**LEGAL PEACEFUL METHODS OF CONFLICT RESOLUTION**

**Legal Method and International Dispute Resolution**

The United Nations places considerable emphasis upon the need for nations to exist for the pursuit of global peace and to avoid conflict and to settle disputes through peaceful means. Article 1(1) states that it is a purpose or duty of the United Nations to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations, which might lead to breach of the peace In line with above desire, Article 1 of the United Nations charter provides the following purposes of the United Nations.

1. To maintain international peace and security, and to that end; to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situation which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self –determination of peoples, and to take over appropriate measure to strengthen universal peace;
3. To achieve international cooperation in solving international problems of economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion;
4. To be a center for harmonising the actions of nations in the attainment of these common ends. While Article 2(2) places an obligation upon members to: settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. Every member of the United Nations is of course a party to this charter and is bound by it. Other Articles dealing with maintenance of peace include Articles 11, 12 and chapter VI and VII of the UN charter.

 It therefore, become necessary to refer to Article 33 of the UN charter for a better appraisal of the issues relating to peaceful or amicable methods of settlement of disputes Article 33 of the UN charter provides thus:

 1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall first of all, seek a solution by negotiation, arbitration, judicial settlement, and resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The security council shall when it deems necessary, call upon the parties to settle their dispute by such means”. “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their choice”.

**Conflict Resolution** Miller (2003) views conflict resolution as “a variety of approaches aimed at terminating conflicts through the constructive solving of problems, distinct from management or transformation of conflict”. Miall et al (2001) indicates that by conflict resolution, it is expected that the deep rooted sources of conflict are addressed and resolved, and behaviour is no longer violent, nor are attitudes hostile any longer, while the structure of the conflict has been changed. Mitchell and Banks (1996) see conflict resolution as:

1. an outcome in which the issues in an existing conflict are satisfactorily dealt with through a solution that is mutually acceptable to the parties, self-sustaining in the long run and productive of a new, positive relationship between parties that were previously hostile adversaries; and
2. any process or procedure by which such an outcome is achieved. Conflict or dispute is resolved when the basic needs of parties involved in conflict have been met with required or desired satisfiers, and their fears have been allayed. Some conflicts, especially those over resources, psychological needs and inadequate information are permanently resolvable while others like those over values, may be-non-resolvable and can at best be transformed, regulated or managed for the sake of peace.

**Conflict Management**

This refers to the process or an act geared towards reducing the negative and destructive capacity of conflict through various means or measures and by working with and through the stakeholder (parties) involved in a conflict. It entails the entire areas of handling conflicts positively at different stages, such as those proactive efforts made to prevent conflicts, including conflict limitation, containment and litigation. This term is sometimes used synonymously with “conflict regulation”. John Burton (1990) refers to it as “conflict prevention,” which he sees as containment of conflict through steps introduced to promote conditions in which collaborative and valued relationships control the behaviour of conflict parties. The concept “conflict management” agrees to the fact that conflict is inevitable, but that not all conflicts can always be resolved; therefore, what can be done in this type of situation is to manage and regulate the conflict.

**Conflict Transformation**

John Paul Lederach (1995) postulated this term. He sees conflict transformation as change. Conflict transformation can be seen descriptively in the changes created by social conflict, and prescriptively in the deliberate intervention by third parties to create change. Conflict transformation takes place at different levels and has a number of dimensions. At the personal levels involves emotional, perceptual and spiritual aspects of change desired for the individual. It also affects relationships touching on communication between parties that needs to change to positively affect poorly functioning communication change also needs to affect structures that generate conflict through deprivation, exclusion and other forms of injustice. It also seeks to understand cultural patterns and values of parties. In summary, conflict transformation recognises the dialectical element of conflict about the inevitability of change. Secondly, it recognises the neutrality of conflict as such, and that conflict can be either negative or positive, but can transform it into positive to maximise opportunities. Finally, there is the continuity element, meaning that parties and interveners continue to work on problem areas to achieve continuous change.

**Conflict Suppression**: This is a conflict situation, which portray the unwillingness or lukewarm attitude of more power parties, or stronger interveners who has the ability to transform or manage a conflict situation, to take necessary measures leading to the management or resolution of the conflict. Instead, they use instruments of power or force to push away the issues under the carpet or to impose a solution that is not sustainable and with which the parties are not satisfied. This usually takes place in unequal relationships. A typical example is a situation whereby the state or government uses its coercive apparatus to suppress opponents or conflicts which cannot be sustained because conflict can still resurface at any time or with little provocation.

**Negotiation**: The term “negotiation” consists of several definitions depending on the angles or perspectives at which different scholars view it. Therefore, negotiation can be defined as a peaceful way of ending a conflict or a situation that may lead to conflict. It is also an exercise geared towards influencing somebody or something. Fisher et al (2000) defines negotiation as “… a structured process of dialogue between conflicting parties about issues in which their opinions differ”. The University for Peace sees negotiation as: “communication, usually governed by pre-established procedures, between representatives of parties involved in a conflict or dispute (Miller, 2003). Miall, Ramsbotham and Woodhouse (1999) define it as “the process whereby the parties within the conflict seek to settle or resolve their conflicts.”
Jeong (2000) opines that the goal of negotiation is “…to reach agreement through joint decision making between parties”. It can be deduced from the above definitions that communication is critical to negotiation process. It can therefore take place in a situation where there is communication between parties. Negotiation can only be achieved when there is communication between parties either before the escalation or at the de-escalation point when communication has been restored. When negotiating, we are trying to persuade each other to see things/issues our own way. The main goal of negotiation is to meet certain interests or needs in a collaborative or peaceful manner.

**Types of Negotiation Strategies**: There are two types of negotiation namely:

1. **Positional Negotiation/Bargaining** This is the type of negotiation in which parties assert a “claim” or “right” to the object of contention, or the type based on the aggressive pursuit of interest by parties which is usually adversarial and competitive in nature. Demands that do not consider the interests and needs of others are typically being pursued parties involved in conflict and this makes it difficult for these interests to be met and needs to be gotten. Positional bargaining can produce unwise agreement; it can be inefficient, endanger on-going relationships, entangle people’s egos with the positions, and is least successful. These are so because instead of pursuing a mutually beneficial outcome, parties therefore desire to win at the detriment of the others. Positional bargaining relies on positions that often mask the (hidden) interests, with one side seems to dominate the negotiation by adhering stubbornly to their positions which eventually break down the negotiation easily.

2. **Principled/Collaborative or Constructive Negotiation:** This is a method of negotiation based on interests and needs. It is designed to produce wise agreement in an efficient, effective and mutually amicable manner. Alternatively, it can be seen a process where parties try to educate each other about their needs and concerns, and both search for the best ways to solve their problems in ways that the interests and fears of both or all parties are met. It is a process aimed at building a sustainable relationship, which is anchored on a collaborative principle geared towards a mutual understanding and feeling of parties. Principled negotiation relies on the following five basic elements: **People** Separate the people from the problem before working on the substantive problem, the people should be disentangled and addressed separately.
**Interests** Focus on interests (needs, desires, and expectations), not position. This is designed to overcome the drawback of focusing on stated positions when the objective is to satisfy underlying interests. **Options** Generate a variety of possible solutions before making a decision. Set aside time for joint brainstorming, to invent options for mutual gain.
**Criteria/Legitimacy** Insist that the result or process be based on some objective standard; e.g. custom, law, practice…. as kind of criteria measures. Negotiation seems to have universal or global application as a principle of conflict management based on dialogue. A good agreement is reached if at the end of the negotiation the following conditions are met:

a. it meets the legitimate interests of the parties to the extent possible;

b. it resolves conflicting interests fairly;

c. it is durable and preserves ongoing relationships.

**Enquiry** An enquiry as the name suggests is an examination of issues in order to establish facts that may be in dispute. In a situation where the facts are properly ascertained and laid down, it would not be difficult to arrive at a reasonable agreement or reach a settlement, which would be favourable and acceptable to both parties. This may necessitate necessary adjustment in accordance with the negotiation between the parties. It requires give and take on the part of both parties. This method may be of significance with respect to issues that can easily be solved through a calm analysis and consideration of historical facts. This method may be utilised with respect to boundary dispute between states. For example, the United Nations General Assembly by a Resolution adopted on 18 December 1967 upheld the utility of the method of impartial fact finding as a method of peaceful settlement of issues. Member states were advised to adopt this method. The UN General Assembly further asked the Secretary – General to prepare a list of experts in this regard whose services could be used by agreement with respect to a dispute. In pursuance of the above, a hortatory Resolution on Peaceful Settlement of International dispute was adopted by the General Assembly of the United Nations on 12 December 1974. The General Assembly Later approved the Manila Declaration on the Peaceful Settlement of International Disputes in 1982. It has the effect of superseding the Resolution made on 12 December 1974. The basic issues contained in the Manila Deelaration as put by Starke are as follows.

(a) That states should bear in mind that direct negotiations are a flexible and effective means of peaceful settlement of disputes, and if they choose to resort to direct negotiation, they should negotiate meaningfully;

(b) That states are enjoined to consider making greater use of the fact–finding capacity of the Security Council in accordance with the United Nations Charter;

(c) That recourse to judicial settlement of legal disputes, particularly by way of referral to the international court of Justice, should not be considered as an unfriendly act between states;

(d) That the Secretary – General of the United Nations should make full use of the provisions of the Charter containing his special responsibilities, for example, bringing to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

**Good Office** This is a method by which an individual, a state or an international organ, acting as a third party, may assist in ensuring an amicable settlement of a dispute. The use of good offices has the effect of bringing the disputing parties together and also ensures settlement in general terms. It does not involve actual participation in the negotiation or the conduct of an inquiry that takes care of everything that is involved in the dispute. Thus, what is required in good offices is the possibility of working out a solution with respect to the dispute.

**CONCLUSION** In as much as conflict is inevitable in the life of an individual, groups, nations or states, it therefore becomes imperative to adopt or adhere strictly to the dictates of Article 33 of the UN charter in resolving disputes or conflict through a peaceful or amicable means in order not endanger international peace and security.

**OTHER PEACEFUL METHODS OF CONFLICT RESOLUTION**

INTRODUCTION

In this unit, other means of peaceful settlement of disputes recognised by international law, as stipulated in Article 33 of the UN Charter, which places considerable emphasis upon the obligation of member states to avoid conflict and to settle disputes through peaceful means will further be discussed. It should also be noticed that the means suggested for resolving disputes, are all obviously lawful, but are not all, strictly speaking, legal means as explained in the previous note.

**Conciliation** The concept “conciliation” was defined by the International Law Institute in 1961 as: a method for the settlement of international disputes of any nature according to which a commission set up by the parties, either on a permanent basis or an ad hoc basis to deal with a dispute, proceeds to the impartial examination of the dispute and attempts to define the terms of settlement susceptible of being accepted by them or of according to the parties, with a view to its settlement, such aid as they may have requested. Judge Manly O. Hudson in 1944 defines ‘conciliation’ thus: Conciliation…is a process of formulating proposals of settlement after an investigation of the facts and an effort to reconcile opposing contentions, the parties to the dispute being left free to accept or reject the proposals formulated. The University of Peace sees conciliation this way: The voluntary referral of a conflict to a neutral external party (in the form of an unofficial commission) which either suggests a non-binding settlement or conduct explorations to facilitate more structures or techniques of conflict resolution. The latter can include confidential discussions with the disputants or assistance during a pre-negotiation phase (Miller, 2003). Although conciliation can be linked to arbitration, but close to mediation, results of conciliation are not binding on the parties as in arbitration. In conciliation, disputes are settled amicably with the use of other states or impartial bodies of enquiry/advisory committees or third party activity, which covers intermediary efforts aimed at persuading the parties to a conflict to work towards a peaceful solution. With respect to conciliation between states, it is usual to appoint the third parties on the basis of their official function and not just on their own initiative. Heads of state or secretary general of the United Nations may be appointed. Essentially, the parties to the dispute normally nominate one or two of their nationals and agree on the number of impartial and independent nationals of other states in order to provide a neutral majority. The conciliator, who is appointed by the agreement of the parties investigates the facts in dispute and suggests the way(s) out of it. The conciliator’s terms of settlement are usually referred to as recommendations, which are not binding on the parties unlike the case of arbitration where awards are made.

**Mediation** Mediation involves the use of or bringing a third party to intervene with respect to a conflict. It can also be referred to as a facilitated negotiation. Miller (2002) sees mediation as the voluntary, informal, non-binding process undertaken by an external party that fosters the settlement of differences or demands between directly invested parties. Miall, Ramsbotham and Woodhouse (1999) define mediation as “the intervention of a third party: it is a voluntary process in which the parties retain control over the outcome (pure mediation), although it may include positive and negative inducements (mediation with muscle)”. Beer and Stief (1997) define mediation as: “any process for resolving disputes in which another person helps the parties negotiate a settlement”. Moore (1996) considers it to be the intervention in a negotiation or conflict of an acceptable third party who has limited or no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute. Mediation is an assistance rendered by a neutral third party (mediator) in helping the disputants or parties in conflict reach a negotiated settlement of their problems unrestrained by evidential rules and having admitted that they have a problem which they are both committed to solving, but in which the mediator manages a negotiation process, but does not impose a solution on the parties. Professor Christopher Moore notes some primary responsibility of a mediator which are thus:

• helping to address the substantive issues in a conflict

• establishing or strengthening relationships of trust and respect between the parties, and

• terminating relationships in a manner that minimises costs and psychological harm. The role of the mediator is to create the enabling environment for the parties to carry out dialogue sessions leading to the resolution of an existing or protracted conflict. The mediator facilitates effective communication between parties with the aim of working on common themes and drawing to attention to neglected points and is a confidant to the parties, as well as a reconciler. The mediator also helps parties to identify and arrive at common grounds with a view to overcoming their fears and satisfying their real needs. For a mediator to be able to enjoy the trust and confidence of the parties to any conflict, he or she must be objective, neutral, balanced, supportive, non-judgmental and astute in questioning, and try to drive the parties towards win-win as opposed to win-lose outcomes.

**Arbitration** Arbitration is another type of third party intervention in the conflict management, which entails settlement of disputes through the use of arbitrators. Arbitration can simply be defined as the use and assistance of a neutral third party in conflict, who listens to evidence, put forward by parties in conflict, and later takes a decision which is expected to be binding on the parties. The decision taken by an arbitrator is usually referred to as an award. International arbitration is defined by the international law commission as a procedure for the settlement of disputes between states by a binding award on the basis of law and as a result of an undertaking voluntarily accepted; you will observe that definition of arbitration in international law is significantly narrower than the common meaning of arbitration. Arbitration is similar to mediation, and close to adjustment, but different from both. The crucial difference between judicial settlement and arbitration is that, arbitration allows the parties to select the tribunal, whereas parties have no control over the composition of a judicial body. In addition, in arbitration the parties may decide the law to be applied. Historically, arbitration began with procedures established in 1794 under the Jay Treaty between the United States and United Kingdom for the settlement of bilateral disputes. It provided for the establishment of three joint mixed commissions to which each state nominated an equal number of members to settle some differences, which could not be settled in the course of negotiating the treaty. In 1871 in an innovatory move, arbitration took place concerned to determine breaches of neutrality by Britain during the American civil war. The Hague Conference of 1899 on the Pacific Settlement of International Disputes led to the creation of an institution known as the Permanent Court of Arbitration. Arbitration has the advantages of speed, flexibility, confidentiality and better understanding than conventional adjudication.

**Judicial Settlement or Legal Method of Dispute Resolution (Litigation) Judicial or legal settlement of dispute is usually carried out by the court duly established and assigned in this manner both at the state (local) level and international level.** At the international level, it is usually referred to as International Court of Justice (ICI). It is also called “The World Court”. It sits at The Peace Palace, at The Hague.

1. Local or Internal Judicial Settlement
2. International Legal Dispute Resolution The International Court of Justice is the judicial organ of the six principal organs of the United Nations. It was first established and called Permanent Court of International Justice (PCIJ) after the first World War in 1921. The Court was dissolved the with the League of Nations at the end of the Second World War in 1946. The PCIJ, though not an organ of the League of Nations, its aim is to estabilish peace to preserve the status quo, the ICJ was an integral part of the United Nations with the framers of the UN Charter directing their efforts towards the establishment of an entirely new international society – a society consistently moving towards progress; a fair society , more egalitarian, more universal; a society all of whose members were to engage in an active and collective endeavour to usher in a full and lasting peace. All members of the United Nations are parties to the statute of the International Court of Justice. Article 93(2) of the charter allows nonmember parties to appear before it or join.

The duties of this court are:

1. To settle legal disputes which are submitted by states in line with international law and;
2. To give advisory opinions of legal questions referred to it by international organs or agencies, which are duly authorised to do so. The court is usually made up to 15 judges (Article 3). Five of the judges are elected every three years to hold office for nine years (Article 13). They are elected by majority votes of both the Security Council and the General Assembly sitting independently of each other. Usually, not more than one judge of any nationality sits in the court. Members of the bench represent the main forms of civilisation and the principal legal systems of the world. In practice, four judges of the court are usually from Western Europe, one from the USA, two from South America, two from Eastern Europe and six from Africa and Asia. The first permanent members of the Security Council are always represented by a judge in the court. Qualification for appointment is based on the highest requirements for the highest judicial office in the relevant country. The judges are required to be knowledgeable or competent in international law and through appointment by their home governments, they are required to be independent. In the event of a state appearing before the court without its national on the bench of the International Court, such a state (country) may appoint an ad hoc judge for the case as in the Nigeria / Cameroon Boundary dispute before the International Court of Justice. These ad hoc judges have the nature of arbitrators. It also lends credence to the idea that each of the judges of the court represents his country. Article 36 (8), Article 38 and Article 39 (3) of the statute of the ICJ also attest to these claims.

**Regional Agencies Arrangement**

Many scholars and analysts believe that regional mechanisms for dispute resolution may be more effective than broad global measures, which tend to be of a general and voluntary nature. Article 52 of the UN Charter provides thus:

1. Nothing in the present charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purpose and principles of the United Nations.

2. The members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements of by such regional agencies on the initiative of the states concerned or by reference from the Security Council.

4. The Article in no way impairs the application of Articles 34 and 35. Article 55 of the charter further provides thus: **1.** The Security Council shall, where appropriate utilise such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorisation of the Security Council, with the exception of measures against any enemy state as defined in paragraph two of this article, provided for pursuant of Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the organisation may, on request of the governments concerned, be charged with the responsibility or preventing further aggression by such state. **2**. The term “enemy state” as used in paragraph one of this article applies to any state which during the Second World War has been an enemy of any signatory of the present charter. The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangement or by regional agencies for the maintenance of international peace and security. Some regional organisations of agencies have put some measures in place or established mechanism for the prevention and management of conflict. For example, the African Union (AU) and Economic Community of West African States (ECOWAS) have established some agencies vested with the responsibility of making, keeping or enforcing peace and monitoring and preventing outbreak of conflict in some countries like Liberia, Sierra Leone, and Sudan and so on. Also the 1948 American Treaty on Pacific Settlement (Bogota Pact), the 1957 European Convention for the peaceful settlement of Dispute, Conflict Prevention, Management and Resolution provide general agreements on dispute settlement. Many bilateral and multilateral treaties are made in this regard. Before this type of dispute settlement could work, states having regard to this arrangement, may play low their sovereignty and submit to such regional arrangements. They are therefore, generally weak and have failed in practice, because the issue of sovereignty may work against this arrangement. Also, a considerable number of states in the region may not ratify many of the treaties while some may deliberately fail to contribute troops, financial and logistic support of or the arrangement.

**CONCLUSION** In the light of the above discussions, it is observed that international law is a phenomenon without compulsory jurisdiction in the event of disagreement or dispute. There is an enormous amount of peaceful and non-violent settlement of disputes taking place at various levels and in many communities all over the world. They are all obviously lawful, but are not all, strictly speaking, legal means. The success of any non-legal means will be determine by the desire or willingness of the parties to end or resolve their differences amicably as the decision or agreement reached is not binding on either parties, while the legal means outcome is binding on both parties involved in the dispute.