use of such terms as international, relation, international relation, and diplomacy which are major terms used in this paper.

2.1 International

Within the context of this paper, international means something that takes place between nations.¹¹ It is a bilateral or multilateral affair that is conducted amongst states. It could be trade, sport, diplomatic affairs, conflict or any other event. It is anything that involves, affects or exists between more than one state. Apart from dictionary definition of the term 'international', theorists and writers always find it more convenient to define the term relative to its usage and as such, always prefix it to the subject to which it is related. For example, *international law*, *international trade*, *international sport*, *international relations*, *international dispute*, to mention but a few. In this paper, the term international is relevant to *international relations* and *international dispute*.

2.2 Relation

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.¹² It is the interconnectivity between events, things, or persons. In this paper, *relation* when used depicts international relation between states, international bodies, supranational entities and mutational corporations.

2.3 International Relation

International relation deals essentially with the interactions and relationships between sovereign states. It could be regulated or unstructured activities between states such as trade, foreign policies, diplomacy, conflict or war.¹³ In modern times the use of international relation has broadened to envisage relationship between states and supranational bodies, intergovernmental organizations, international non-governmental organizations, international legal bodies and even multinational corporations.¹⁷

2.4 Diplomacy

International relation is enhanced by diplomacy as the major vehicle for fostering international unity. Simply put, diplomacy is the art and skill of managing international relations. It is an established systematic means of influencing the decisions, behaviour and policies of foreign governments and people in a way and manner that ensures international peace, stability and commerce.¹⁴ Etymologically; diplomacy is derived from two ancient Greek words; *diplo*,

¹¹ Webster Dictionary, <<https://www.merriam-webster.com/dictionary/international>>, accessed 12/08/2021.

¹² Cambridge Dictionary, <<https://dictionary.cambridge.org/dictionary/english/relation>>, accessed 12/08/2021.; Webster Dictionary, <<https://www.merriam-webster.com/dictionary/relation>>, accessed 12/08/2021.

¹³ Webster Dictionary, <<https://www.merriam-webster.com/dictionary/international%20relations>>, accessed 12/08/2021.

¹⁴ Anon, 'The Functions of Diplomacy,' (2011), <<https://www.e-ir.info/2011/07/20/the-functions-of-diplomacy/>>, accessed 13/08/2021; E Spyridakis, 'The Role of Diplomacy in Handling International Crises in

meaning “folded in two,” and *ma*, meaning “an object.”¹⁵ It represented a two folded document conferring a privilege; often a permit to travel on the bearer.¹⁶ It was later deployed as a term to denote documents through which princes granted such favours and grew with later usage to be associated with solemn documents issued by chancelleries, especially those containing agreements between sovereigns; from whence it was identified with international relations.¹⁷ Diplomacy is the major means by which foreign policy and supranational governance is carried out.¹⁸

3. The Nature of International Dispute

A dispute is a disagreement, clash of interest or a controversy involving more than one person. Owing to the dynamism with which disputes and conflicts may manifest, there is hardly any generally accepted or adopted definition in statutes, treaties and conventions except where it is contextually described.¹⁹ The editors²⁰ of *Black's Law Dictionary* define dispute as a “conflict or controversy, especially one that has given rise to a particular law suit.” The Permanent Court of International Justice (PCIJ) as early as 1924 attempted to define a dispute by highlighting its characteristics when it states in the *Mavrommatis Palestine Concession cases* between Greece and Britain (*Mavromatis case*),²¹ that “A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons.”

It could be asserted therefore, that once two parties contend and stick to divergent views on a point of law or fact, a conflict or dispute is established. According to Merrills,²² a dispute occurs when a specific ‘disagreement concerning a matter of fact, a law or policy in which a claim refusal, counter claim or denial by another ensues.’ A dispute is more than an expression of dislike or hostility; it must involve a particular disagreement or specific contention between the different states or international institutions or organisations before it could be viewed as international dispute. To that extent, even two friendly states may have a dispute²² on issues.

Most often, dispute and conflict are used interchangeably; because, conflict is also defined as a disagreement on an important issue or object. However, it has been observed that when the

the Post-Bipolar Era: The Case of the Balkans,’ < [https://www.files.ethz.ch/isn/Role of Diplomacy...](https://www.files.ethz.ch/isn/Role%20of%20Diplomacy...)>, accessed 12/08/2021.

¹⁵C W Freeman, ‘diplomacy,’ <<https://www.britannica.com/topic/diplomacy>>, accessed 13/08/2021.

¹⁶*Ibid.*

¹⁷S F Malik, ‘Diplomacy in International Relations,’ <https://www.csstimes.pk/diplomacy-international>, accessed 13/03/2022; S J Masika, ‘Diplomacy and International Relations: An Introduction’ accessed 13/03/2022

¹⁸V Stanzel, (ed), *New Realities in Foreign Affairs: Diplomacy in the 21st Century*, SWP Research Paper, <<https://www.swp-berlin.org/research/papers>>, accessed 12/08/2021.

¹⁹J Pohl, K Mashigo and A Nohen, ‘Dispute Settlement Provisions in International Investment Agreements: A Large Sample Survey,’ (2012) (02), *OECD Working Papers on International Investment*, OECD Publishing, <<http://dx.doi.org/10.1787/5k8xb71nf628-en>>, accessed 23/08/2021.

²⁰B A Garner, *Black's Law Dictionary*, (9th ed. St. Paul, Min.: Thomas Reuters, 2009) 540.

²¹*Greece v Great Britain*, <http://www.worldcourts.com/pcij/eng/decisions/1924.08.30_mavrommatis.htm>, accessed 20/08/2021

²²Quoted in R Barnidge, ‘The International Law as a Means of Negotiation Settlement,’ [2013] (36) (3) *Fordham International Law Journal*, 545

two terms assume technical usage, conflict could be wider and deeper in meaning than dispute.²³ Be that as it may, in this paper, the two terms are used interchangeably and no effort is made to distinguish them owing to the fact that the characteristics and the medium for resolution of both dispute and conflict in international law are congruous, overlap and conform to same standards. Merrills²⁴ relates international dispute to dispute as follows:

A dispute may be 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. In the broadest sense, an international dispute can be said to exist whenever such a disagreement involves governments, institutions, juristic persons (corporation) or private individuals in different parts of the World.

To classify a disagreement as a dispute, certain features must be cognisable. Succinctly put; such a disagreement must be specific or identifiable. In other words, it must be based on a well defined and cognisable subject, either of law or fact.²⁵ Secondly, such a disagreement must be based on conflicting or opposing claims or assertions; directly or indirectly. It must manifest in what one party thinks is its right, entitlement or obligation and which the other party contends otherwise.

Flowing from the above description, international dispute can be viewed as a disagreement involving governments, international and supranational institutions, international juristic personalities and multinational corporations.²⁶ International dispute are disagreements, clash of interests or conflicting claims that may arise or exist between states, governments, supranational institutions, international juristic persons and multinational corporations and which affects or transcends one or more states.²⁷

4. International Dispute Settlement Mechanisms

International Dispute Settlement involves the resolution of international conflicts. It is concerned with the techniques, institutions, mechanisms and apparatus established or adopted on permanent or *ad hoc* basis for solving international disputes and conflicts between states, supranational institutions, intergovernmental institutions, international legal personalities and multinational corporations.

Settlement of international dispute may be by means of pacific resolution or deployment of force. The use of force may involve coercion in form of sanctions, economic blockades,

²³P Fenn, D Lowe and C Speck, 'Conflict and Dispute in Construction,' [1997] (15) (6) *Construction Management and Economics* 513-518 <<https://www.tandfonline.com/doi/abs/10.1080/014461997372719>> accessed 22/08/2021

²⁴Quoted in R Barnidge, 'The International Law as a Means of Negotiation Settlement,' [2013] (36) (3) *Fordham International Law Journal* 545

²⁵ R Bilder 'An Overview of International Dispute Settlement,' [1986] (1) (1) *Emory Journal of International Dispute Resolution* 1-32

²⁶ JS Nye, 'Understanding International Conflicts: An Introduction to Theory and History,' (4th edn., Longman, 2002)

²⁷T Okasha, 'Understanding International Conflicts,' <https://www.academia.edu/29719831> accessed 23/05/2022

political isolation and imposed restrictions. While war of aggression and invasion may be contentiously excluded as means of dispute settlement, it is most certainly conceivable and indeed contained in historical international relations as means of international dispute settlements or means to force nations to negotiate mutual resolutions, despite the fact that the propriety might be contested.

On the other hand; pacific settlement of international dispute involves peaceful engagement of the parties to the dispute by means of such mechanisms as negotiation, mediation, conciliation, arbitration, judicial settlement and other peaceful means adaptable or available to the parties. There are no limitations to what can be tagged pacific dispute settlement mechanism once it is confined to peaceful resolution.²⁸ This finds expression in Article 33 (1) of the United Nations Charter,²⁹ which expressly states 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.

Sands and Klein³⁰ categorised pacific dispute settlement mechanism in international relation into two. They posited that such mechanisms may be diplomatic or legal. It is diplomatic when the parties to the dispute have control over the process and procedure of the settlement; to this group belong such mechanisms as negotiation, consultation, mediation, conciliation or inquiry. They are legal when there is an arbiter, an umpire or a judge, and the decision legally binding; such as arbitration and judicial mechanisms.

Schmalenbach³¹ posits that as a result of the principle of free choice of means stipulated in Article 33 of the UN Charter, the models of international dispute settlement are manifold and that on closer examination they basically 'comprise various combinations of different institutional settings, methods of dispute resolution and assigned powers.' He concludes based on the submission above that categorising dispute settlement mechanisms are on the basis of three factors; to wit: the institutional setting, the method of dispute resolution and assigned power.

²⁸P E O Oguno and C Okafo, 'Dispute Resolution Methods Available in International Institutions (ECOWAS): A Critical Analysis,' [2019] (1) (1) *American Journal of Law*, 1< <https://ajpojournals.org> > *AJL* > *article* > *download*; <https://www.ajpojournals.org/journals/index.php/AJL/article/view/397>>, accessed 12/08/2021.

²⁹United Nations Charter, concluded at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five., <<https://www.un.org/en/about-us/un-charter/full-text>>, accessed 04/08/2021.

³⁰P Sands and P Klein, *Bowett's Law of International Institutions* (6th edn Sweet & Maxwell 2009) 518

³¹J Klabbers, A Wallendahl, *Research Handbook on the Law of International Organizations*, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2450128>, accessed 18/08/2021

5. Meaning, Characteristics and Forms of Mediation

Mediation is a structured and interactive process involving a third party who assists the disputing parties in resolving their conflict through means of effective communication and convincing appeasement tools and techniques.³² Characteristically, mediation is distinctive as a conflict resolution tool in that it is private, non-compelling and confidential.³³ Again, mediation involves a third party, known as the mediator, facilitating the resolution of a dispute between parties by proposing a solution to the parties, which solution is not binding on them. Since the mediator can only advise and not insist on the parties relying on his advice, the parties reserve significant control over the process and the effect of the outcome. Mediation is a confidential process and the agreement reached is not binding, hence, the parties and the mediator are usually sincere, down to earth and forthright in their discussions and resolutions. Mediation is preferable where the parties want to retain peaceful relationship.

Various learned authors have proffered definitions for mediation, considering it from different points of view.

Lall³⁴ states that mediation relates to the ‘injection of a third state or states, individual or individuals, at the request of or with the consent of the parties to an international dispute or situation, with the view to assisting in or obtaining its settlement, adjustment, or amelioration.’

The centrality of Cormick’s³⁵ definition is to assess the ability of the mediator in determining what constitutes the mediator’s role when he states that mediation is:

A voluntary process in which those involved in a dispute jointly explore and reconcile their differences. The mediator has no authority to impose a settlement. His or her strength lies in the ability to assist the disputants in resolving their own differences. The mediated dispute is settled when the disputants themselves reach what they consider a workable solution.

The United States Institute of Peace (USIP)³⁶ defines mediation as “a mode of negotiation in which a mutually acceptable third party helps the parties to a conflict find a solution that they cannot find by themselves. It is a three-sided political process in which the mediator builds and then draws upon relationships with the other two parties to help them reach a settlement.”

³²J Bercovitch and A Houston, ‘The Study of International Mediation: Theoretical Issues and Empirical Evidence,’ in J Bercovitch (ed), *Resolving International Conflicts: The Theory and Practice of Mediation*, (US: Lynne Rienner Publishers, 1996) 13.

³³*Ibid.*

³⁴A Lall, *Modern International Negotiation: Principles and Practice*, (New York and London: Columbia University Press, 1966) 12

³⁵In S Kaufman and G T Duncan, ‘A Formal Framework for Mediator Mechanisms and Motivations,’ (1992) (36) (4) *The Journal of Conflict Resolution*, 689

³⁶Terms for Conflict Management and Peace Building (USIP), Available on: https://www.quia.com/jg/2746504_list.html, accessed 21/08/2021

One may therefore assert that mediation becomes relevant where there is a dispute, a conflict or a misunderstanding as to the interpretation and implication of facts or law that have degenerated to a stalemate, necessitating the intervention of a third party. It could also result from the interpretations given to interstate relationships and the ensuing security, trade and environmental implications for other states. Essentially therefore, it has been agreed³⁷ that there are three basic components of mediation, which will in all instances constitute its definitive structure, they are:

- i. There must be a specific, existing conflict, dispute or misunderstanding;
- ii. Such a conflict, dispute or misunderstanding must be between separate identifiable parties;
- iii. There must be a mediator who performs the specific role of a peace maker between the parties.

Even though the above three characteristics remain the basic features of mediation, one could add two additional features, to wit: firstly, the compromise settlement or agreed solution must be by the disputing parties and not imposed, forced upon them or coerced by the mediator or any party and secondly, the solution arrived at must be one that avoids or puts an end to hostilities, war or belligerency. The last two are subjective because, a solution may not be adopted before mediation would be said to have taken place. It could be additionally observed that there are instances also where pressure have been applied in getting parties to accede to a mediated settlement; as well as verifiable grounds to state that mediation may not stop hostilities, only that the solution proffered should not involve such hostilities.

Based on the characteristics of mediation, Bercovitch³⁸ concludes that mediation may likely occur under four separate circumstances; which are where:

- i. a conflict has developed for some time;
- ii. the efforts of the involved actors have reached an impasse;
- iii. neither actor wants further consequences, costs and escalation of the dispute; and
- iv. both parties agree with some form of mediation and are ready to communicate in a direct or indirect manner.

Usually, several variant forms of mediation are cognisable, some of which are evaluative, facilitative, transformative, and narrative. Mediation is said to be evaluative where the mediation focuses on evaluating the dispute between the parties with a view of helping the disputing parties resolve their differences. In the process of evaluation, the disputing parties

³⁷M Carmelina and L Lazaroi, 'The Effectiveness of International Mediation -The Current Debate, Available on [https:// www.redalyc.org](https://www.redalyc.org), accessed 21/08/2021, accessed 21/08/2021

³⁸J Bercovitch, 'International Mediation and Intractable Conflict, Available at: https://www.beyondintractability.org/essay/med_intractable_conflict, accessed 13/08/2021

may engage the mediator to, by their mutual agreement; provide a template for reasonable settlement.³⁹ In evaluative mediation, the mediator has an advisory role which he plays through analysing the strengths and weaknesses of the case of the parties to the dispute. Through this, predictable consequences of the actions of the disputing parties would be assessed, with a view of preventing further hostilities and reaching a settled compromise. It should be noted that at the municipal level, this form of mediation is not allowed in some jurisdictions. For example, in Germany, due to national regulation, it is viewed as an oxymoron and thus is not sanctioned by the German Mediation Act; rather the facilitative form was adopted.

In facilitative mediation, the process does not involve evaluation; rather, the mediator facilitates the conversation between the parties through a guardianship process of providing a structured agenda and a template for discussing same.⁴⁰ Transformative mediation focuses on the redefinition of the relationship pattern of the parties and re-evaluation of the communication mechanisms between the disputing parties with the primary aim of achieving a shift in the mode of communication between the disputing parties. It has been said⁴¹ that what transformative mediation seeks to achieve is a shift towards (a) personal strength, (b) interpersonal responsiveness, (c) constructive interaction, (d) new understanding of themselves and their situations, (e) critically examining the possibilities, (f) feeling better about each other, and (g) making their own decisions. Those decisions may or may not include settlement agreements.

The focus of narrative mediation is to emphasise the sociological/psychological nature of conflict-saturated narratives. This system tries to draw a difference between the parties and the problems, by isolating the issues and making them separate from the disputing parties. By isolating the dispute, the parties can see the dispute separately and then together proffer a solution to it, not as disputants, but as two separate parties that need to find solution to a problem.

6. Mediation and Other Third Party Assisted Conflict Resolution Mechanisms

Mediation is identified as an Alternative Dispute Resolution (ADR) mechanism along with other concepts like arbitration, conciliation, negotiation and a host of other mechanisms. Owing to the complexity in the structure of what constitutes alternative dispute resolution mechanisms, defining in isolation one form of alternative dispute resolution mechanism is always tasking and often invoke with it the necessity of a comparative analysis and the identification of contrasting factors between the dispute resolution mechanisms. Be that as it may, alternative dispute resolution mechanisms may always overlap and even possess similar characteristics. For example, mediation is also referred to as assisted negotiation. In addition, mediation has been likened to, compared with and considered as having the same meaning and

³⁹ Zena Zumeta, 'Styles of Mediation: Facilitative, Evaluative, and Transformative Mediation, Available at <https://www.mediate.com/articles/zumeta.cfm> accessed 13/08/2021

⁴⁰ Zena Zumeta (n 50)

⁴¹ *Ibid*

effect with several other third party assisted conflict resolution mechanisms. Such other terms that have been used interchangeably or in association with mediation includes conciliation, good office and consultation.

6.1 Mediation and Conciliation

Generally, mediation and conciliation are used in association or interchangeably. However, some learned authors have drawn a thin line of difference between the two. Ezejiofor⁴² is of the persuasion that:

Mediation and conciliation are sometimes used interchangeably, but this is not right, because they are not quite the same thing. A mediator is a person who is trusted and accepted by both the parties to a dispute. His role is to assist the parties to reach an agreed settlement of the dispute. The procedure he adopts to achieve this is to meet each party privately, so as to understand that party's own side of the story. Thereafter he tries to bring the parties together so that they may themselves work out a compromise solution to the dispute. He does not himself suggest a solution to the parties and cannot compel them to reach a settlement.

On conciliation, he posits:⁴³

A conciliator performs a slightly different function. Like a mediator he is a neutral third party, trusted by the disputing parties. First of all, he inquires from the parties whether they are prepared to try to settle the dispute amicably. If the response is positive, he then arranges a joint meeting with the parties, after studying the relevant documents. At the meeting, the conciliator invites each party to set out his case, while he listens carefully and asks questions in order to satisfy himself that he understands their various contentions. After the joint session, he may meet with each party separately and privately, with a view to discussing the matter in confidence and finding out the point beyond which the party is not prepared to go. In other words, he seeks to find out the party's 'bottom line'. He then carefully considers each party's evidence and submissions against the rebuttal thereof by the other party. Against the background of all these, the conciliator draws up and proposes the terms of settlement which represents in his own perception a fair compromise of the dispute.

Garner⁴⁴ proved the congruency of the two terms by stating that:

The distinction between *mediation* and *conciliation* is widely debated among those interested in ADR, arbitration, and international diplomacy. Some suggest that

⁴² G. Ezejiofor, *The Law of Arbitration in Nigeria*, (Longman: Ikeja 1997) 7

⁴³ *Ibid*

⁴⁴ Bryan A. Garner, *A Dictionary of Modern Legal Usage* (2nd ed Oxford University Press, 1995) 554.

conciliation is ‘a nonbinding arbitration,’ whereas *mediation* is merely ‘assisted negotiation.’ Others put it this way: *conciliation* involves a third party’s trying to bring together disputing parties to help them reconcile their differences, whereas *mediation* goes further by allowing the third party to suggest terms on which the dispute might be resolved. Still others reject these attempts at differentiation and contend that there is no consensus about what the two words mean- that they are generally interchangeable. Though distinction would be convenient, those who argue that usage indicates a broad synonymy are most accurate.

The challenge to debating the congruency of the two terms and what they mean is made obvious through Garner’s analysis as it brought in *arbitration* and *negotiation* to distinguish between the two terms, *conciliation* and *mediation*; whereas *arbitration* and *negotiation* are intended to have independent meanings also. Drawing from Garner’s submission, it would appear that the academic exercise by Ezejiofor was a distinction without a differentiation and hence seems to be of little consequence as to threaten the sanctity of an interchangeable usage of the terms ‘conciliation’ and ‘mediation’.

6.2 Mediation and Good Offices

Good offices is a method of dispute settlement in international diplomacy in which a third party with the consent of the disputing parties acts as a friendly intermediary between the disputing parties for the purpose of persuading them to negotiate and come to an amiable settlement of the dispute.⁴⁵ Apart from the fact that the term ‘good office’ appears to be deployed as a term in international diplomacy whereas mediation is used generally in international diplomacy, commercial settlements and even in family dispute resolution, any academic attempt at distinction appears only to be superfluous and theoretical. This is because a critical analysis of the meaning of ‘good office’ depicts a concept that is not characteristically distinguishable from mediation. Under the Hague Conventions of 1899 and 1907 for example, mediation and good office were not distinguished, but rather used in a manner that depicts that they set to achieve the same purpose.⁴⁶

7 The Significance and Advantages of the Use of Mediation in International Dispute Resolution

There is no doubt that mediation grew owing to its fundamental characteristics. Apart from the fact that litigation can hardly be binding or enforceable against states, especially the super powers, mediation is preferred to litigation because it is cost effective, certain and time management is achievable unlike litigation. Beyond this, it offers parties full control over both the process and person(s) to which their dispute will be submitted. It also offers them the ability to determine the outcome of the process, thereby giving the disputing parties the opportunity of negotiating as equals and peers. Mediation helps build confidentiality between the parties.

⁴⁵ Webster Dictionary, <<https://www.merriam-webster.com/dictionary/good%20offices>>, accessed 14/08/2021.

⁴⁶ Pacific Settlement of International Disputes (Hague, I), 1889, 1907, Article II.

Since mediated solutions are based on imputes of the disputing parties, compliance is always easy for the very reason that the disputing parties worked together for a mutually agreeable solution.

It has also been argued that mediation promotes mutuality by allowing disputing parties the opportunity to work together in assessing and solving their differences. In fact, once parties to a dispute concede to mediation, it signifies that the party are ready to resolve amicably their differences. Mutuality is most significant because it makes communication between the disputing parties informal, sincere and direct and hence has the capability of preventing future occurrence of hostilities.

8. Historical development of the use of mediation in international relations

Mediation as a means of resolving disputes precede litigation as a dispute resolution mechanism. In Africa, mediation appears to be the primary means of dispute resolution prior to the advent of the colonialists.⁴⁷ War would only resorted to if conciliatory and mediation moves fail.⁴⁸ City states relate with themselves with this unwritten code that disputes between them can always be resolved without war.⁴⁹ This also appears to be the practice in the Near East or Middle East Regions. Kramer, Carnevale and Choi⁵⁰ attested that one of the earliest recorded mediations occurred 'more than 4000 years ago in Mesopotamia.' They stated further that 'there are records indicating that a Sumerian ruler helped to avert a war between neighbouring groups and to develop an agreement in a dispute over land.'

In Europe, where litigation has been a means of dispute resolution for centuries, mediation appears to also be of antiquity; well-known and utilised in ancient Greece and Rome. A *proxenetas* in ancient Greece does exactly what the modern mediator does.⁵¹ The ancient Romans also recognised the importance of mediators in the resolution of disputes. Different appellations were conceded to those that undertake responsibilities akin to that of modern mediators in ancient Rome. They were referred to as: *internuncius*, *medium*, *intercessor*, *philantropus*, *interpolator*, *conciliator*, *interlocutor*, *interpres*, and finally *mediator*.⁵²

⁴⁷ A T Ajayi and L O Buhari, 'Methods of Conflict Resolution in African Traditional Society,' [2014] (8) (2) *African Research Review*, 138-157.

⁴⁸ Ibid; F Ben-Mensah, 'Indigenous Approaches to Conflict Resolution in Africa,' In World Bank (ed), *Indigenous Knowledge: Local Pathways To Global Development*, (Washington, DC: World Bank, 2004) 3944; O Ntsoane, 'Batswana Indigenous Conflict Resolution Methods: A Narrative,' (2003) (2) (2) *African Journal of Indigenous Knowledge System* 15-25; K N Okoro, 'African Traditional Education: A Viable Alternative for Peace Building Process in Modern Africa,' (2010) (2) (1) *Journal of Alternative Perspectives In The Social Sciences*, 136-159

⁴⁹ Ibid

⁵⁰ P J Carnevale and D Choi, 'Culture in the Mediation of International Disputes,' [2000] (35) (2) *International Journal of Psychology* 106

⁵¹ K Harter-Uibopuu, 'Ancient Greek Approaches toward Alternative Dispute Resolution,' [200] (10) (1), *Willamette Journal of International Law and Dispute Resolution*, 47-69, <<http://www.jstor.org/stable/26211207>> accessed 21/08/2021.

⁵² L E Matthaui, 'The Place of Arbitration and Mediation in Ancient Systems of International Ethics,' [1908] (2) (4) *The Classical Quarterly*, 241-64, <<http://www.jstor.org/stable/636172>> accessed 21/08/2021.

However, it has been observed that⁵³ a cardinal difference between the African indigenous approaches to the European approach to dispute settlement and conflict resolution lies in the very foundations of each system. In Europe, alternative dispute resolution mechanisms grew as alternative to the harshness of the European home-grown adversarial system, whereas the African indigenous approaches were not developed as alternative(s) to any other system, they form the core of the system. Negotiation, arbitration, and mediation were core to African indigenous systems. Hence, mediation grew as part of and not alternative to dispute resolution mechanism in that respect.⁵⁴

Mediation has been used in international diplomacy throughout history⁵⁵ and thus this paper examines its use in three phases: before World War I, between World War I and World War II and after World War II.

8.1 Mediation in International Relations Before World War I

The use of mediation in international diplomacy before World War I was wide spread. The nature of mediation in international relations at this time could broadly be subdivided to the ancient times, the Middle Ages and the Renaissance period forward. It must be observed that the use of international diplomacy in this segment of the work recognises diplomacy between city states, alliances between neighbouring cities and states properly so called.

Mediation in ancient times was not structured or codified. Ancient times as used herein represents the period of recorded history up to the 5th century when western Roman Empire fell. Warfare in ancient times was often with the ultimate aim of expanding territories, collecting tributes and conducting slave raids. Hence, when a state laid siege on another, mediation usually takes the form of pacification rather than what is known as mediation in the modern sense. Despite this fact, there were examples of ancient mediation in international diplomacy. One of such examples is the mediation between the Kushites and the Romans. Following the war against Rome by the Great Queen Kandake Amanirenas of Kush, the Kushites sent mediators to Augustus, who was in Samos, and in the year 21/20 BC, a peace treaty was concluded.⁵⁶ The treaty was as a result of mediation efforts of the mediators.

The medieval period covers the period between the fall of the Western Roman Empire at about the 5th Century AD to the period of Renaissance and discovery, which commences in the 15th Century AD. Even though there were no much recorded activities in international relations

⁵³ D Olowu, 'Indigenous Approaches to Conflict Resolution in Africa: A Study of the Barolong People of the NorthWest Province, South Africa,' (2018) (1) (1) *Journal of Law and Judicial System* 10-16; R B G Choudree, 'Traditions of Conflict Resolution in South Africa,' (1999) (1) (1) *African Journal on Conflict Resolution* 9-27, <<https://www.ajol.info/index.php/ajcr/article/view/136106>> accessed 13/08/2021

⁵⁴ T W Bennett, 'Human Rights and the African Cultural Tradition,' [1993] (22) *Transformation*,

⁵⁵ S Sukhtankar and, Jay Kakani, 'Mediation: A Peacemaking and Peacekeeping Tool in International Relations,' (2020) <<https://www.mediate.com/articles/Sukhtankar-Kakani-peacekeeping.cfm>>, accessed 13/8/2021

⁵⁶ D N Edwards, *The Nubian Past*, (London: Routledge, 2004); A E Robinson, 'The Arab Dynasty of Dar For (Darfur) Part II,' *African Affairs* <Doi:10.1093/Oxfordjournals.Afrf.A100377> accessed 13/08/2021

within this period, there are still evidence of the use of mediation in averting wars and also concluding agreements and treaties.

The Renaissance period commences with the Peace Treaty between the Holy Roman Emperor and the King of France and their respective allies, popularly referred to as the Peace Treaty of Westphalia, and which ended the thirty years wars. From the very wordings of the Preamble to the Peace Treaty, it is certain that it was a product of mediation. The Preamble provides elaborately on the background to the Peace Treaty and stated the role of Venice as mediator of the peace treaty thus:

[B]y the Mediation and Interposition of the most illustrious and most excellent Ambassador and Senator of Venice, Aloysius Contarini Knight, who for the space of five Years, or thereabouts, with great Diligence, and a Spirit intirely impartial, has been inclin'd to be a Mediator in these Affairs.

This treaty is quoted elaborately because it did not only represent the watershed in international diplomacy, it was the first major treaty to be concluded based on mediation efforts of a neutral state, that is, the Republic of Venice. The treaty marks the first formal recognition of states as independent entities and secured the limitation of the powers of kingdoms to wage wars against each other for annexation purposes.

Whereas the treaty secured for Europe, to a certain extent, a lull in the quest for kingdom expansion and annexation within Europe till the Napoleonic wars,⁵⁷ the quest to continue such activities with other territories led to colonisation and annexation of foreign kingdoms. Thus, while violence within Europe itself reduced for a period, it simmered through Asia, the Americas and Africa, with Africa being the most devastated, possibly because of its proximity to Europe and the riches she possesses in both human and natural resources.

The struggle and quest for dominance by states in Europe resulted in another chaos, which culminated in the Congress of Vienna, 1815.⁵⁸ Although the Congress of Vienna 1815 did not really project the meeting as a mediation effort, the Final Act of the Congress of Vienna/General Treaty (1815), provides in Article LXIII that:

The confederated States engage, in the same manner, not to make war against each other, on any pretext, nor to pursue their differences by force of arms, but to submit them to the Diet, which will attempt a mediation by means of a Commission. If this should not succeed, and a juridical sentence becomes necessary, recourse shall be had to a well-organised Austregal Court (Austregal instanz), to the decision of which the contending parties are to submit without appeal. [Emphasis added]

⁵⁷ Napoleonic Wars < https://www.newworldencyclopedia.org/entry/Napoleonic_Wars> visited 21/08/2021.

⁵⁸R Lesaffer, 'The Congress of Vienna (1814-1815),' <<https://opil.ouplaw.com/page/congress-vienna-1814-1815>>, accessed 21/03/2021

Thus, the Vienna congress can be said to mark the beginning of the formal recognition of mediation as a major means of settling international disputes. About half a century later, the Convention for the Pacific Settlement of International Dispute, also known as Hague I, made July 29, 1889 officially and formally adopted mediation as means of pacific settlement of disputes. The provisions of this Convention laid out the principle of mediation as first choice of dispute resolution. It provided in details for the nature of mediation, who may mediate, functions of the mediator, implications of mediation and instances for mediation. These are provided for in details in Part II, Articles II to VII. The position was also restated in the Hague Convention of October 18, 1907 with the same provisions but a larger number of state parties.

Hague I stated that in cases of “serious disagreement or dispute, before an appeal to arms, the Contracting Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.”⁵⁹Independently of this recourse, independent states may still initiate mediation efforts where desirable, even if hostilities have broken out.⁶⁰ Hague I recognised the responsibility of the mediator as reconciliatory of “the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.”⁶¹The function of the mediator ends if any of the parties to the dispute rejects the reconciliation proposal he proposes.⁶²

Hague I further states that good offices and mediation undertaken either at the request of the parties in dispute or on the initiative of a third party to the dispute has exclusively the character of advice, and never binding force.⁶³ Special mediation may also be recommended in cases of a serious difference endangering peace, whereby, states may be represented in the mediation by chosen representatives, which may be another state.⁶⁴ However, the weakness of mediation as recognised under Hague I is manifest in the fact that mediation does not interrupt, delay, hinder mobilisation or preparation for war, and successful mediation does not also lead to cessation of war, except there is an agreement to that effect.⁶⁵

8.2 Mediation in International Relations Between World War I and II

Perhaps owing to the failure of the Hague Conventions of 1889 and 1907 to stop the events that culminated in the World War I, the use of mediation was rather considered weak to stop international conflicts from snowballing into costly wars, hence, the Treaty of Versailles made 28th June, 1919, establishing the League of Nations opted for arbitration and submission to the Council established by the treaty for the resolution of such disputes, but still recognised

⁵⁹Convention for the Pacific Settlement of International Dispute, article 2

⁶⁰*Ibid.*, article 3

⁶¹*Ibid.*, article 4

“Convention for the Pacific Settlement of International Dispute., article 5

⁶³Convention for the Pacific Settlement of International Dispute, article 6

⁶¹ *Ibid*, article 8 shld read 92

⁶⁵*Ibid.*, article 7

settlement by diplomacy, which one may concede involves mediation.

There were other provisions for mediation in international diplomacy between the World War I and World War II. The Treaty of Paris, made August 27, 1928, Article II states that the “High Contracting parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.”

8.3 Mediation in International Relations after World War II

The end of the World War II triggered the establishment of supranational institutions that led to the promotion of mediation as a major means of dispute resolution. Mediation was incorporated as a peaceful tool for conflict resolution under the United Nations Charter, which in its Article 33 provides that member states shall “settle their international disputes by peaceful means.” Once member states are engaged in a dispute that may endanger international peace, they are enjoined to settle such disputes through mediation. Mediation may also be recommended by the Security Council.

In addition, following the creation of the United Nations; various bilateral, multilateral, regional and sub-regional institutions also came up, which provide that disputing parties must refer their disputes to mediation before resorting to any other legal means for settlement of such disputes. It has been noted that: ⁶⁶

Approximately 434 international crises occurred between 1918 and 2001, out of which 128 resorted to mediation. Although there was merely 30% rate of incidence during this period, when we narrow our focus to the post-Cold war era, we find that 46% of all the crises were mediated. These statistics clearly demonstrate the effectiveness of mediation in international relations.

In the African Region, mediation has been adopted and used as means of dispute settlement in international relations. Upon the establishment of the Organization of African Unity (OAU) in 1963, Article III (2) of the OAU Charter imposed the principle of non-interference in the internal affairs of states. Even though this restricted the Organisation’s ability to mediate,⁶⁷ through the Commission on Mediation, Conciliation and Arbitration (the Commission);⁶⁸ the Organisation was able to mediate in conflicts at the institutional level.⁶⁹ The Protocol

⁶⁶S Sukhtankar and J Kakani, ‘Mediation: A Peacemaking and Peacekeeping Tool in International Relations,’ <<https://www.mediate.com/articles/Sukhtankar-Kakani-peacekeeping.cfm>> accessed 13/8/2021

⁶⁷African Union Mediation Support Handbook, (Revised Edition, ACCORD and African Union, September 2014), <<https://www.peaceau.org/uploads/au-mediation-s...>>, accessed 13/8/2021.

⁶⁸OAU Charter, Article XIX.

⁶⁹Aranzazu Pagoaga Ruiz de la Illa, ‘International Dispute Settlement in Africa: Dispute Settlement and Conflict Resolution under the Organization of African Unity, the African Union, and African Traditional Practices: A Critical Assessment,’ *Deusto Journal of Human Rights*, <<https://dihr.revistas.deusto.es>> article > download>, accessed 13/8/2021.

establishing the Commission provided elaborately for mediation, conciliation and arbitration to resolve disputes, but with the consent of the parties and by reference to the Commission.

The AU Constitutive Act, in Article 4(e) provides for the “peaceful resolution of conflicts among member states of the Union through such appropriate means as may be decided upon by the Assembly.” The African Union (AU) has however, established the African Peace and Security Architecture (APSA) with the mandate to deal with the prevention, management and resolution of conflicts in Africa. Article 6(c)⁷⁰ of the Protocol establishing the Peace and Security Council of the AU (PSC Protocol) imposed the function of peacemaking on the body and highlighted the means of achieving same to include the use of good offices, mediation, conciliation and enquiry.⁷¹

Based on the above, the AU designed a strategy for mediation that involves certain cognisable principles. It states that:⁷²

- i. the parties must own the agreement
- ii. mediation and negotiations should be inclusive of all significant political actors
- iii. civil society must be involved in the mediation and negotiations
- iv. the mediator(s) must help the parties develop a relationship of trust and cooperation
- v. mediation must be a non-threatening venture for the parties
- vi. mediators must be impartial
- vii. there is no quick-fix solution in deep-rooted conflict
- viii. mediators must help the parties address the root causes of the conflict
- ix. mediators must be flexible, creative, responsive and adaptive
- x. the drafting and implementation of peace agreements should be properly linked
- xi. the process must address the regional dimensions of national conflicts
- xii. there is a need for systematic and rigorous approaches to mediation processes

At the West African sub region, there existed also, a similar template for mediation as one of the mechanisms for international dispute resolution.⁷³ From inception of the Economic Community of West African States (ECOWAS), it has played and continued to play mediation roles in resolving international conflicts within the region. A number of Protocols and documents have been developed to aid mediation in the sub-region.⁷⁴ Article 17 of the Protocol Relating to Mutual Assistance of Defence, 1981 states that mediation would be used to resolve

⁷⁰Protocol Relating to the Establishment of the Peace and Security Council on the African Union, <<http://www.peaceau.org> > uploads > psc-protocol-en>, accessed 13/8/2021.

⁷¹M Bustamante, ‘The AU and the Drive for Mediation Support - Africa Portal,’ <<https://www.africaportal.org> > documents > The ...>, accessed 13/8/2021.

⁷²African Union Mediation Support Handbook (n 97).

⁷³S Atuobi, ‘ECOWAS and Mediation in West Africa: Toward an Enhanced Capacity,’ *Harvard Africa Policy Journal*, [2010-2011], (7), 29-40, < <http://mediation.supportnetwork.net> > 2014/03 > E...>, accessed 13/8/2021.

⁷⁴ECOWAS Dialogue and Mediation Handbook, <<https://www.ecowas.int> > uploads > 2020/07 > Dia... >, accessed 13/8/2021.

any conflict between two of its member states.⁷⁵

Also, Article 4 of the Revised Treaty of ECOWAS adopted the principle of peaceful settlement of disputes among member states, including the use of mediation. A more detailed and comprehensive peace and security structure was developed by ECOWAS, when it adopted the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security.⁷⁶ Article 58 of the Protocol, states that ECOWAS will “employ, where appropriate, good offices, conciliation, meditation and other methods of peaceful settlement of disputes.” Article 4 of the said Protocol further imposed a duty on the authority of Heads of State and Government to mediate in conflicts in the sub region.⁷⁷

9. Some of the major examples of successful inter-state mediations

Mediation has been used in history to settle several disputes. There are so many instances where mediation have been used to finally resolve issue in controversy between state parties. In some cases, the matter was so grave as to raise concern of the probability of bringing about a war situation. For the purpose of this paper, it is sufficient to refer to a few.

9.1 The Kiriji War

The classical expression of mediation transcends international diplomacy. A good example of the utilisation of mediation in part of the territory that later became Nigeria was the resolution of the debacle known as Kiriji War;⁷⁸ a multifaceted pre-independence fratricidal war in which the Yorubas mainly of Western Nigeria, North Central Nigeria and Southern Benin Republic nearly killed themselves to extinction in the struggle for republicanism from the emerging Ibadan city state.⁷⁹ The war took place within the region when it was not part of the colony or protectorate of the United Kingdom; and raged for decades. It was said to have resulted in nearly a million deaths and the enslavement of many more but was eventually resolved by the mediation of the then colonial Governor in Lagos.⁸⁰

This was as a result of series of peace moves starting with the Alaafin of Oyo’s invitation extended to Her Imperial Majesty to mediate. The colonial government through Governor Alfred Moloney was eventually tasked to mediate. The proclamation of the treaty that was eventually signed on 23rd September 1886 at Imesi Ile, read in part:

[T]hrough the friendly mediation of His Excellency Governor of Lagos, an understanding has been brought about, and a treaty of peace, friendship and

⁷⁵O Elgstrom, J Bercovitch and C Skau, ‘Regional Organisations and International Mediation: The Effectiveness of Insider Mediators,’ <<https://www.ajol.info/ajcr/article/view>>, accessed 21/08/2021.

⁷⁶S Atuobi, ‘ECOWAS and Mediation in West Africa: Toward an Enhanced Capacity,’ [2010-2011] (7) *Harvard Africa Policy Journal* 29-40.

⁷⁷A J Adinoyi, ‘Efforts and Challenges of Sub Regional Mediation Mechanism: Case of Economic Community of West Africa States’, (ECOWAS 2015).

⁷⁸Samuel Johnson, ‘The History of the Yorubas,’ (Lagos, CMS Bookshop, 1921).

⁷⁹*Ibid.*

⁸⁰*Ibid.*

commerce between that peace has this day been established and shall henceforth continue forever between the signatories of the said treaty and between their respective peoples.

It should be added that during the Nigerian Civil War (1967-1970), Quakers Adam Curle, John Volkmar and Walter Martin⁸¹ mediated between leaders on both sides, by working as messengers to alleviate tensions between the parties. Even though the mediation did not result in cessation of hostilities, the mediation efforts helped in shaping post war reconstruction and the adoption of a policy of no victor no vanquished.

9.2 The Tashkent Agreement

This agreement ended the 1965 Indo-Pak War. This famous agreement marked the end of the 1965 17-days war known as the Indo-Pak war. The Indo-Pak war of 1965 resulted from skirmishes between April 1965 to September 1965;⁸² commencing with Pakistani invasion of Jammu and Kashmir, which provoked retaliation by the Indian forces into West Pakistan. While India presumably had the upper hand, both parties ended up gaining each other's territory.

Upon a call by both the United State and the United Nations for a ceasefire,⁸³ the Russian (then the Soviet Union) Prime Minister Alexei Kosygin offered his good offices by way of mediation thus bringing about improved relations between India and Pakistan. This mediation gave rise to the Tashkent Agreement which was signed on the 10th of January 1966.⁸⁴ The Agreement was a success and the basis for a long-lasting peace between the two nations.

9.3 Algiers Accord

The background to this mediation effort can be summarized thus; upon the overthrow of the then Shah of Iran, Mohammad Reza Pahlavi, by the Islamic Revolutionary movement, he fled to the United States, where he was admitted for cancer treatment. Iran's demand that he be returned to face trial was not acceded to, and hence, as a reaction to this, a group of Iranian college students took over the United States Embassy in Tehran, aided by the new government in Iran. Diplomatic negotiations failed to douse tensions and attempt by the United States to rescue the Embassy officials failed.

It was at this point that the Algerian Government offered to mediate. The settlement arrived at became the Algiers accord, which was signed in Algiers on 19th of January 1981. Part of the agreement was that in exchange of the release of the hostages, the United States would not intervene politically or militarily in Iranian internal affairs and that trade sanctions on Iran

⁸¹Mediation During the Nigerian Civil War 1967-70, <<https://www.quakersintheworld.org/quakers-in-action/226/Mediation-During-the-Nigerian-Civil-War-1967-70>> accessed 21/08/2021.

⁸²A Gauhar, 'The Tashkent Declaration' [1996] (19) (1) *Pakistan Horizon*, 13-25, <<http://www.jstor.org/stable/41393260>> accessed 08/23/2021.

⁸³*Ibid.*

⁸⁴ *Ibid.*

shall be lifted and the Iranian debts to the US institutions would be paid, amidst other agreements.

10. Viability of mediation in the Russia-Ukraine War

Understanding the root cause of the Russia-Ukraine war is complicated. This stems from the multi-dimensional interest in the conflict. Analysts have approached it from the angle of Ukrainian quest for autonomy in deterring its international relation, Russian fear of western regional dominance in the neighbourhood of Russia and its implication on its security, and America's insistence of expounding NATO to hitherto pro-Russian States.⁸⁵ The analysis of the facts resulting in the war will no doubt be influenced by the leaning of the person analyzing the facts. However, the desirability of a mediated settlement obvious.

The Russian Ukrainian war is a regional war involving two countries that were hitherto subsumed in the defunct United Soviet Socialist Republic (USSR). Prior to the dereliction of the Union in 1991, the Federation of Russia and Ukraine also belonged to the Security Alliance under the Warsaw Pact which was a security alliance in opposition to the North Atlantic Treaty Organization (NATO) led by the United States of America. The emergence of both NATO and the Warsaw Pact could be understood from the cold war that resulted after the second world war between the West and the East which was for decades symbolized by the Berlin wall.

However, President Gorbachev's agreement with President Ronald Reagan on the need to douse the tension in favour of world peace which resulted in the braking down of the Berlin wall, the dereliction of the Warsaw Pact and the dissolution of the USSR was not met with equal commitment from the West. On the contrary, NATO continued to expand into the territories then belonging to the USSR. Starting with the balkanisation of the former Yugoslavia, NATO and America's push into the East has continued unabated. Complicating this political and security tension is the refusal of the European Union (EU) to admit Russia as a member and the blatant refusal of NATO to grant Russia leave to join the alliance. It would appear that this state of affairs gives Russia genuine reasons to be concerned about its own security if neighbouring nation that were once its allies and indeed developed by the Soviet Union now enters into alliance with NATO and the EU- two bodies protecting the security and economic interests of the West.

Whereas this background might have given the impetus to a genuine concern for Russia, it nevertheless would not amount to sufficient justification in international law for a just war to be established against Ukraine if at all the concept of just war can still be justified in the face of international and supranational standards established for peace. This paper promotes the view that mediation can be used to resolve the imbroglio between the two states. This is predicated upon the fact that even though there has been no justification found for wars of aggression and both international law and supranational bodies frown at it, it has been the past

⁸⁵BA Düben, The Legitimacy of Russia's Actions in Ukraine, Available on: <https://blogs.lse.ac.uk/lseih/2015/03/04/does>. accessed 23/05/2022

time of superpowers to demean and compel smaller (weaker) nations to submit to their whims and caprices. Accordingly, rather than subject such smaller nations to total annihilation, mediation would be most suitable to secure a win-win situation. In the case of the Russia-Ukrainian war, Turkey and Israel have already offered to mediate and indeed, mediation is ongoing.

It is important to note that mediation as a pacific means of dispute settlement in the Russian Ukrainian war is possible and will achieve the desired goals based on the following grounds:

- i. Both nations were once in alliance and thus understand the security and economic apparatus within each other.
- ii. Ethnic and geographical affinity within the two States suggest that peaceful resolution through mediation can achieve the resolution of all the disputed issues.
- iii. A third-party mediation would give both the Russia and Ukrainian the assurance needed for sincere negotiation.
- iv. Wars of aggression are better tackled by mediation rather than the imposition of sanctions owing to the fact that most aggressors are superpowers whose influence on the smaller nations are divisive and hence such sanctions end up impoverishing the common people within the nation while the oligarchy are largely unaffected; thus, triggering economic and political chaos as well as unnecessary threat, distortion and confusion in international relations and re-alignment.

12. Conclusion

Generally, it could be said that the use of mediation as a mechanism for settling international disputes and enhancing international relations is now well entrenched in international diplomacy; both as an institutional mechanism and as a mechanism utilized by third party states to settle disputes amongst states.

Further, a consideration of the template for mediating in international disputes reveals a shift in the notion that in the absence of specific agreement, there appears to be no customary duty imposed upon states or any compelling moral obligation to settle international disputes. The emerging trend in international relations is that, even though invitation of mediators or submission to mediation is not a matter of compulsion, positive obligations imposed by treaties, conventions and agreements now compel states to utilise amongst other mechanisms, mediation in settling their disputes.

The mechanisms set up by such international and supranational institutions as the United Nations, African Union and ECOWAS has gone a long way in establishing a well-structured and articulated basis for using mediation to resolve international disputes. It can therefore be stated accordingly that although mediation is not compulsory and there is no obligation for parties in dispute to be bound by the outcome, the trend in international relations suggest that in several cases, mediation has been utilized to successfully resolve international disputes.