

Negotiation: The Pillar of Dispute Settlement in Diplomacy

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Abstract

We cannot conveniently discuss the issue of dispute settlement in international politics without exploring the concept of Negotiation. Negotiation is the most important function which is performed by the diplomatic agents (i.e. Ambassadors, Consular agents, Envoys etc). Generally, the head of the diplomatic mission negotiates on various aspects of, on behalf of the sending state with the state to which they are accredited in order to maintain friendly relationship or settle disputes. Diplomatic negotiations explore channels and discussions between parties to a conflict in order to resolve differences and prevent the outbreak of conflict. Negotiation between States is one of the conventional methods of dispute settlement. It basically involves two or more states who through their diplomatic channels (foreign offices) enter into negotiation. Art. 2(3) of the United Nations (UN) charter states that “all members shall settle their international disputes by peaceful means in such a manner that international peace and Security and justice are not endangered.” This paper examines the dynamics of negotiation and how it helps in resolving disputes amongst parties when they occur especially in international scene. The paper adopted doctrinal method where the relevant primary and Secondary Sources were used. It was found that negotiations as a conventional method of resolving international disputes, is effective as it provides the platform for states (big or small) to ventilate their feelings. Though it has been criticized for excessive publicity and power politics. It concluded that negotiation empowered parties themselves to steer the process and sharpen its outcome to deliver mutually acceptable settlement. It can either be through direct negotiation or institutional negotiations. It recommends that states should adopt the option of Alternative Dispute Resolution (ADR) first when dispute arises between them. States involved in dispute should submit themselves to the methods of negotiation or other forms such as enquiry, mediation, conciliation, arbitration as stipulated in Art. 33 of the United Nations Charter.

Keywords: negotiation, pillar, dispute, settlement, diplomacy

1. Introduction

Negotiation is the most Common diplomatic methods which States use for settlement of their disputes. Art. 33 of the United Nations Charter states 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, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other Peaceful means of their own choice.
- 2) The Security Council shall, when it deems necessary, call upon the parties to settle their Dispute by such means.

It is noteworthy that this is basically the legal basis for preventive diplomacy. Negotiation, as a conventional method of dispute Settlement, involves two or more states who through their diplomatic channels (foreign offices) enter into talks; negotiation. It is per excellence the pursuit of agreement by Compromise and required

direct Contact. Diplomats are by definition negotiators. The art of negotiation is done by diplomats who are engaged in Negotiation.¹

The challenging duties of diplomats which were the drafting of wide range of bilateral and multi-lateral agreements embodied in treaties, Conventions, protocols of political and economic nature is gradually reduced because of the development of easy Communication and the increasing resort to multi-lateral diplomacy. Today, most agreements between States are multilateral in nature and uses negotiation.² Negotiation is assumed the simplest mode of peaceful resolution of conflict. This is because it directly involves the parties to a conflict in the procedure. Negotiation directs the course of solving conflict to the area of parties' divergent views or at least understanding the difference in the position of parties concerned. It does not involve third parties or at least in the very first stage. Negotiation ensures a continuing dialogue between foreign states or parties in a conflict within a state. It is usually the *prima facie* for resolving Conflict before using other means as the parties decide first how to be resolved. Most time, in negotiation, position of parties are narrowed down because resolution depends on how to bridge the gap between parties and the ability skill of the diplomats involved. States and parties involved in conflicts, conduct negotiation mostly through their permanent diplomatic mission with written documents through the office of the Foreign Affairs Ministry or through political representative and Spokesperson or accredited agents in interstate affairs conflict. In Contemporary time, negotiation dominates all spheres of international life especially in multi-lateral relations among states and parties. Whether negotiations between states would be successful or not or would eventually lead to compromise or agreement between states depends on the determination, goodwill and readiness of the parties. To Supplement the determination and readiness of the states towards peaceful means of dispute settlement, Art. 2(3) of the United Nations Charter states that "All members shall settle their international disputes by peaceful means in such a manner that international peace and Security and justice are not endangered."

It is interesting to note that negotiations which are a symbol of bilateralism have been recommended by the United Nations (UN). In 1946, the UN advised Iran and Soviet Union Governments to negotiate and report to it about the peaceful Settlement to their dispute. Sometime back, the United States and Cuba reached a pact through negotiations for Surrender of hijackers by Cuba to the United States. The UN also advised India and Bangladesh for bilateral negotiation over the Farrakka Barrage in December, 1975. Finally, they reached an interim agreement through negotiations in September, 1977. The negotiations continued till the final agreement. In 1990, the UN Security Council advised Iraq and Kuwait to sort out their differences through negotiations vide Resolution 660.

Umozurike³ noted that the parties to a dispute may negotiate directly either through regular officials or officials Specially designated. Friendly intervention by third parties may take the form of good offices. The third party who could be a head of state or other respected person, brings the disputants together to negotiate their differences.

Negotiations should be carried out in good faith while underscoring the importance of maintaining a constructive atmosphere during the negotiation process and the need for parties to refrain from engaging in conduct detrimental to the progress of the exercise.

2. The Nature of Negotiation

Negotiation Can be divided into four (4) phases: pre-negotiation, Conceptualization, bargaining and Settlement. Pre-negotiation involves identification of parties, detection of mutual interest and Selection of a forum for Communication. Conceptualization identifies the position of each parties and the subject matter of the dispute. The bargaining phase is where parties discuss their positions and negotiate the terms and conditions which will lead to a solution. The last stage is reaching an agreement. Negotiation empowers the parties themselves to steer the Process and sharpen its outcome to deliver mutually acceptable Settlement.⁴ Where states Cannot reach agreement through direct negotiation, they may decide on using institutional negotiations which are formed through the mixed or joint Commissions.⁵

Looking at negotiation closely, it shows that the concept involves Providing international instrument or legal frameworks for Consultation and Communication. The example of Consultation is seen in the Case of *Australia*

¹ N D Palmer and H C Perkins. (1985). *International Relations* (3rd edn). CBS Publishers & Distributors, 85.

² M N Shaw. (1977). *International Law* (1st edn). Teach Yourself Books, 721.

³ U O Umozurike. (1993). *Introduction to International Law*. Ibadan: Spectrum law Publishing, 181.

⁴ R Mani and R Ponzo. (2007). Peaceful Settlement of Disputes and Conflict Prevention, in *The Oxford Handbook of the United Nations* (1st edn). Oxford University Press, 303-322.

⁵ *Ibid.*

*v New Zealand*¹ and free trade agreement of 31st August, 1963. An example of Communication is the US-Soviet memorandum of understanding of 20th June, 1963 in Geneva for a direct Communication link called “hot line” between Washington and Moscow in the case of Crisis.

Negotiations may be open or secret or both. They may be short or long as in the case of negotiations which temporarily suspended the Vietnamese war in 1973. As nations like to settle their disputes through negotiations, it may be preceded by correspondence and/or commission of inquiry to ascertain facts and sort out points of differences between the disputing nations. In other cases, negotiations are undertaken between plenipotentiaries to be formalized at Foreign Ministers level or Summit Conference between the nations. For instance, this happened when the Iceland and British Prime Minister met in London in September, 1973 to settle their dispute regarding unilateral extension of fisheries Zone by Iceland from 12-50 miles in September 1972.²

Negotiation is bilateralism in nature because it involves resolving disputes among two or more parties. It is the central tool of diplomacy; shows how states pursue interests without resorting to force, as Art. 33 of the UN charter emphasizes. The Core nature of Diplomatic negotiation lies in its Continuous, iterative exchange of proposals, concessions and clarifications. It is not a single meeting. Negotiation involves power politics, international law and technical details. For example, climate change talks, Science, finance, Sovereignty etc. Negotiation is interest-based and not position-based. Skilled diplomats move from rigid “Position’s” to underlying “interests” to find a targeted possible agreement. In a nutshell, the purpose of negotiation is to reconcile conflicting interests peacefully while its goal is to achieve mutually acceptable outcome, not winning like in litigation. The actors involved in negotiation are states primarily. However, International Organizations (IOs), Non-Governmental Organizations (NGOs), non-State armed groups are included. Negotiators have limited authority — ‘no mandate, no deal’ principle. It is interesting to add that negotiation can be done in a most informal Setting like Corridors, dinners, retreats. This is because Diplomacy relies heavily on informality to build trust.

3. The Role of Negotiation in Dispute Settlement

Negotiation is unarguably the oldest dispute settlement mechanism known to man. It is understood as a process where two or more parties interact with each other to accommodate their conflicting interests with the aim of finding a mutually acceptable solution. It is one of the means of dispute settlement mentioned in Article 33 of the UN Charter and is usually considered to be the first stage of any dispute settlement exercise. As a cost-effective method of dispute settlement, negotiation also affords considerable flexibility to the parties at the same time assuring them of control of the process as well while remaining the least technical of all dispute settlement mechanisms. In international relations, the concept of negotiation is understood in three senses. Firstly, to discuss issues of mutual interest. Secondly, as a means for the codification and progressive development of international law and lastly, as a means for the settlement of disputes. In this brief, the term negotiation is being used in the last context. The United Nations General Assembly Resolution 53/101 on Principles and Guidelines for International Negotiations provides a generic, non-exhaustive framework for the conduct of negotiations useful for the suitable conduct of the process in line with Articles 2 (3) and 33 of the UN Charter. Among other aspects, the resolution highlights that negotiations should be carried out in good faith while underscoring the importance of maintaining a constructive atmosphere during the negotiation process and the need for parties to refrain from engaging in conduct detrimental to the progress of the exercise. Consultation and exchange of views are similar to negotiations and involve deliberate negotiated efforts in arriving at a solution to disputes and the avoidance of disputes. Exchange of views can be viewed as being part of the broader process of negotiation or a stepping stone for the resort to other dispute settlement mechanisms as with Article 283 (1) of the United Nations Convention on the Law of the Sea, 1982 which provides that the parties to a dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means. However, there exist provisions in treaties, which provide for binding negotiation. Article 4 (3) of the Dispute Settlement Understanding of the World Trade Organization (WTO) provides for binding consultations to be carried out in good faith on the requirement of the other party. In this regard, a specific time framework for consultation is also provided for the process. Parties to a dispute are normally required to engage in negotiation before resorting to arbitration or judicial settlement. It is also possible for International Courts to mandate the need for negotiations in certain scenarios. Significantly, the ICJ has encouraged parties to resort to negotiations even during the pendency of proceedings in what stands testimony to the importance and lasting relevance of negotiations as a primary dispute settlement mechanism between States. Negotiation has been a pivotal tool in resolving international conflicts, with several recent instances demonstrating its efficacy. There are notable examples where diplomatic negotiations have led to conflict resolution among nations. In Ethiopia–Tigray Peace

¹ ICJ Rep (1974) 457.

² (n3) 181.

Agreement (2022)¹, after two years of civil war, the Ethiopian government and the Tigray People's Liberation Front (TPLF) signed a peace agreement on November 2, 2022, in Pretoria, South Africa. Mediated by the African Union, the agreement included a permanent cessation of hostilities, disarmament of Tigrayan forces, and restoration of federal authority in the Tigray region. Subsequent talks in Nairobi detailed implementation steps, including humanitarian access and transitional justice measures. Similarly, in Israeli–Lebanese Maritime Border Agreement (2022)², Israel and Lebanon, technically at war since 1948, resolved a long-standing maritime border dispute in October 2022. U.S.-mediated negotiations led to an agreement delineating maritime boundaries, allowing both nations to exploit offshore gas fields. This marked a significant diplomatic achievement, reducing regional tensions and opening avenues for economic cooperation. And in Armenia–Azerbaijan Border Negotiations (2023–2024)³, which is ongoing tensions between Armenia and Azerbaijan have seen renewed diplomatic efforts. In May 2023, U.S. facilitated talks in Washington indicated progress toward a peace agreement. By April 2024, Armenia agreed to return four villages to Azerbaijan, with both countries committing to border demarcation based on the Alma-Ata Declaration. These steps have been welcomed by international actors as moves toward lasting peace.

4. Advantages of Negotiation

Negotiation which is akin to Diplomacy has been a veritable tool for diplomats involved actively in international relations. Negotiations have helped to reduce the challenging duties of diplomats involved in drafting wide range of bilateral and multilateral agreements (treaties) because of the development of easy Communication and the increasing resort to multi-lateral diplomacy. It is the simplest mode of peaceful resolution of Conflict mechanism. This is because it directly involves the parties to the Conflict in the procedure. Negotiation helps to ensure a continuing dialogue between foreign states or parties in a conflict within a state. Negotiation can Subject national policies and proposal to the sharp test of world-wide appraisal thus revealing the strength or weakness of a cause. It is better to outline the advantages of negotiation thus;

1) Peaceful Settlement and Conflict Prevention

Negotiation is the primary method for implementing Art. 33 of the UN charter, which obligates states to seek peaceful means before involving the Security Council.⁴ It provides an institutionalized means to de-escalate disputes and prevent them from escalating to armed conflict. By focusing on early dialogue, negotiation serves as “preventive diplomacy” that addresses tensions while they are still manageable.⁵

2) Preservation of State Sovereignty and Consent

Unlike adjudication by the International Court of Justice (ICJ) or Enforcement by the Security Council, negotiation keeps decision-making authority with the states involved. The outcome depends on voluntary Consent, which aligns with the Westphalian principle of sovereignty.⁶ Owing to the fact that States Create their own agreements, Compliance rates are high. Hence, ‘Ownership of Solution’ reduces the enforcement problem Common in international law.

3) Creation of Mutually beneficial / Integrative Solutions

Negotiation allows parties to move beyond Zero-Sum positions to identify underlying interests and trade-offs.⁷ Though issue-linkage, States Can expand the “Zero sum possible Agreement.” For example, territorial Concessions Can be linked to Security guarantees or economic aid, creating value for both Sides rather than one Side's loss being the other's gain.

4) Cost Effectiveness Compared to Force

¹ African Union. (2022). Agreement for Lasting Peace through a Permanent Cessation of Hostilities Between the Government of the Federal Democratic Republic of Ethiopia and the Tigray People's Liberation Front. Retrieved from https://en.wikipedia.org/wiki/Ethiopia-Tigray_peace_agreement on 28th September 2025

² U.S. Department of State. (2022). Israel and Lebanon finalize maritime boundary agreement. https://en.wikipedia.org/wiki/Israeli-Lebanese_maritime_border_dispute accessed on 28th September, 2025

³ Wikipedia contributors. (2024). Armenia–Azerbaijan border crisis (2021–present). In Wikipedia, The Free Encyclopedia. Retrieved from [https://en.wikipedia.org/wiki/Armenia-Azerbaijan_border_crisis_\(2021-present\)](https://en.wikipedia.org/wiki/Armenia-Azerbaijan_border_crisis_(2021-present)) accessed on 28th September, 2025.

⁴ R Mani and R Ponzi. (2007). *Peaceful Settlement of Disputes and Conflict Prevention*, in *The Oxford Handbook of the United Nations* (1st edn). Oxford University Press, 303-322.

⁵ M N Shaw. (1977). *International Law* (1st edn). Teach Yourself Books, 721.

⁶ (n11) 322.

⁷ *Ibid.*

Military action, Sanctions and prolonged hostility impose massive human and economic Costs. Negotiation avoids these by resolving disputes through Communication.¹ For instance, the Camp David process Cost far less in lives and resources than another Arab-Israeli war would have, while also unlocking U.S. aid and trade benefits for both Egypt and Israel.

5) Building Trust and Long-term Comparative Relations

Diplomacy is a repeated interaction. Negotiation builds Communication habits, personal relationships between diplomats and precedents for future Co-operation.² Even when immediate disputes are not fully resolved, the process itself creates “channels of Communication” that reduce misperception and make future crises easier to manage.

6) Flexibility and Creative Problem-Solving

It is an axiom that legal methods are bound by precedent and rules. Negotiation is flexible. It allows for Constructive ambiguity, phased implementation and politically tailored Solutions that Courts Cannot provide.³ This flexibility lets diplomats Craft face-saving formulas in order for both Sides to claim victory domestically which is Critical for ratification.

5. Challenges / Limits of Negotiation

One of the greatest disadvantages of negotiation, in spite of enormous advantages, is that it may not succeed since it depends on a high rate of goodwill, flexibility and Sensibility, hostile public opinion in one State or by the party may prevent the Concession of Certain Points and mutually trust may fatally Complicate the process while opposing political attitude may be such as to preclude any acceptable negotiated agreement.⁴ For clarity, let us outline and explain Some of the obvious disadvantages of negotiation.

1) Zero Guarantee outcome or Enforcement

Unlike adjudication, negotiation has no third-party authority to impose a Settlement. Compliance depends entirely on Voluntary Consent and reciprocity.⁵ A state can walk away or violate the agreement if its interests change. This ‘enforcement gap’ makes negotiated outcomes fragile, especially without external guarantees.

2) Time Consuming and Prone to Delay

The process of negotiation can take years because it involves pre-negotiation, bargaining and ratification stages. While delay Can mature the process, it Can allow for Conflict escalation.

3) Power Asymmetry and Coercion

Negotiation assumes relative equality but power imbalances distort outcomes. Stronger states can use economic sanctions, military threats or control of agenda to intimidate weaker ones. The result may be settlement that shows power, not justice, which breeds long-term resentment that undermines stability.

4) Domestic Constraints

Owing to the fact that a deal accepted abroad may be rejected at home, negotiators lack full mandate often. Hence, agreed terms can fail ratification. This constraint limits flexibility and creates risk of last-minute collapse.

5) Cultural/Communication Barriers

Diplomats from different cultures have different norms on time, directness/authenticity and face-saving.⁶ When signals are misread or wrongly interpreted, crisis can ensue or deadlock may result. What one side sees as “firm bargaining,” another sees as insult. In the absence of skilled mediation, these differences increase transaction costs and risk of misunderstanding.

6. Conclusion

The peaceful settlement of international disputes is a core principle of current international law and relations. Therefore, in its preamble, the UN Charter refers to the need for states to live in peace with one another as good

¹ R Mani and R Ponzi. (2007). *Peaceful Settlement of Disputes and Conflict Prevention*, in *The Oxford Handbook of the United Nations* (1st edn) Oxford University Press, 303-322.

² *Ibid.*

³ *Ibid.*

⁴ R Mani and R Ponzi. (2007). *Peaceful Settlement of Disputes and Conflict Prevention*, in *The Oxford Handbook of the United Nations* (1st edn) Oxford University Press, 303-322.

⁵ M N Shaw. (1977). *International Law* (1st edn). Teach Yourself Books, 721.

⁶ U O Umozurike. (1993). *Introduction to International Law*. Ibadan: Spectrum law Publishing, 189.

neighbours and the prohibition of the use of force except in the common interest. Article 2(3) specifically requires States to “settle their international disputes by peaceful means in such manner that international peace and security, and justice, are not endangered.”

The Charter directs, in Article 33, that parties to a dispute that might endanger peace should first “Seek a resolution through negotiation, inquiry, mediation, Conciliation, arbitration, judicial Settlement, resort to regional agencies or arrangements, or other peaceful means of their choice.” Most disputes are indeed Settled through negotiations with or without the help of third parties. Bilateral and multilateral treaties provide for a negotiated Settlement of disputes that may arise.¹

In diplomatic negotiation, the parties to a dispute may negotiate directly either through regular officials or officials specifically designated. Friendly interventions may take the form of Good Offices. The third party who could be a head of state or other respected person brings the disputants together to negotiate their differences. It was emphasized in the Hague Convention for the Pacific Settlement of Disputes that third parties (states) have a right to offer good offices or mediation and that such an offer was not to be regarded as an unfriendly act.

Diplomatic negotiation is the art of turning Conflict into cooperation under anarchy. It is less about legal logic and more about Psychology, timing and managing perceptions. The task of the negotiator is to create a reality that both Sides Can live with.² The practical example of negotiation in action is the Camp David Accords, 1978 between Egypt, Israel and the U.S. That accord shows almost every feature of negotiation which are that:

- a. Negotiation is a process, not event. It took close to two years of talks to achieve the framework into a full peace treaty in 1979.
- b. It was based on interest. In the bargaining process, the position of Israel was “no withdrawal from Sinai without full peace” while Egypt insisted on “no peace without total Israeli withdrawal.” The interest of Israel was security and recognition while Egypt was interested in their Sovereignty over Sinai plus leadership of Arab world. It is interesting to note that at the end of negotiation, Israel gets demilitarized Sinai with the aid of U.S and recognition. Egypt also got land back plus Suez Canal. Hence, both interests met without either side losing face.
- c. Camp David was isolated as there was no media, no aides. That Secrecy helped them make Concessions without immediate domestic backlash.
- d. There was power and leverage. Force was minimal. U.S. had no army at Camp David but huge leverage.
- e. The different stages of negotiation played out clearly, for instance, there was the pre-negotiation stage when the UN representatives 242 provided the formula: “land for peace”, that became the baseline. Opening stage which was shown deadlock for days. Bargaining stage where the core matters of bridging Proposals, Sinai map talks and overflight rights were discussed.
- f. Closing and Implementation. The Camp David shows that Negotiation in diplomacy is not about legal logic or who is right. It is about timing the ripeness, managing domestic Constraints, using leverage and trust, and drafting Ambiguity that allows both Sides to win.
- g. Negotiation is diplomacy’s most flexible tool but its Strength which lies in being voluntary, Consensual, adaptable is also its weakness. The Limits of enforcement, power and domestic politics mean that it works best when combined with mediation, institutions and guarantees.

7. Recommendations

Based on the findings, the following recommendations are made:

- i. States should develop and maintain structured negotiation and mediation Capabilities. They should strive to invest in professional diplomatic Capacity especially in negotiation, Conflict mediation and Shuttle diplomacy methods.
- ii. State officials in diplomatic institutions should always abide by the rules and functions of their offices to avoid Counter objectives and practice. They should be proactive and efficient in Communication, interaction and negotiation.
- iii. To encourage negotiators and make the art interesting, States should respect the terms of all diplomatic and Consular treaties, negotiated agreements entered into especially as they relate to maintaining international peace and Security. Negotiators or negotiations must focus on ensuring

¹ *Ibid.*

² H. Kessinger. (2014). *World Order*. Penguin Press, 81.

that all parties fulfil their Commitments and addressing obstacles that may arise during the implementation stage.

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