DIRECTORATE OF DISTANCE EDUCATION

UNIVERSITY OF NORTH BENGAL

MASTER OF ARTS-POLITICAL SCIENCES

SEMESTER -IV

PEACE AND CONFLICT RESOLUTION

ELECTIVE 406

BLOCK-2

UNIVERSITY OF NORTH BENGAL

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FOREWORD

The Self Learning Material (SLM) is written with the aim of providing simple and organized study content to all the learners. The SLMs are prepared on the framework of being mutually cohesive, internally consistent and structured as per the university's syllabi. It is a humble attempt to give glimpses of the various approaches and dimensions to the topic of study and to kindle the learner's interest to the subject

We have tried to put together information from various sources into this book that has been written in an engaging style with interesting and relevant examples. It introduces you to the insights of subject concepts and theories and presents them in a way that is easy to understand and comprehend.

We always believe in continuous improvement and would periodically update the content in the very interest of the learners. It may be added that despite enormous efforts and coordination, there is every possibility for some omission or inadequacy in few areas or topics, which would definitely be rectified in future.

We hope you enjoy learning from this book and the experience truly enrich your learning and help you to advance in your career and future endeavours.

PEACE AND CONFLICT RESOLUTION

BLOCK-1

BLOCK-2

BLOCK 2: PEACE AND CONFLICT RESOLUTION

Introduction to the Block

Unit 8 deals with Escalation, Des-escalation and Intractability. Conflict escalation is a gradual regression from a mature to immature level of emotional development.

Unit 9 deals with Conflict Resolution (Cases). The UN's Agenda for Peace can be broadly separated into four groups: preventive Diplomacy, Peacemaking, Peacekeeping and Peacebuilding. Preventive diplomacy tries to put an end to a conflict by getting the concerned parties to resolve the conflict before it become violent.

Unit 10 deals with Strategies of Peace-Diplomacy; International Law. On a social/economic level, peacebuilding works towards the meeting of basic needs by establishing just and equitable economic and political systems.

Unit 11 deals with Approaches- Mediation and Arbitration. The term conflict is understood as any situation, event, or opinion in an inter-personal or other relations where there is more than one position and these are at variance with one another.

Unit 12 deals with Negotiations. Negotiations are a part of everyday life. The process of negotiating has been described by Walton and McKersie as ‘the deliberate interaction of two or more complex social units which are attempting to define or redefine the terms of their interdependence.’

Unit 13 deals with Reconciliation and ADR. In sum, the concept of reconciliation can fit into the framework of conflict transformation and has great potential to complement practices for transformational strategies.

Unit 14 deals with Post Conflict Challenges; Peace Agreements. Two concepts of peace should be distinguished: negative peace, defined as the absence of organised violence between such major human groups as nations, as also between racial and ethnic groups because of the magnitude that can be reached by such conflicts

UNIT 8: ESCALATION, DES-ESCALATION AND INTRACTABILITY

STRUCTURE

8.0 OBJECTIVES

After this unit, we should able to understand:

- What is Conflict Escalation?
- To discuss the Conditions that Encourage Escalation
- To describe the Three Process Models
- To know about the Psychological Dynamics
- To discuss the Changes in Relations
- To know about the Group Dynamics

8.1 INTRODUCTION

Susan and Theresa had been business partners in their professional practice for 20 years. The practice was very successful, but Susan and Theresa had grown apart in lifestyles, goals, and attitudes. They did not discuss these changes with each other. Instead, as is so often the case,

they let small annoyances fester. After awhile, they stopped communicating. Business was conducted through memos or their staff.

Theresa retained a lawyer, who advised her to file a partnership dissolution action. Her lawyer, seeking maximum impact, had the complaint served on Susan two days before Christmas while Susan was at home with her family. Susan, outraged, retained the toughest lawyer she could find.

The case became expensive. Clients were caught in the fight and left the firm. The attorneys' fees were $10,000 per month. The office was in chaos. At Theresa's deposition, Susan's lawyer was very aggressive, suggesting by the questions that Theresa had committed fraud, when that was not the case. Theresa, furious at Susan, refused to consider any overture of settlement.

Finally, after months of acrimonious pretrial preparation and tens of thousands of dollars in legal expenses, the parties became financially and physically exhausted. On the advice of their lawyers, they agreed to mediation and after three days of discussions the partnership issues were resolved. This case illustrates the power and danger of conflict escalation.

Conflict escalation is a gradual regression from a mature to immature level of emotional development. The psychological process develops step by step in a strikingly reciprocal way to the way we grow up. In other words, as conflicts escalate through various stages, the parties show behaviors indicating movement backward through their stages of emotional development.

Escalation is charted in five phases, each having its own characteristics and triggers. Stage One is part of normal, everyday life. Even good relationships have moments of conflict. These can only be resolved with great care and mutual empathy. In this stage, people look for objective solutions a cooperative manner. If a solution is not found, especially because one of the parties sticks obstinately to his or her point of view, the conflict escalates.

In Stage Two, the parties fluctuate between cooperation and competition. They know they have common interests, but their own wishes become more important. Dealing with information becomes limited to that

favoring one's own arguments. Logic and understanding are used to convince or win over the opposing side. At this stage, each party does everything possible to not show weakness. The temptation to leave the field of argument increases until the conflict escalates because of some action taken by one of the parties.

By entering Stage Three, the field of concrete actions, the parties each fear that the grounds for a common solution is lost. In other words, they lose hope for a reasonable outcome. Interaction becomes hostile. All logic is focused on action, replacing fruitless and nerve-wracking discussions. In the partnership case, this is when Theresa hired her lawyer. Hiring the lawyer satisfied Theresa by temporarily reducing her inner tensions and anxieties. Finally, she was "doing something" about the problem. Paradoxically, the parties each believe that through pressure they will change the other party. At the same time neither is prepared to yield.

At this level, stereotyping is applied as negative identification of the opponent. Hence, Theresa was implicitly characterized as dishonest in her deposition. Power becomes important as empathy disappears.

At Stage Four, the parties' cognitive functioning regresses to those of six year-olds. One is aware of the other's perspectives, but is no longer capable of considering the other's thoughts, feelings and situation. How often have we remarked that parties in conflict are acting like children. In fact, they are because of the escalation. Both sides feel forced into roles of from which they see no escape. If the conflict cannot be halted at this stage, the escalation undergoes a dramatic increase in intensity. Escalation results when one side commits some action that is felt by the opposite side as a loss of face.

At Stage Five, progressive regression appears in the form of a comprehensive ideology and totalizing of antagonistic perspectives. Sacred values, convictions, and superior moral obligations are at stake. The conflict assumes mythical dimensions. Sometimes the parties have fantasies of omnipotence, seeing no way that they can lose in court. In psychological terms, the escalation has reached a hallucinatory-narcissistic sphere. The entire self-conception is drawn into the conflict such that individual perceptions and evaluations disappear. By

threatening and creating fear, both parties strive towards total control of the situation and thereby escalate the conflict further. To remain credible and to restrain the enemy from an act of force, the threatened party feels compelled to commit acts of force itself. This, in turn, proves to the threatening party the aggressive nature of the threatener and provokes counterforce and further escalation. This process continues until the parties reach financial or physical exhaustion, or the matter is decided in the courtroom.

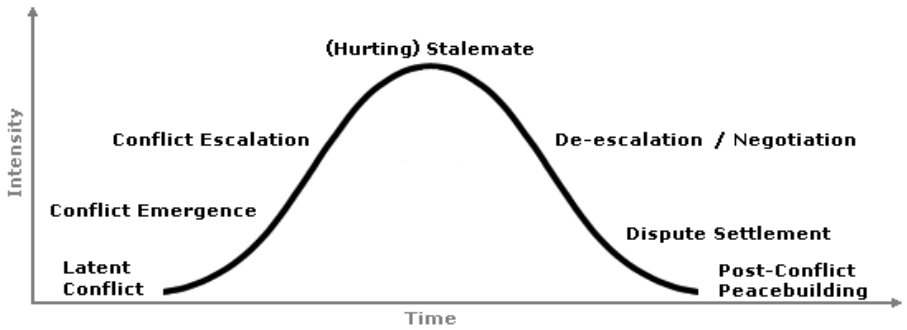
At some point along the way, the parties may seek mediation. The difficulty of an escalated case is that the parties must be walked back through the stages of escalation. If a mediator is not aware of the escalation cycle and assumes that the parties are at Stage One, the mediation is doomed to failure. Furthermore, working back through the escalation stages takes time and infinite patience. The parties may backslide and regress. Oftentimes, the parties resist the mediator's efforts to move them into more mature levels of escalation. This behavior is very similar to parents working with children who have temporarily regressed. Sometimes, one party will move to an earlier stage of escalation faster than the other, creating more complexity. Thus, the mediator's function is to act as a guide for the parties, assisting them in finding their way to the common ground of Stage One. Only when the parties have reached Stage One will they be ready to find a common ground for resolving the conflict.

Intractable conflicts are demoralizing. Beyond destabilizing the families, communities, or international regions in which they occur, they tend to perpetuate the very conditions of misery and hate that contributed to them in the first place. Although the common factors and processes associated with intractable conflicts have been identified through research, they represent an embarrassment of riches for theory construction. Thus, the current task in this area is integrating these diverse factors into an account that provides a coherent perspective yet allows for prediction and a basis for conflict resolution in specific conflict settings. We suggest that the perspective of dynamical systems provides such an account. This article outlines the key concepts and hypotheses associated with this approach. It is organized around a set of

basic questions concerning intractable conflict for which the dynamical perspective offers fresh insight and testable propositions. The questions and answers are intended to provide readers with basic concepts and principles of complexity and dynamical systems that are useful for rethinking the nature of intractable conflict and the means by which such conflict can be transformed.

8.2 WHAT IS CONFLICT ESCALATION?

Escalation refers to an increase in the intensity of a conflict and in the severity of tactics used in pursuing it. It is driven by changes within each of the parties, new patterns of interaction between them, and the involvement of new parties in the struggle. In the conflict stage diagram, it is the next step after conflict emergence that pushes the conflict up towards, eventually, a hurting stalemate.



When conflicts escalate, more people tend to become involved. Parties begin to make bigger and stronger threats and impose harsher negative sanctions. Violence may start, or if violence has already occurred it may become more severe and/or widespread as the number of participants involved in the conflict increases, and a greater proportion of a state's citizens actively engage in fighting.

Conflict theorists Dean Pruitt and Jeffrey Rubin list five changes that occur as a conflict escalates. First, parties move from light tactics to heavy tactics. Light tactics include such things as persuasive arguments, promises, efforts to please the other side, while heavy tactics include threats, power plays, and even violence. Second, the conflict grows in size. The numbers of issues in contention expands, and parties devote more resources to the struggle. Third, issues move from specific to

general, and the relationship between the parties deteriorates. Parties develop grandiose positions, and often perceive the other side as "evil." Fourth, the number of parties grows from one to many, as more and more people and groups are drawn into the conflict. Fifth, the goal of the parties changes from "doing well" to winning, and finally, to hurting the other.

Under certain circumstances, escalation is the rational thing to do. If a party has overwhelming power over its opponent, it makes sense to use this power to overcome the opponent's resistance. Parties might also intentionally escalate the conflict in order to pressure the other side, involve third parties, or rally more people to their cause. In many cases, this sort of tactical escalation can have positive effects and help move parties toward a mutually beneficial relationship.

However, a great deal of conflict escalation is inadvertent, and occurs without the parties having fully considered the implications of their actions. Sometimes this is a result of perceived crises and time pressures that compel the parties to act before they have considered alternative courses of action or have a full understanding of the situation. The use of force and threats, if regarded as too extreme, can ultimately backfire and provoke retaliation. It is in these cases that conflicts have the potential to spiral out of control and have terribly damaging effects. Destructively waged conflicts typically involve great losses for one or more of the contending parties, and tend to persist for a long time. To avoid these negative consequences, a better understanding of the dynamics of escalation is needed.

Pre-Dispute And Pre-Escalation Processes To Prevent Disputes: A Brief Introduction

Among the dozens of dispute resolution processes that exist today, there are a number of relatively new pre-dispute and pre-escalation processes that can be used to prevent disputes before they become so intractable that they have to be dealt with through traditional ‘resolution’ processes. These processes are most effective when instituted proactively, at or near the beginning of a relationship.

The philosophy behind these processes can be illustrated by the following expressions: “It usually costs less to avoid getting into trouble than to pay for getting out of trouble” (Professor Lewis Brown, 1950). “An ounce of prevention is worth a pound of cure”. “A stitch in time saves nine”. “Fortune favours the prepared mind”. “Fix the problem, not the blame”. “Be prepared”. “Be proactive, not reactive”. “The highest and best form of dispute resolution is dispute prevention”.

These processes are all practical, common-sense practices and techniques, invented by users of dispute resolution services. They acknowledge that problems and unexpected events are likely to occur in any relationship, and they are based on such principles as mutual cooperation, collaboration, early attention to problems as soon as they develop, prompt action to deal with problems on a ‘real time’ basis, avoidance of adversarial attitudes, reliance on pre-selected experts, participation in reaching solutions to problems and disputes, and direct party control over the outcome of a dispute.

Here is a list of some typical pre-dispute and pre-escalation processes:

- Realistic allocation of risks, the practice of assigning each risk to the party who is best able to manage, control or insure against the risk.
- Providing incentives to encourage cooperation, to encourage parties to act cooperatively and focus on achieving legitimate joint goals.
- Identifying potential causes of disputes, so the parties can select appropriate processes for preventing, controlling and de-escalating the development of disputes.
- Partnering, a team-building effort to establish cooperative working relationships.
- Direct negotiations and step negotiations, whereby the parties themselves deal directly with each other to solve problems.
- Ombuds, an individual appointed to investigate complaints by employees, clients or constituents, independently and impartially.
- Standing neutrals and dispute review boards: A jointly-appointed trusted neutral person or group of individuals, selected by the parties to assist them with problems throughout their relationship, who can,

if necessary, achieve a 'real time' resolution of any problems or disputes that occur.

Categories of prevention processes

Pre-dispute and pre-escalation processes can be grouped under the following two broad categories, 1. prevention and cooperation techniques that help to avoid problems and disputes; and 2. dispute de-escalation, control, and 'real time' resolution techniques to prevent disputes.

Prevention and cooperation techniques that help to avoid problems and disputes.

Realistic Allocation of Risks

Realistic allocation of risks is the practice of balancing the obligations of parties to a relationship by assigning each risk to the party who is best able to manage, control or insure against the risk. If a party to a relationship is saddled with a risk that it cannot handle, this creates resentment and adversarial relationships, and sows the seeds of countless potential disputes. Therefore many problems can be avoided by following this practice.

Providing Incentives to Encourage Cooperation

The practice of providing incentives to encourage cooperation among parties to a relationship helps to prevent disputes from arising. If a party to a relationship has a financial incentive to act cooperatively it is more likely to work in a collaborative way. An example of such an incentive is a 'bonus pool' which will be divided among all the participants in a business venture provided they all meet certain defined goals of cooperation and teamwork. The bonus is payable either to everyone or to no one, thus encouraging the participants to support and assist each other by focusing on legitimate joint goals, and subordinating selfish interests for the ultimate benefit of all participants.

Analysis of Potential Sources of Disputes

A joint effort by parties who are about to enter into a relationship to identify likely sources of potential disputes can motivate the parties to develop ways of preventing and controlling disputes. The process involves investigating the kinds of disputes that have been shown to arise typically in similar relationships, analysing the prospective relationship

to identify sources of disputes, and considering ways in which to prevent and control those potential disputes.

Partnering

Partnering is a team-building effort in which the parties, with the assistance of an expert facilitator, commit to achieve mutual goals and objectives and resolve potential problems by establishing cooperative working relationships. It is customarily implemented at the beginning of the relationship by holding a retreat among the key stakeholders in the relationship, establishing a 'partnering charter', and periodically renewing the partnering effort with further refresher retreats.

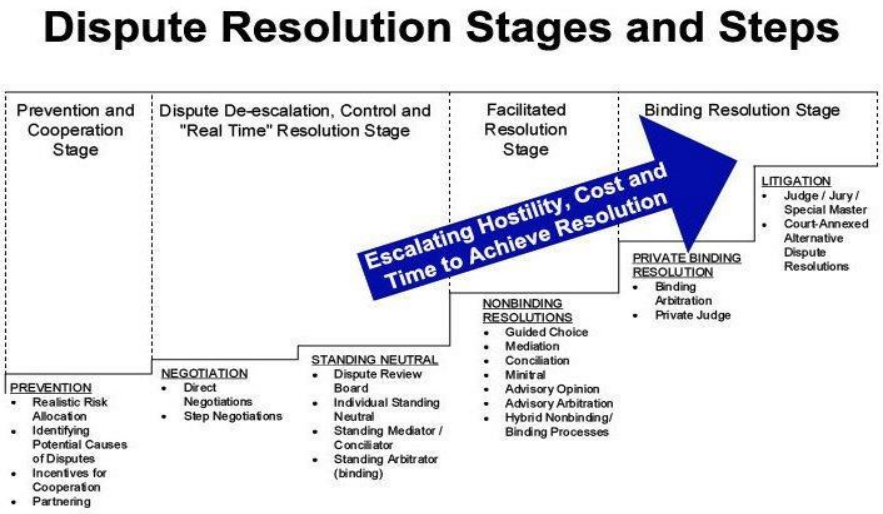
Dispute de-escalation, control, and 'real time' resolution techniques to prevent disputes.

Negotiation

Negotiation is a voluntary and usually informal process in which parties identify issues of concern, explore options for the resolution of the issues, and search for a mutually acceptable agreement to resolve the issues raised. Negotiation is different from mediation in that there is no neutral individual to assist the parties negotiate. Negotiation can be a useful adjunct to any other dispute resolution process

Step Negotiations/Issue Elevation

Step negotiations, sometimes called 'issue elevation' is a variation of traditional negotiation, using successive levels of negotiation to encourage agreement. The negotiation process is structured so that if the individuals from each party who are most directly involved in a dispute are not able to resolve a problem promptly at their level, their immediate superiors, who are not as closely identified with the problem, are asked to resolve the problem. If they fail, the problem will be passed up to higher management of both parties. Because of an intermediate manager's interest in keeping messy problems from reaching the desks of upper level managers, and interest in demonstrating to higher management the intermediate manager's ability to solve problems, there is a built-in incentive to resolve disputes before they reach the highest level.



Ombuds

An ombuds is a third party individual selected by an institution – for example, a university, hospital or governmental agency – to investigate complaints by employees, clients or constituents. The ombuds works within the institution to investigate the complaints independently and impartially. The process is voluntary, private and non-binding.

Standing Neutrals and Dispute Review Boards

A standing neutral is a trusted neutral person or group of individuals appointed by the parties to a relationship, at the beginning of their relationship, to be available to assist the parties throughout their relationship in the 'real time' resolution of any problems that occur during the relationship.

The neutral should be known to and respected by the parties, and be in a position to be available on reasonable short notice to provide prompt objective advice to the parties whenever they cannot agree among themselves how to solve a problem. The availability of a respected expert who can administer a 'dose of reality' when needed can have a therapeutic effect upon the relationship between the parties.

The mere existence of such a respected person encourages the parties to deal realistically with each other and resolve problems themselves without referring them to the neutral. Experience has shown that when the neutral is required to give advice, the parties, guided by that advice,

are usually able to reach a consensual solution to the problem without having to resort to any formal dispute resolution process.

Standing neutrals are known by various names, such as ‘wise person’, ‘mutual friend’, ‘referee’, or ‘interim dispute resolver’, and can come in different forms, such as a ‘dispute review board’ consisting of three neutrals, an ‘initial decision maker’ who closely monitors a relationship, or a ‘standing mediator’, or ‘standing arbitrator’, depending upon the needs of the parties.

8.3 CONDITIONS THAT ENCOURAGE ESCALATION

Some conflict escalation is driven by incompatible goals. Many note that destructive social and inter-personal conflicts always begin with the emergence of contentious goals of two adversaries. If the parties do not see a possibility of finding a mutually beneficial solution, and one believes that it has the power to substantially alter the aspirations of the other, it may try to bully the other side into submission. As the adversaries begin to pursue their incompatible goals, they may issue threats or otherwise attempt to coerce the opposing side into giving them what they want. Each side typically believes that the other is driven by power and will increase its coercive behavior unless it is prevented from doing so by greater coercion. But if one party is harmed or threatened by another, it is more likely to respond with hostility. The greater number of issues in contention and the more intense the sense of grievance, the more fuel there is to encourage escalation.

In many instances, the parties view each other as having relatively high aspirations or regard the issues under dispute as ones that cannot be compromised. For example, matters regarded by adversaries as being integral to their personal or collective identities are more prone to conflict escalation. When faced with groups that exhibit radically different attitudes, values, and behaviors, parties may feel criticized, demeaned, or threatened. Threats to identity tend to arouse feelings of anger and fear, which can in turn fuel conflict escalation. Similarly, moral conflicts often lead to conflict escalation because the opponent is viewed as wrong in principle and not merely on the wrong side of some

specific issue. Disputes involving ideological or moral issues tend to attract more parties and be resistant to compromise.

Past grievances, feelings of injustice, and a high level of frustration may also provoke escalation. Hostility-driven escalation is typically caused by grievances or a sense of injustice, and may ultimately be rooted in events of the distant past. One party feels that it has been treated unfairly by its opponent, and angrily blames its opponent for the suffering it has endured. Deprivation, inequitable treatment, and pain and suffering thereby lead to a desire to punish or injure the other. If there are no "norms of redress" in place, the aggrieved party may feel compelled to strike back in response to this perceived provocation. However, their feelings of anger and frustration may lead them to overreact. And if their actions are seen as overly severe and exceed the normative expectations of the other side, these actions may provoke outrage and simply intensify the struggle.

Indeed, hostility-driven conflicts tend to escalate for trivial reasons, and also become unnecessarily violent. Once victims have made exaggerated assessments of the severity of the harm they have suffered, they are likely to seek revenge. Their hostile actions often simply lead to further injustice, which grants victim status to the original wrongdoer. This not only generates new conflict issues, but also provokes fresh feelings of anger and injustice. Both parties may come to view revenge as an end in itself.

8.4 THREE PROCESS MODELS

Various frameworks can be used to better understand the dynamics of conflict escalation. Pruitt, Rubin, and Kim discuss three broad models of escalation: the aggressor-defender model, the conflict-spiral model and the structural-change model. Taken together, these three accounts of what occurs during escalation can help to make sense of a wide variety of conflicts.

8.4.1 Aggressor-Defender Model

Jannie Botes says journalists frequently escalate conflicts. This can be positive or negative, depending on the situation.

In the "aggressor-defender" model, the "aggressor" is viewed as having a goal that places it in conflict with the "defender." The "aggressor" begins with mild tactics and moves on to heavier tactics if these don't work. The defender reacts, escalating its efforts in response to the aggressor's escalatory actions. While this model reflects some cases of escalation, it suggests that escalation moves simply in one direction, with the defender always reacting to the action of the aggressor. In many cases, escalation is better understood as a circular process, in which each side reacts to the other's behavior.

8.4.2 Conflict Spiral Model

According to the conflict-spiral model, escalation results from a vicious circle of action and reaction. Because each reaction is more severe and intense than the action that precedes it, each retaliation or defensive action in the spiral provides a new issue or grievance. These dynamics explain the movement from lighter tactics to heavier tactics, as well as the expansion of issues in conflict. As the spiral rises, each party's list of grievances grows longer, producing a growing sense of crisis.

Conflict spirals can be either retaliatory or defense. In a retaliatory spiral, each party punishes the other for actions it finds hurtful. Retaliation may be in response to events of the distant past, or to the opponent's most recent atrocious acts. These events lead one party to blame the other for harm suffered, and to desire punishment. Central to this desire for retaliation are feelings of anger and the perceived need to "teach" the other a lesson. In addition, it is common for one party to miscalculate the likely reaction of the other, and inadvertently commit acts that result in further escalation. For example, one side may try to intimidate its opponent, and instead provoke a harsh counteraction.

In a defensive spiral, on the other hand, each party reacts so as to protect itself from a threat it finds in the other's self-protective actions. While retaliatory spirals are typically driven by blame and anger, defensive spirals are driven by fear. Though one side may simply wish to protect itself, its actions may be perceived as threatening by its opponent. One

example of this sort of spiral is the arms race. (This is called the security dilemma and is discussed in the essay on security.)

8.4.3 Structural Change Model

Carolyn Stephenson says that both escalation and de-escalation are needed to resolve conflicts.

Finally, according to the structural-change model, the experience of conflict and the tactics used to pursue it produce residues that affect and change the parties and communities involved. As a fight escalates, the means of waging it become more and more removed from the substantive issues that first gave rise to conflict. The psychology of the adversaries, as well as the relationship between them, undergoes fundamental changes. These enduring structural changes encourage further contentious behavior and fuel escalation. Thus, the structural-change model has the unique ability to explain why escalation tends to persist and recur.

Check Your Progress 1

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

1. What is Conflict Escalation?

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2. Discuss the Conditions that Encourage Escalation.

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3. Describe the Three Process Models.

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8.5 PSYCHOLOGICAL DYNAMICS

Escalation is both a cause and a result of significant psychological changes among the parties involved. In addition to anger and fear discussed above, negative attitudes, perceptions, and stereotypes of the opponent can drive escalation, as well as being caused by it (another spiral). Parties have a tendency to blame the other side for any harms suffered, and want at least restitution, if not retaliation. They may also form ideas about the dispositions, basic traits, and motives of the other side. For example, each side may believe that the other is fundamentally selfish, unfriendly, and hostile to its welfare. As a result, actors often come to regard revenge and punishing the other side as an end in itself. Discussions about substantive issues and grievances give way to personal attacks upon the other.

Another psychological process that drives escalation is the sacrifice trap, also commonly known as entrapment. In some conflicts, a party may expend seemingly unjustified amounts of time, energy, and resources because they cannot admit they were wrong in what they did. So they continue or even increase their commitment to a failing course of action in order to justify their previous investments. As time passes, the cost of continuing increases, but so do the prospects of reaching one's goal. In addition, because they do not regard total withdrawal as an option, they come to regard total commitment as the only choice. Combatants thereby become trapped into an escalatory path of ever-increasing commitment.

Another psychological process that contributes to negative attitudes is selective perception. Once parties have expectations about the other side, they tend to notice the behavior that fits these expectations. But this tendency to make observations that fit their preconceptions simply makes those preconceptions stronger. As a result, the actions of distrusted parties are seen as threatening, even when their actions are ambiguous. There is a tendency to misinterpret their behavior, and to give them little benefit of the doubt. This may give rise to fear and defensive escalation. Even when an adversary makes some conciliatory actions, this conduct is likely to go unnoticed, or to be discounted as deceptive. Not surprisingly, selective perceptions often get in the way of effective negotiation and problem-solving processes.

This process of selective perception is further enforced by attributional distortion. Once one party has formed preconceptions about the other, any information that supports this hypothesis will be attributed to the opposing side's basic disposition. Any observations that do not fit their expectations, such as friendly behavior, will be attributed to situational causes or regarded as a fluke. As a result, there is almost nothing that the opponent can do to dispel the party's negative expectations. These negative evaluations allow parties to rationalize their own hostile behavior, which simply intensifies the conflict.

Selective perception is likewise reinforced by self-fulfilling prophecies. One party's negative views about the other may lead that party to behave in hostile ways towards its opponent. This typically evokes a hostile response from the opponent, and in effect prods the opponent to behave in ways that fulfill the party's initial expectations. In this way, parties' worst suspicions of each other lead them to act in ways that confirm their negative views.

8.6 CHANGES IN RELATIONS: INTERACTIBILITY

After conflict has begun, the relations between the adversaries change in certain fundamental ways. In light of the psychological changes discussed above, their interaction becomes contentious, the number of issues in contention expands, and the parties become polarized. The adversaries become increasingly isolated from each other, and their harsh actions tend to reinforce each other's negative stereotypes.

Development of hostile goals increases the divergence of interest among parties. As one side imposes negative sanctions upon another, any harm suffered become new issues of contention. New issues come to the fore as a result of each side's desire to defeat the other. The number of issues in conflict is likely to expand, and deep conflicts over values may surface. Legitimate distrust develops among the adversaries, and what might otherwise be a relatively minor issue takes on great symbolic significance.

In many cases, groups are bifurcated into "us" versus "them," and differences between the "in-group" and the "out-group" are emphasized.

Psychological or physical barriers may be put up to reduce interaction. Group members define themselves by their joint opposition to a common enemy, which increases group solidarity and polarization.

In addition, people have a tendency to stop interacting with those that they do not like or respect. Once communication has been interrupted, it becomes very difficult to resolve the substantive issues that first gave rise to the conflict. This absence of communication may lead to the embellishment or distortion of facts, and damaging rumors may provide more fuel for escalation.

As a result of escalation, formerly neutral or moderate parties are pulled toward one side or the other, and communities become severely polarized. Third parties who would otherwise urge moderation and attempt to mediate the controversy disappear and are forced to take sides. Such polarization further reduces the opportunities for communication and contributes to the general deterioration of the relationship between the adversaries.

Parties may also begin to deindividuate persons from the opposing side. Through deindividuation, persons come to be seen as members of a category or group rather than as individuals. This state of mind makes it easier for parties to take more severe measures against their opponents and to view them as less than fully human. In some cases, parties humiliate their enemies to make them appear less than human, and thus further justify their degradation.

This process of dehumanization makes any moral norms against harming other human beings seem irrelevant. Those excluded from moral norms can be viewed simply as inferior or as evil, perverted, or criminal. Harsh and violent action not only becomes psychologically plausible, but also may seem necessary. There is a disengagement of morals, and restraints against harming or exploiting certain "kinds" of people are reduced. This can lead to severe violence, human rights violations, sometimes even genocide.

Such severe violence and hatred produces negative attitudes and perceptions that tend to persist even after the substantive issues of the conflict are settled. These "residues" then encourage the development of

further conflict and the use of severe tactics when conflict arises again in the future.

Conflict resolution should be easy. Conventional wisdom, enshrined in scholarly analyses (cf.Deutsch, Coleman, & Marcus, 2006), has it thatconflict arises when people feel their respective interests orneeds are incompatible. Defusing a conflict, then, is tanta-mount to eliminating the perceived incompatibility andcreating conditions that foster common goals and values. Aconflict that has become intractable should be especially easy to resolve through such interventions. After all, aconflict with no end in sight serves the interests of very few people, drains both parties' resources, wastes energy, and diminishes human capital in service of a futile endeavour. Even a compromise solution that only partially addresses the salient needs and interests of the parties should be embraced when they realize that such a compromise rep-resents a far better deal than pursuing a self-defeating pattern of behavior that offers them nothing but aversive outcomes with a highly uncertain prospect of goal attainment. Conflict resolution, of course, is at times anything but easy. To be sure, many antagonistic encounters stemming from incompatible interests are short-lived and run their course without causing irreparable damage to either party. But a small portion of relationships that are mired in conflict become protracted affairs, to the point of seeming intractability. Such conflicts can be extremely detrimental and become self-sustaining, displaying marked resistance to intervention even in the face of rational considerations that would seemingly defuse the animosities at work (cf. Azar, 1990; Bennett, 1996;Bercovitch, 2005; Burton, 1987; Coleman, 2003; Goertz & Diehl, 1993; Kriesberg, 2005; Marshall & Gurr, 2005;Pearce & Littlejohn, 1997).This imperviousness to rationality suggests that the problem of intractability says more about psychology than it does about objective reality. An intractable conflict is one that has become entrenched in cognitive, affective, and social-structural mechanisms, a transformation that effectively distances the conflict from the perceived incompatibilities that launched it. This trans-formation can occur in conflicts in marriages, in work settings, between political groups in communities, and between warring nations. As a conflict becomes a primary focus of each party's

thoughts, feelings, and actions, even factors that are irrelevant to the conflict become framed in a way that intensifies or maintains the conflict. It is as though the conflict acts like a gravity well into which the surrounding mental, behavioural, and social-structural landscape begins to slide. Once parties are trapped in such a well, escape requires tremendous will and energy and thus feels impossible.

The Dynamical Perspective

This simplified scenario of intractable conflict, captured in the gravity well metaphor, has clear parallels to a wide variety of phenomena not only in the social sciences but also in the physical sciences. Indeed, recent years have witnessed the advent of a perspective in the physical sciences and mathematics that identifies the dynamic and inertial processes that are common to everything from slime moulds to galaxy formation. This perspective, which underlies dynamical systems theory and models of complexity, emphasizes the inevitable and spontaneous organization of discrete elements into global patterns that, once formed, resist disruption and other sources of change (cf.Holland, 1995; Kelso, 1995; Schuster, 1984; Strogatz,2003). Even a highly volatile phenomenon—whether tornado, a swarm of locusts, or a crowded sidewalk in Manhattan— can be viewed as the coordination of elements and forces into a higher order entity that becomes self-sustaining and orderly. Our aim in this article is to show the relevance of this perspective for illuminating the nature ofintractable conflict and to suggest new strategies for resolving such conflicts that follow from this understanding. Although developed in mathematics and the physical sciences, the principles of dynamical systems and complex-ity have potential application to the fundamentals of human experience. This potential has become increasingly manifest since the 1990s, and the dynamical perspective has emerged as a primary paradigm for the investigation of psychological processes at different levels of personal and social reality. To date, dynamical models have been advanced to explain and predict a wide range of processes, from self-concept and social judgment to the emergence of public opinion and societal transitions (see reviews byGuastello, Koopmans, & Pincus, 2009, and

Vallacher &Nowak, 2007). We feel that the dynamical perspective isideally suited to capture the dynamics of intractable con-flict, and over the past several years we have begun toreframe this topic in dynamical terms (e.g., Coleman, Bui-Wrzosinska, Vallacher, & Nowak, 2006; Coleman, Valla-cher, Nowak, & Bui-Wrzosinska, 2007; Coleman, Valla-cher, Nowak, Bui-Wrzosinska, & Bartoli, in press; Nowak,Vallacher, Bui-Wrzosinska, & Coleman, 2007). Our efforts to date have been largely theoretical, even metaphorical, in an effort to show how conflict intractability can be under-stood in terms of basic dynamical properties. Having laid this conceptual groundwork, we propose that the next steps to use the propositions and tools of the dynamical perspective to explore well-defined issues in concrete contexts involving real human conflicts. The Problem of Intractable Conflict Before we describe the dynamical perspective on intractable conflict, it is important to clarify the scope of the problem with respect to both real-world concerns and theory construction. As the world enters the 21st century, protracted social conflicts represent pressing problems un-demining the security and well-being of societies world-wide. Today, there are over 30 wars and violent conflictsbeing waged around the globe; approximately 40% of intrastate armed conflicts have lasted for 10 years or more, and 25% of wars have lasted for more than 25 years (seehttp://globalsecurity.org/military/world/war and Marshall& Gurr, 2005). The enduring conflicts in Israel–Palestine, Kashmir, Cyprus, Sudan, and the Democratic Republic of Congo are just a few examples. A study of international conflicts between 1945 and 1995 identified 18 cases of intractable interstate relationships that produced 75 militarized and violent conflicts that resisted hundreds of at-tempts at resolution and posed serious threats to regional or international security (Bercovitch, 2005). In these settings, entire generations of youths are socialized into conflict, condition we know to perpetuate destructive conflict. These circumstances often lead to incalculable human suffering, including destruction of vital infrastructure, division of families and communities, and extreme violence, dislocation, and trauma to individuals (Cairns & Darby, 1998;Coleman, 2000). In fact, scholars have linked the events of September 11th, 2001 to the socio-political conditions that fester in hot

zones of intractable conflict (Crocker, Hamp-son, & Aall, 2005). Indeed, enduring conflicts have been linked to one half of the interstate wars since 1816, with 10out of 12 of the most severe international wars emerging from protracted destructive relations (Bennett, 1996). The seeming immunity to resolution has led many scholars to label such conflicts intractable (cf. Coleman, 2003).Despite the widespread and destructive nature of in-tractable conflict, this phenomenon has yet to be conceptualized in an agreed-upon and coherent fashion. The failure to achieve consensus regarding the fundamental processes underlying intractable conflict, and the corresponding failure to generate effective strategies for trans-forming such conflict, is not due to a lack of effort on the part of the scientific and practitioner communities. To the contrary, numerous theories, research initiatives, and intervention strategies have been proposed over the years (cf.http://www.beyondintractability.org; Azar, 1990; Burton,1987; Cairns & Darby, 1998; Coleman, 2003, 2004, 2006;Crocker et al., 2005; Goertz & Diehl, 1993; Kelman, 1999;Kriesberg, 1998, 2005; Kriesberg, Northrup, & Thorson,1989; Lederach, 1997; Pearce & Littlejohn, 1997; Pruitt &Olczak, 1995). To some extent, the problem in framing acoherent theory reflects the inevitable idiosyncrasies ofeach conflict. Common factors and processes have beenidentified, but they represent an embarrassment of richesfor theory construction. The task for theory construction is integrating these diverse factors into an account that is coherent yet allows for prediction and a basis for conflict resolution in specific conflict settings. We propose that adopting the perspective of dynamical systems will promote the emergence of such an ac-count. In particular, we suggest that the proximate causes of intractable conflict (e.g., competition over scarce re-sources, ideological differences, protection of personal or group identity) belie a more fundamental tendency that can be observed in systems throughout nature—the integration of basic elements into a global state that provides coherence and stability for the system. This tendency, which generates and is maintained by a host of dynamic pro-cesses, cannot be reduced to traditional motivational assumptions such as hedonism, self-esteem, or self-interest, whether immediate or long-term. The press for higher order coherence, moreover, is robust with respect to

the idiosyncratic features of specific conflict scenarios and thus provides a framework within which the complex nexus of proximate causes of intractable conflict can be understood and investigated. The central issue for conflict resolution in these cases is not how to resolve the issues in dispute but rather how to transform the system from the coordinated ensemble of dynamics perpetuating the conflict to a different coherent state that allows for benign (or positive) relations between the parties. The Dynamical Perspective on Intractable Conflict: Frequently Asked Questions because many readers are unfamiliar with the dynamical systems perspective, it is useful to clarify the key concepts and general hypotheses associated with this approach to intractable conflict. Accordingly, we have developed a setoff basic questions1concerning intractable conflict for which the dynamical perspective offers fresh insight and testable propositions. Some of these questions represent fundamental features of conflict that have been addressed throughout the years. Others represent seemingly paradoxical features of conflict that are difficult to understand through the lens of canonical models of conflict. All are intended to provide readers with basic concepts and principles of complexity and dynamical systems that are useful for rethinking the nature of intractable conflict and the means by which such conflict can be transformed. Wheaten to add that this account does not dismiss classical accounts that trade on notions such as power, justice, competition over resources, identity, entrapment, and in-group– outgroup relations. To the contrary, these concepts are incorporated into the heart of the dynamical perspective.

8.7 GROUP DYNAMICS

Internal changes that groups undergo during escalation include not only the social-psychological changes discussed above, but also changes at the group or collective level. Dynamics at the individual level are often accentuated by collective discussion and tend to become group norms. Collective goals of defeating the enemy develop, as well as increased group cohesiveness. Once people realize that others share their views and hear new arguments favoring them, their own perceptions are validated and reinforced. Group discussion can in this way cause individual

members to become more extreme in their hostile attitudes. The number of moderates in the group thus begins to diminish as more and more people come to hold extreme views.

The development of group solidarity, or cohesiveness, can likewise contribute to escalation. Many note that groups with little internal diversity tend to escalate conflicts rapidly. This is in part because cohesiveness encourages conformity to group norms and strengthens negative perceptions among group members. With group cohesiveness also comes heightened commitment to the goal and a stronger conviction that is attainable. Individuals typically become more invested in the conflict, and look to other members of the group to justify their violence and reinforce their beliefs. Without a diversity of views, no one questions the advisability of extreme actions. This may also contribute to an effect whereby groups become convinced that glorious victory is assured and attempt to mobilize the community for conflict.

As conflict escalates, new, more militant leadership often develops. Leaders who fear that they will be replaced by challengers will not want to be seen as weak or submissive. As a result, they will often refuse to admit that any past actions were mistaken and are likely to grow in militancy and become more "hardline." Furthermore, conflicts that already involve contentious activity are likely to fall into the hands of militants who have strong negative attitudes and tend to use extreme tactics. In many instances, these leaders seek to ritualize the conflict and exhibit a complete lack of interest in resolution. All of this contributes to conflict escalation.

In addition, new and more militant subgroups sometimes develop, as well as committees or departments to deal with the struggle. Radical spokespersons and extremists emerge, and participation widens to include those who are willing to use more intense means. These newly aroused will tend to form less moderate struggle groups that grow rapidly in size and form goals to defeat their opponent. This social endorsement of aggression can increase the likelihood that severe tactics will be used.

These competitive goals and aggressive actions tend to outlive the reasonable purposes for which they were intended. Norms of contentious interaction develop, and any individuals who challenge these norms tend

to be ostracized by other group members. Those who doubt the legitimacy of certain tactics may stay quiet out of fear of being labeled traitors. Or, any "dissident murmurs" will simply be drowned out by the majority. Leaders are likely to foster such homogeneity by portraying the enemy as a grave threat and instituting policies that build support for the struggle.

Militant subgroups may also endure as a result of vested interests. Group membership and participation in the struggle can give individuals status, wealth and even a sense that life is meaningful. Members may not wish to surrender these benefits, and therefore work hard to ensure that their group lives on. Similarly, leaders who have gained their positions because of their militancy and military men who gained status as generals and admirals have a vested interest in the perpetuation of conflict. Such individuals have incentives to resist conflict resolution and make sure that the war effort continues.

Finally, the involvement of other parties may increase a group's capacity to escalate conflict. Outside parties may see an opportunity to gain some benefit or weaken an old enemy if they join the conflict. In other cases, parties will join a struggle out of obligation to their friends or allies. They may become directly engaged, or simply provide weapons or extra funds. Such aid often enables combatants to escalate their level of fighting. During the Cold War, for example, many local conflicts were exacerbated by the larger conflict between the USSR and the United States. Each superpower would lend support to its favored side and thereby provide more fuel for local conflict.

These changes among individuals, groups, and communities result from prior escalation and contribute to further escalation. Once these transformations have taken place, escalation tends to persist and recur, and there is lasting damage to the relationships between the parties. In order to limit the destructive effects of escalation, parties must find a way to limit or reverse this process. Strategies to limit escalation or de-escalate conflict are needed and are discussed at length in the essays on those topics.

Check Your Progress 2

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

1. How do you know about the Psychological Dynamics?

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2. Discuss the Changes in Relations.

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3. How do you know about the Group Dynamics?

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8.8 LET US SUM UP

The unit, focusing on the macro-level psychological analysis, aims to describe the unique nature of intractable conflicts and delineate their major societal emotional-cognitive-behavioral processes, as well as the evolved socio psychological repertoire that fuels them, and the processes that are involved in resolving them peacefully. This goal is achieved by analyzing the course of intractable conflict and its peaceful resolution via its three main phases: eruption of intractable conflict, its escalation and management, and its de-escalation and movement towards peacemaking. Additionally, the chapter strives to make this analysis within a conceptual framework that focuses on the interrelationship between the context and the collective psychological state of society members.

8.9 KEY WORDS

Conflict Escalation: Conflict escalation is the process by which conflicts grow in severity over time. This may refer to conflicts between individuals or groups in interpersonal relationships, or it may refer to the escalation of hostilities in a political or military context.

Encourage: give support, confidence, or hope to (someone).

Group Dynamics: Group dynamics is a system of behaviors and psychological processes occurring within a social group, or between social groups.

8.10 QUESTIONS FOR REVIEW

1. Describe the necessity of Conflict Escalation?
2. Discuss the Conditions that Encourage Escalation.
3. What are the three important models of peace process?
4. How do you know about the Group Dynamics?

8.11 SUGGESTED READINGS AND REFERENCES

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8.12 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. See Section 8.2
2. See Section 8.3
3. See Section 8.4

Check Your Progress 2

1. See Section 8.5
2. See Section 8.6
3. See Section 8.7

UNIT 9: CONFLICT RESOLUTION (CASES)

STRUCTURE

9.0 OBJECTIVES

After unit 9, we can able to know:

- To know about the Peacekeeping, Peacemaking and Peace Building
- To discuss the Peacekeeping, Peacemaking and Peace Building in Practice
- To know the Adjudication

9.1 INTRODUCTION

The UN's Agenda for Peace can be broadly separated into four groups: preventive Diplomacy, Peacemaking, Peacekeeping and Peacebuilding. Preventive diplomacy tries to put an end to a conflict by getting the concerned parties to resolve the conflict before it become violent. Peacemaking tries to resolve. The conflict diplomatically but after the bout becomes violent. It tries to get the involved parties to cease-fire. Peacekeeping role of the UN comes into play at illis stage to make sure that the ceasefire is honaured. Peacebuilding is the last stage that promotes peace and order by raising social structures, legal systems and sometimes even setting up a new government. The principal focus of this unit is on methods of peaceful settlement of disputes which are not purely diplomatic: peacemaking, peacekeeping, and adjudication. While peacemaking may Involve the traditional or diplomatic modes of settling disputes described in the preceding unit, peacekeeping gces beyond these, though it falls short of military or enforcement provisions in Chapter VII. It is non-aggressive use of military force to help nations in conflict reach a settlement. Other non-diplomatic methods of resolving disputes are the adjudicative methods where a third party is invested with power to decide the dispute. The method by which the decision is reached is not, as in diplomacy, by persuasion, but by determining the question of fact on which the parties are in dt~agreement and reaching a

decision on the dispute by applying the applicable law to the fwts. The unit also bestows attention on the adjudicative functions of the International Court of Justice and other judicial tribunals.

9.2 PEACEKEEPING, PEACEMAKING AND PEACE BUILDING

9.2.1 Peacekeeping: Characteristics

"Peacekeeping" as an operation does not find mention in the UN Charter. It has grown out of the practice of the UN. It has been described fairly accurately in the Blue Helmets: A Review of United Nations Peacekeeping, thus: "As the United Nations practice has been evolved over years, a peacekeeping operation has come to be defined as an operation involving military personnel, but without enforcement powers, undertaken by the United Nations to help maintain or restore international peace and security in areas of conflict. These operations are voluntary and are based on consent and cooperation. While they involve the use of military personnel, they achieve their objective not by force of arms, thus, contrasting them with the 'enforcement action' of the United Nations under Article 42" (UN, 1999). By and large, peacekeeping forces are employed to act as a buffer between two parties which had been at armed conflict, but which have accepted a ceasefire. In some situations, it may be considered that an Observation Mission would satisfy the purpose of observing whether the ceasefire is being kept. In 1947, for example, the Security Council appointed UN Observation Team in Indonesia in connection with the conflict between the butch Colonists who attempted to maintain the old colonial order 'as against Indonesian nationalists.

No member af the Security Council was prepared to support the Dutch colonial order. The Observer Team was to observe and report to the Security Council the observailce of the various ceasefire lines and sporadic fighting. The Security Council considered the reports from the Observers and acted towards Indonesian independence. In 1949, the Security Council appointed the UN Military Observer Group in India and Pakistan (UNMOGIPI to observe whether the ceasefire between India

and Pakistan in Kashmir was being kept, a~id that Group exists even now. The parties agreed to ceasefire and what was needed was observance of the compliance by the parties. Observation Groups were employed in some other cases also. An Observer Group may not consist of more than 100 members. A peacekeeping force. on the other hand, consists of several thousands of lightly armed soldiers. An Observer Group simply observes and reports, but a peacekeeping force should first of all secure a ceasefire, and possibly ensure the withdrawal of the forces to the positions occupied before the adoption of the ceasefire. The model of a peacekeeping force may be found in the UN Emergency Force (UNEF-I) established in 1956-57. Britain, France and Israel were involved in armed conflict with Egypt, following the nationalisation of the Suez Canal by Egypt. The UN General Assembly met in Emergency Special Session acting under thc Uniting for Peace Resolution, called for a ceasefire, and directed the Secretary General deploy a peacekeeping force to secure the observance of the ceasefire. Peacekeeping operations are based upon the following principles: First, the parties to the conflict must agree to ceasefire and withdraw troops to agreed positions, ancl to the presence of the peacekeeping forces on their soil. The UNEF-I was inducted with the express consent of Egypt. When in 1967 President Nasser of Egypt withdrew the consent for stationing the peacekeeping force, Secretary General U Thant ordered the withdrawal of the force. The peacekeeping forces are contributed by willing members of the 'LrN, and in accordance with the agreement reached by the Secretary General and the contributing member. Generally a conflicting party does not agree to emplacement of forces on its soil if the State to which the forces belong has a vested interest in the outcome of the conflict. - Second, the peacekeeping force must act with impartiality and neutrality between the rival parties. If they do not, the State wherein the forces are situated might create difficulties to the functioning of the forces. In 1974, the Security Council established the UN Observer Force (UNDOF) pursuant to the agreement on disengagement between Syria and Israel following the Israeli occupation of Golan Heights. This Israeli occupation has been an: obstacle to permanent peace between Syria and Israel, but the UNDOF has been successful in maintaining calm on the Syria-Israeli

front ever since IL was established, and one of the contributing factors to the success has been the UNDOF's neutrality and implemented. Third, the peacekeeping forces are authorized to use force only self defence. Peace keeping forces are supplied with rifles and transport vehicles. They are not capable of conveying out an enforcement action. If peacekeeping forces are unlike forces that take enforcement action, they are also unlike observer missions, who are not likely to he engaged in self-defense. Peacekeeping forces may have to patrol the buffel bone clr other demilJtariscd zones. Very lightly armed observer groups are incapable in peace keeping.

9.2.2 Peacemaking

Peacemaking is defined in An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping, Report of the Secretary General, as "action to bring hostile parties to agreement essentially through such peaceful means as those foreseen in Chapter VI of the Charter." (International Legal Materials (ILM), 1992, p. 956). But in actual practice, it has gone beyond this. It may include coercive and forceful action, unlike the consensual operation of peacemaking.

9.2.3 Peace Building: Characteristics

In the Agenda for Peace, the Secretary General Boutros Butros-Ghali proposed "peace building" as a way of preventing resumption of civil conflicts by the parties which for the time being have stopped fighting as a result of peacemaking efforts. There is every chance of such resumption, resulting in the whole fabric of the civil society collapsing as a result of an intensified civil war. The objectives of peace building stated by him include "disarming the previously warring parties and restoring order, the custody and possible destruction of weapons, repatriating the refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming and strengthening governmental institutions and promoting formal and informal processes of political participation" (Wedgewood and Jacobson, 2001, p. 1). The objectives of peace building are wide ranging, some of short term and some of long term. Just as

peacemaking may present problems of taking coercive action, peace building is likely to entail using some coercive measures. Therefore, peacemaking may include some peace building as well. In the cases studied below, it will be observed that peacekeeping, peacemaking and peace building have occurred in different combinations and sequence.

9.3 PEACEKEEPING, PEACEMAKING AND PEACE BUILDING IN PRACTICE

After World War I1 no major war has occurred. This may not have been entirely due to the UN presence. It may have been due to nuclear deterrence, mutual assured destruction on a practically unacceptable scale. But there have been minor wars, such as between India and Pakistan, Iran and Iraq, Great Britain and Argentina, Israel and its neighbours, etc. Civil wars and internal conflicts have, however, taken a very heavy toll. According to an estimate, civil wars have scarred the world's poorest countries, leaving more than a million dead, many more driven out of their homes, billions of dollars of resources destroyed and economic opportunities wasted (White, 1997, p. 277). The Security Council had to respond by peacekeeping, peacemaking and peace building operations in reference to such situations. In some cases, the Council was quite successful, in others it was partial success and in some it was failure. In civil war situations peacemaking is difficult. There may be more than two groups at conflict. The lines of conflict may not be clear for there could be guerrilla warfare. For this reason arranging a ceasefire line and maintaining it is difficult. There will now be a study of several situations of civil conflict, besides conflicts of an international character.

9.3.1 The Congo

The Congo attained independence from Belgium in 1960. Before and after independence, the Congo remained a collection of tribes rather than an integrated nation. Belgium intervened in inter-tribal conflicts in the name of humanitarian assistance. President Kasavubu and Prime Minister Lumumba sent a cable to the Secretary General, Dag Harnmerskjold. requesting military assistance to protect their country against "external

aggression which is a threat to international peace." The Secretary General invoked Article 99 of the Charter and asked the President of the Security Council to convene a meeting of the Council. The Council met, barely two weeks after the independence of Congo and passed a resolution calling upon Belgium to withdraw its'forces, and to authorise the Secretary General to provide the necessary military assistance, in consultation with the Government of the Congo, until the Congolese forces could discharge their tasks. The Secretary General initiated the UN operations in the Congo (ONUC). But the situation deteriorated as the internal conflict became intense, and Tshombe, the President of Katanga province of the Congo declared secession, and Belgian troops did not withdraw. Again on the initiative of the Secretary General, another resolution was passed, which recognised the unity of the Congo, called upon the Belgian forces to leave the Congo, and authorised the Secretary General to take all necessary action to this effect. The resolution requested all States to refrain from interference in the Congo, as it might undermine the territorial integrity and political independence of the Congo. . Belgium refused to withdraw its forces from Katanga, and ONUC did not have authority to eater Katanga. The Council again passed a resolution authorising that ONUC to enter Katanga, declaring that ONUC would not be a party to or influence in any way the outcome of the internal conflict. The Council called upon members to carry out its decisions in accordance with Article 25 and 49 of the Charter. The situation further worsened as President Kasavubu and Prime Minister Lumumba dismissed each other from office and the army chief of staff, General Mobutu staged a revolt. At this juncture, the Soviet Union vetoed a resolution proposed by the Secretary General. By this time the Soviet Union's support got crystallised towards Lumumba, and the U.S. support in favour of Kasavubu. The U.S. proposed that the question be transferred to the General Assembly under the Uniting for Peace Resolution. The General Assembly adopted a resolution stating that in order to safeguard international peace it was essential for &e UN to assist the Central Government of the Congo and towards this end requested the Secretary General, Dag Harnmerskjold, to take "vigorous action" to rcstore law and order to preserve the unity, integrity and political

independence of the Congo. It called upon all members not to intervene in the conflict and reminded them of their obligation under Articles 25 and 49 of the Charter. Shortly after this Dag Hammerskjold died in an air crash while travelling in the Congo. The General Assembly could not proceed further as the requisite majority could not be obtained for any resolution. Then the matter was taken back to the Security Council which was able to adopt a resolution which consisted of two parts: The first part characterized the situation as a "threat to international peace and security" and as "serious civil war situation". It called for UN measures to prevent civil war, to make arrangements for ceasefire and to halt all military operations, and to use force, if necessary, as a last resort., It urged the withdrawal of all Belgian troops, advisers and mercenaries. It decided to' investigate into the death of Lumumba also in an air.crash, allegedly because the army closed an airport where he was to land. The resolution noted violation of human rights and fundamental freedoms. It rejected the claim of sovereignty of Katanga, and authorised the Secretary General to take "vigorous action" including the use of force if necessary to expel foreign military personnel not under UN command. Here it may be seen there was an authorization for the UN forces to use force to restore the Central Government's authority in Katanga. But there was no authorisation to impose any political solution to end the conflict. But various measures were authorised to help the 3 parties to reach a political settlement. The use of force to end the secession of Katanga 1 came very close to enforcement action. Eventually a relatively stable State emerged called Zaire. It was an UN peacekeeping operation with fringes of enforcement action. Perhaps it is now apt to call it as peacemaking.

9.3.2 Peacekeeping in Iraq and Kuwait

Peacekeeping combined with power to take limited enforcement action was a feature of the task entrusted to UN Iraq-Kuwait Observation Mission (UNIKOM) established in 1 1991 by the Security Council. In 1990, Iraq invaded Kuwait, and the Security Council acted fist with nod-violent sanctions. When they failed, the Security Council authorised the U.S. led coalition to evict Iraq from Kuwait. After Kuwait was freed, the

Security Council adopted a resolution 1aying.down the conditions for a ceasefire. Iraq accepted the conditions and a formal ceasefire came into effect. UNIKOM was established to monitor the demilitarised zone and in 1993 increased its strength to prevent violations of the demilitarised zone.

9.3.3 Peacekeeping in Cyprus

The UN played in Cyprus a peacekeeping role of a neutral or limited character. In 1963, violence broke out between the Greek and Turkish communities over a constitutional amendment proclaimed by the President Archbishop Makarios of Cyprus. The Security Cooncil adopted a resolution in March 1964, which noted that the situation was likely to threaten international peace and security, and called upon members to refrain from any action likely to worsen the situation or endanger international peace, and asked the Government of Cyprus to take all measures to stop violence, and recommended the creation, with the consent of the Government of Cyprus, a UN Peacekeeping force (UNFICYP). The function of the force is to preserve international peace and security. Between 1964 and 1974, the UNFICYP did not act as a bufier between two fighting forces, but acted only as a police force to maintain and resto law and order. In 1974, there was Greece-backed coup against President Makarios and there was irnmihent lhrkish invasion in response to the Greece led coup. The Secretary General, Kurt Waldheim, and the Cypriot representative requested a meeting of the Security Council. On July 20,1974, the day on which Turkey invaded Cyprus in support of its Moslem population, the Security Council adopted a resolution declaring that there was a serious threat to international peace and security and demanded the end of the foreign military intervention. The implied invocation of Article 39 of the Charter, in the peremptory language used, was taken as a provisional measure under Article 40. The Secretary General suggested in his report that the UNICYP should create a security zone between Turkish forces and Greek Cypriot forces. The I I Security Council requested the Secretary General to implement the report. The Cypriot I case conformed to the consensual peacekeeping

operation, with the difference that the I force acted for some time as a police force, bordering on peacemaking.

9.3.4 Nicaragua

In 1980s, the United States adopted the then President, Ronald Regan's doctrine that the United States should extend support to anti-Communist forces, whether governmental or I non-governmental, anywhere in the world. Pursuant to this policy, the Central Intelligence f Agency (CIA) of the U.S. extended support to the contras in Nicaragua fighting against the government. In 1987, there was a regional peace arrangement, the Guatemala Agreements, I which called for cessation of aid to irregular forces and of the use the territory of one State for attack on other States. By a resolution adopted in November 1989,'the Security Council emplaced in 1990 a military component of the peace effort. There were two groups, the UN Observer Group in Central America (ONUCA) to supervise elections, and a military component of peace effort to supervise the observance of the Guatemalan Agreements. In the elections held in 1990 in Nicaragua, a right wing opposition secured majority. Following this, the contras agreed to be demobilized. The rebel camps in Honduras were disbanded; the contra rebels assembled in, specified places in Nicaragua. The ONUCA, with more military men added, exercised the responsibility to take the delivery of weapons and other military equipment, including the uniforms. The progress of disarmament was difficult, but the commander of the ONUCA and the UN Secretary General expressed satisfaction with the disarmament and demobilization. This operation was in the nature of peacemaking.

9.3.5 Haiti

In 1991, President Aristide, elected President of Haiti in 1990, was deposed by a military coup. The Security Council imposed oil and arms embqrgo, and it caused the military rulers to agree to restore the president to authority. The sanctions were lifted, but the milit& leaders failed to implement their undertaking. In 1994, the Security Council passed a resolution authorising the U.S. to take military action to restore democracy. The threat of military action influenced the military rulers to

step down, and to consent to a UN force to oversee the return to democracy. The sanctions were lifted after democracy was restored. This is an example of peacemaking between the democratic forces and the military opponents.

9.3.6 West Irian

Though the Indonesian independence issue was settled in 1950s, disputes between the Netherlands and Indonesia continaed over some islands in the archipelago. One such island was West Irian. The Indonesians airdropped some men in jungles who got engaged in guerrilla warfare with the Dutch forces. In 1962, the Netherlands and Indonesia agreed that the administration of West Irian be transferred to a UN Temporary Executive Authority (LNTEA) pending the transfer of the territory to Indonesia. A UN Security Force (UNSF) was to observe the ceasefire, after which the transfer should take place. The UNSF sl.iould police the island until transfer. The UN mission successfully achieved its task.

9.3.7 East Timor

Until 1975, East Timor was a Portuguese colony and it was forcibly occupied by Indonesia. Following long drawn out negotiations, both Portugal and Indonesia agreed to ask the UN Secretary General to conduct a popular consultation to find out the whether the people wanted autonomy within Indonesia or independence. A plebecite was held. The result of the direct ballot was rejection of autonomy within Indonesia. Following the announcement of the result, there was intense campaign of violence by the military forces opposed to independence. Many were uprooted from their homes. The Security Council acted under Chapter VII of the Charter to establish a multinational force of about 11000 troops and civilians under Australian command. This UN Mission of Support in East Timor or UNI'MISET was empowered to use all necessary means to restore order and faciliete humanitarian assistance. At the same time, as the civilian and judicial administration had collapsed, the LJN Security Council established the CTN Transitional Administration for East Timor (UNTAET) to administer the territory. Its mandate included building capacity for self-government. The UNTAET

was to act under a special representative of the UN who was empowered to enact new laws and regulations, and to suspend, amend or abolish the existing laws. The UNTAET mission ended with the independence of East Timor in May 2002. The LINTMISET, however, continued its peacekeeping tasks even after East Timor's independence. Thus, the UN handled both peacekeeping and peace building tasks hem.

9.3.8 Cambodia

In 1980, the UN General Assembly passed a resolution on Cambodia (Kampuchea) calling for an international conference on Kampuchea, and laying down the principles to form the basis of discussion at the conference, viz., negotiation with Vietnam for an agreement for withdrawal of Vietnamese forces, observance of human rights, free elections, and noninterference by outsiders. The Security Council in 1990 authorised a massive peacekeeping operation. The UN Transition Authority in Cambodia (UNITAC-1991-1993) oversaw the elections. The Khmer Rouge, an intransigent party.in the civil conflict, accused WTAC of not being neutral, and not ensuring the withdrawal of all Vietnamese forces, and did not give up its arms. The Security Council adopted a resolution asking the Secretary General to study the implications of Khmer Rouge not complying with the conditions for free elections. The Council decided that elections should be held in all areas not under the Khmer Rouge control. Only one-fourth of the Khmer Rouge forces were in cantnot sites for disarming. Despite these conditions elections were held. The presence of significant large groups of Khmer Rouge forces prevented real peace emerging in the country.

9.3.9 Namibia

South West Africa (later came to be called Namibia) was placed under the M&&td &e. of South Africa by the League of Nations. The UN Charter brought all the Territories under its Trusteeship system. But South Africa refused to accept the mMct obligations. In 1966, the UN General Assembly terminated the mandate of South &&ka. The South West African Peoples Organization (SWAPO) formed to fight agaitrst the continued rule by South Africa. In 1969, the Security Council

declared that the cooccupation of South West Africa by South Africa was illegal and accepted a plan m$l hi; the Secretary General for elections under international supervision paving the waysfor independence. The plan could not be implemented as South Africa did not cooperate. In 1988, an accord was reached outside the UN, which linked South African withdrawal from South West Africa with Cuban withdrawal from Angola. The Security Council decided to establish the UN Angola Verification Mission (UNAVEM) to supervise the withdrawal of Cuban forces. The UN operations in South West Africa consisted of peacekeeping between South African forces and the forces of SWAPO, supervising the ceasefire, demobilising illegal forces and holding free and fair elections. The UN operation took a long time and was possible only because of an agreement reached outside the UN. The UN carried out its operations on a consensual basis.

9.3.10 Angola

In Angola the National Union for Total Independence of Angola (UNITA) fought for freedom from Portuguese rule. Another faction was also in the field with the same objective, the Popular Front for the Liberation of Angola (PFPLA). Cuban forces assisted UNITA. The 1988 peace plan, mentioned above in connection with Namibia, linked the withdrawal of the South African forces from South West Africa with the withdrawal of Cuban forces from Angola. The Security Council emplaced 'the UN Angola Verification Mission (UNAVEM-I) to verify the withdrawal of Cuban forces, and to conduct free elections. The elections were held in 1992 and a majority was secured by the PFPLA. The UNITA charged the UNAVEM-11, which supervised the election, that it did not conduct the elections in a free and fair manner and repudiated the result. It resorted to arms and captured many municipalities. In 1995, the Security Council established a larger mission, UNAVEM-111, on a peacekeeping mission, to use good offices to reconcile the factions, to monitor the extension of the administration throughout the State, to effect ceasefire and disengagement of fighting forces, to help demobilization and disarmament of UNITA, to effect the return of government forces to barracks, to supervise the Angolan police

force, and to supervise the Presidential election. The mission was scccessfully achieved.

9.3.11 Rwanda

Trouble started in Rwanda in 1993 when the Patriotic Front (RPF) of the Tutsi tribe started fighting against the Government then controlled by the Hutu tribe. The Security Council emplaced the UN Observer Mission Uganda-Rwanda (UNOMUR) to observe whether the RF'F was receiving aid across the Rwanda-Uganda border. The WF and the Government reached an agreement, the Arusha Accords of 1993, for a comprehensive settlement, first by establishing a transitional government until elections, next integration of armed forces of the two sides, and then holding elections. A neutral international force was to be established to implement the agreement. On the Secretary General's report, the Security Council established the UN Assistance Mission for Rwanda (UNAMIR) to help achieving the peace process. However, on April 6, 1994, in an air crash near Kigali airport the President of Rwanda and the President of Burundi died. On the next day, bairicades were raised in Kigali, the capital of Rwanda, and the extremists of the Hutu started the massacre of the Tutsi people and the moderates among the Hutu who advocated reconciliation. About 200,000 dled in the massacre which was genocide on a large scale. The resulting civil war caused the reducing of the role of UNAMIR to merely that of reqcuing the civilians from the conflict area and rendering humanitarian assistance. The Security Council, instead of increar~ng the strength of UNAMIR to put down the civil war, reduced the strength to play the role of an intermediary to effect reconciliation between the factions and to render humanitarian aid. In May, the Security Council decided to have a new force of 5,500 men to contribute to the security of displaced persons. But, it appeared that such a force would not be available until July. As a temporary measure, France was authorised to deploy its force5 for enforcement action, under Chapter VII of the Charter, to provide security and protection for displaced persons. By August, the RPF gained control over the whole territory. However, a situation arose of massive flow of refugees to neighbouring countries. During the period of the disturbance about half a million'ciied in the

genocide, three million were displaced and two million fled to neighbouring countries. The refugee camps in the neighbouring countries presented the problem of inter-ethnic fighting, By February 1996, nearly 1.5 million people remained in the neighbouring countries. During 1994, the State was reduced to extreme disorderliness: no administration, no functioning economy, no judicial system, no educational system, no water or electricity supply, and no transport. The next two years saw the things slowly returning to normalcy with the assistance of UNAMIR, the U.N. High Commissioner for Refugees, other national agencies, and some non-governmental organisations. The presence of UNAMIR provided a measure of confidence among people. Canada, Britain, United States and France provided in 1996 a force to give humanitarian assistance. On the whole, the UN was unable to take effective enforcement action to stop the civil war; it did some peacemaking and peace building. In November 1994. the Security Council established the International Criminal Tribunal for Rwanda (ICTR), invoking Chapter VII of the UN Charter. Several Hutu extremists who indulged in genocide and committed crimes against humanity were brought before the Tribunal, which was based in Arusha. The ICTR was established on the request of the new Government controlled by WF, which desired that the trials should not appear as vengeance against the Hutu. The trials enforced the principle of accountability and helped to build peace.

9.3.12 Somalia

In 1992 civil conflict broke out in Somalia, and the Security Council found that the civil conflict disturbed the stability and peace in the region and the continuation of it would constitute a threat to international peace and security. The civil war led to starvation of. people on a large scale. An operation to provide humanitarian assistance (UNOSOM) did not provide the intended assistance. The Secretary General outlined three optious before the Security Council: 1) To continue the presence of UNOSOM based upon the principles of peacekeeping. 2) To withdraw the military elements of UNOSOM and allow humanitarian agencies to negotiate with the fighting factions; 3) To use military force countrywide or in some limited areas by UNOSOM, or by a group of States under the

Security Council's authorisation. He informed that the United States was willing to lead such an operation. The Security Council unanimously resolved, basing on Chapter VtI of the ChLmer, authorising- . the Secretary General and the member States cooperating with the United States to use all necessary means to secure an environment congenial to providing humanitarian relief. The Council called upon the fighting parties to cooperate with the force so established. The operation under the U.S. leadership, the Unified Task Force (UNITAF), started with 28,000 men from the U.S. and 17,000 from other countries. It proceeded aggressively to dis- the various factions and extending humanitarian assistance. It did not limit itself to action of self-defence. But in February 1993, the U.S. started reducing its troop wength. This was apparently due to the fact that several U.S. service men were killed and the , growing sentiment in the U.S. was why should Americans get killed for the \ake of a cause in some remote part of,Africa. The Secretary General proposed and the Security Coutlcil approved the creation of a UN force, 28,000 strong, invoking Chapter VI1 of the Charter (UNOSOM-11). This force proceeded aggressively and in the process actually became one of the sides fighting the civil war, directing its action against Somalia National Alliance. In this situation, the Security Council decided in ~aih 1995 to withdraw from Somalia, as the operation was going beyond the principles of peacekeeping. In his final report on UNOSOM 11, the Secretary General stated that there was a need for a careful and creative rethinking about peacemaking, peacekeeping and peace building in the context of the Somalia operation. It was a frustrating experience. It requires to be recognised that each civil war situation presents features unique to it.

9.3.13 Western Sahara

After the cessation of the Spanish rule over Western Sahara, the question arose whether it should becpme part of Morocco, which staked a claim to it, or remain independent. In accordance with the agreement reached at the instance of the UN Secretary Genera1 and the Organisation of African Unity, the UN Mission for Referendum in Western Sahara (MINURSO) was established in 1991 to supervise ceasefire and to

conduct a referendum to decide whether West Sahara should become part of Morocco or remain independent. But the referendum was postponed on a number of occasions due to disagreement on who should be entitled to vote. The MINURSO continues to be in existence now.

9.3.14 Mozambique

In 1992, the fighting between the two political parties in Mozambique caused deaths on large scale and uprooted many people. The UN Operations in Mozambique (ONUMOZ) held elections in 1994 and brought an end to the conflict. The UN Secretary General described the operation in Mozambique as a story of success in peacekeeping, peacemaking and humanitarian and election assistance.

9.3.15 Yugoslavia

The problems faced in Yugoslavia from 1990 to 2000 were varied and traumatic. Yugoslavia before its disintegration consisted of six Republics: Serbia, Slovenia, Croatia, BosniaHerzegovina, Montenegro, and Macedonia, and two autonomous regions, Kosovo and Vojvodina. The population is multi-ethnic. Slovenia had predominantly Slovenes, but there were minorities of Serbs, Croats and Hungarians. Croatia had Serbs who were concentrated in two areas. In Serbia, two-thirds were Serbs, but the autonomous Kosovo and Vojvodina were parts of Serbia and Vojvodina had a Hungarian minority. Kosovo had local Albanians 91 per cent. In Montenegro, besides Montenegrins, there were Moslems and Albanians constituting one-third of the population. Bosnia-Herzegovina had Moslem population of 40 per cent, 32 per cent Serbs, 18 per cent Croats and rest others. In Macedonia, 20 per cent were ~lbanians; 67 per cent Macedonians, and the rest other minorities. Presidential Council headed the Federal Government of Yugoslavia, and the chairmanship of it circulated among presidents of the six republic.

In December 1990, in Slovenia 85 per cent of people voted for independence. About the same time, Croatia declared the supremacy of the Croatian law over the federal law. Negotiations for preserving the federation failed as the Serbs insisted on a tight federation while others desired a loose federal system. In May 1991, the majority of voters in

Croatia opted for independence. At this stage, the U.S., European Community (EC) and the Conference on the Security and Cooperation in Europe (CSCE) supported the territorial integrity of Yugoslavia. In June 1991, both Slovenia and Croatia declared independence. The Central authority (JNA) reacted to this by moving its army in Slovenia with heavy armour and attacked the Sloveniin militia. Slovenian authorities declared that a state of war existed and appealed for international assistance. EC and CSCE attempted to bring about a ceasefire but hostilities started in Croatia also. The Serbs in Slovenia and Croatia joined with JNA, and Serbia increased it military involvement. The EC took the position that that the internal boundaries in Yugoslav federation should not be altered by force, and if done such changes would not be recognised. The EC managed to arrange for a ceasefire, monitored by observers in civilian clothes and carrying no arms, and called for a peace conference at The Hague. The conference laid down the following principles as the basis of settlement: no unilateral change of internal boundaries by force, protection of the rights of all in Yugoslavia, and due note to be taken of the legitimate concerns and aspirations of all. The Security Council met in September 1991 and adopted a resolution stating that the fighting in Yugoslavia and its consequences in neighbouring States constituted a threat to international peace and security, and the resolution noted the efforts of EC and CSCE to secure peace. Thus Chapters VII and VIII of the UN Charter were brought into the picture. The Council appealed to those involved in the conflict to observe ceasefire. It called upon all members of the UN to impose an embargo on weapons and military equipment into Yugoslavia. It requested the Secretary General to use his good offices to have the differences resolved. In the final event, the efforts of EC and CSCE in preserving the integrity of Yugoslavia did not succeed. The Security Council did not find the necessary consent to introducing a peacekeeping force forthcoming. In February 1992, the Security Council endorsed the creation of a peacekeeping force, United Nations Protection Force (UNPROFOR). An advance party of it proceeded in March to the area, but it never became operational. In January 1992, the EC recognised Slovenia and Croatia. This was followed by recognition of Bosnia-

Herzegovina and Macedonia. Serbia claiming as the successor state of the former Yugoslavia objected to the recognition. The EC imposed certain conditions for recognition: The desire to become independent must be demonstrated to be in accordance with the people's will, and the new State should undertake to respect human rights and humanitarian law. Even in December 1991, a Commission of the EC considered that the Republic of Yugoslavia was in a process of dissolution. In April 1992, Serbia and Montenegro affirmed that they would remain as the Federal Republic of Yugoslavia, but' the claim to be the successor of old Yugoslavia was disputed by the EC and United States. In Bosnia-Herzegovina there was an agreement that the three main ethnic groups, Moslems, Croats and Serbs would be maintained as separate constituent groups, function as such in central organs. But it was later repudiated by the Serbs, and there was outbreak of violence on large scale. Serb militia along with JNA units, including air force. gained control over a significant part of the territory. The President of Bosnia-Herzegovina appealed to the EC, CSCE and United Nations for protection against Serbian aggression. I I The Security Council met in April 1992, and demanded that all parties to implement the I ceasefire and facilitate humanitarian assistance. Due to the on-going violence, the refugees i 1 in the neighbouring Croatia reached the figure of 600,000. The Serbs in Bosnia-Herzegovina I made a concerted attempt to create an ethnically pure region of Serbs. The situation in Bosnia-Herzegovina was such that the Security Council met in May 1992, called upon all the parties to stop fighting, defnanded the JNA and Croatian forces to stop interfering in Bosnia-Herzegovina, and appealed to all to create conditions under which humanitarian assistance can be extended where needed. The Security Council met'in April 1993 and adopted a resolution commending the peace plan agreed to by both the parties in Bosnia-Herzegovina as reported by the Secretary E General, called upon both the parties to observe ceasefire, condemned the violation of international humanitarian law, including the practice of "ethnic cleansing", the massive and systematic detention and rape of women. Acting under Chapter VI1 of the Charter, the resolution stated that the measures envisaged in the resolution would come into effect if Bosnian Serbs

renewed attacks or did not comply with the peace plan. I In May 1993, the Security Council, acting under Chapter VII of the Charter, established an international criminal tribunal, the International Criminal Tribunal for Yugoslavia (ICTY) for the trial of war crimes, genocide, and crimes against humanity. The Government of the Netherlands provided facilities at The Hague for the Tribunal to function, and for the undertrials to be kept in custody. There are two views about the wisdom of this measure. The first view is that the leaders of the fighting groups will not permit any agreement to be reached if there is a threat that the leaders will be criminally tried. And so the establishment t of the Tribunal will contribute to the prolongation of the fighting. The second view is that I peace is not possible if those who had committed grave crimes go about free and unscathed. t Doubtless the establishment of the Tribunal will have some deterrent effect and contribute to implementing the principle of accountability of persons for their individual criminal acts. I In 1995, the Dayton, Ohio, peace talks resulted in reaching the General Framework Agreement for Peace (GFA) in Bosnia-Herzegovina. The GFA was the final outcome of several conferences held earlier, The GFA was signed by the representatives of the ~e~iblic of Bosnia-Herzegovina, the Republic of Croatia, and of the Federal Republic of Yugoslavia (represented by the President of Serbia, Slobodan Milosovic). In 1998 crisis arose in Kosovo. It had autonomous status under Yugoslavia in the time of Marshall Tito, but that status was repudiated by President Slobodan Milosevic. The Albanian majority in Kosovo, facing discrimination in all fields, rose in insurrection. The Kosovo Liberation Army (KLA) began to get arms, men and materials from across the Albanian border. The KLA adopted the hit and run tactics. The Serbian response was a large scale attack on ethnic Albanians who left their homes and fled to hills. In October 1998, Serbia agreed to the presence of international observers to guarantee that the state police action would not abuse civilians. In January 1999, the contact groua with Serbia, consisting of the United States. Britain, France, Germany and Russian Federation, convened a negotiation conference in France and presented a framework agreement between Albanians and Yugoslav Government for Kosovian~autonomy. This settlement required

Yugoslavia to withdraw its forces from Kosovo, the KLA to lay down their arms, NATO peacekeeping forces to I enforce the agreement and a three year period to settle the political future. The Yugoslavian Government refused to accept the terms. Then the NATO undertook a seventy-eight day bombing campaign not limited to Kosovo but extending to the whole of the Yugoslavian Federation. The objective was stated to be to avert a humanitarian catastrophe. In June - 1999, the Security Council, acting under Chapter VII of the Charter, required that all military and para-military forces to withdraw from Kosovo, and authorised NATO military deployment, and a U.N. civil administration to develop provisional institutions for democratic, and autonomous self-government, until political settlement and holding of elections. 'I'he regime was of indefinite duration, though provisionally for 12 months. The NATO took the action, without authorisation from the Security Council fearing Rafssian or Cpese veto in the Security Council. The Yugoslav crisis defused in the year 2000, when elections were held in Serbia and Montenegro and Vojislav Kostunica won in the Presidential election defeating Slobodan Milosovic. The attempt by Milosovic to call for second round of elections failed due to popular uprising in Serbia and Montenegro. Kostunica assumed the Presidency of Federal Republic of Yugoslavia (FRY), comprising Serbia and Montenegro. The U.S. lifted the sanctions against FRY. FRY applied for membership of the UN and was admitted. The United States, France, Germany, and Britain established fonnal diplomatic relations with FRY. Peace building in Kosovo was of high dimension. When the UN Mission in Kosovo (UNMIK) arrived, they found that there was utter chaos and anarchy. With the presence of UN Mission and the international force established by the NATO, refugees who fled to Macedonia and Albania started returning. They were nearly half a million, and they started seizingback their former belongings. There was organised crime and smugglkg, and attacks on Serbs and non-Albanians and trafficking in women. Surpassing all the tasks of r.econstruction, there was the need to establish a basic legal framework. The pre-existing law, with necessary corrections made to ensure the protection of human rights, was taken as the starting point. There was also the task of promoting democracy, developing

political and professional organisations, and stsengthening the mass media. Humanitarian assistance had to be extended to those who lacked food and shelter. It was also necessary to build a market-based economy, to promote trade, to issue and facilitate circulation of currency and banking.

9.4 ADJUDICATION

Adjudication, or judicial settlement, is the process by which a dispute is settled by a third party, who is invested with authority or jurisdiction to decide, by determining the facts at dispute between the parties and applying the relevant law, after giving each pay equal opportunity to present their respective cases in accordance with the authoritative rules of procedure. Within the State, the judiciary exercises a sovereign function, and adjudicates disputes between private parties, between private parties and the executive. It may also adjudicate challenges to laws enacted by the legislature testing them on the touchstone of the constitution. The international community is radically different from the State system. There is no centralised executive and States themselves perform the functions of obeying the law and enforcing the law. There is no centralised legislature, and laws come into existence by agreement, by practice followed with the conviction that it is obligatory to follow it. There is only a very rudimentary judicial system. Let us examine the International Court of Justice (ICJ) and other existing judicial tribunals.

9.4.1 The International Court of Justice

After World War I, the League of Nations was established and following it the Permanent Court of International Justice (PCIJ). With the outbreak of the World War 11, the League of Nations became practically defunct. The United Nations was es~ablished after World W~F 11, with the ICJ forming one of its principal organs in place of the PCIJ of the League period. The statute of the EJ was so designed that a continuation is maintained between the PCIJ and the ICJ. 1 The Court consists of 15 Judges elected by the General Assembly and the Se~urity.~., Council, by simple majority, voting separately but simultaneously. Each Judge is electe'i for a term of nine years. Every three years five Judges retire and

their places are filled by election. The qualification to be a Judge is that he should be of high moral character and qualified to be appointed to the highest judicial office in his country. Nominations of candidates for election are not made by Governments but by national groups in the pen&t.net Court of Arbitration, established by First Hague Peace Conferenw, 1899. The ICJ consists of only a Registrar and a list of persons who might be appoifited as arbitrators. Each piuty to the Convention establishing the Court is entitled to nominate four persons. Only States can be parties before the IC3. Under Article 96 of the UN Charter, the General Assembly, the Security Council and any organ of the UN and any Specialised Agency authorised by the General Assembly, may seek the Advisoq Opinion og any legal question arising within the scope of their work. While an Advisory Opiiion is given great respect, it is not binding on anybody. The jurisdiction of the ICJ is based upon the consent of the parties to the dispute, the consent given in one form or another. The consent may be given expressly in respect of any particular dispute. If one party sues and the other does not raise any objection to jurisdiction, the Court gets jurisdiction (by virtue of the principle of forum prorogatum): The consent may be given under the UN Charter, or under any treaty in respect of any particular class of disputes. (Article 36 of the Statute of the ICJ). here is the so-called compulsory jurisdiction under the "Optional Clause". A State may by a Declaration declare that it accepts ips0 facto the Declaration, without 'the necessity of any further agreement, the jurisdiction of the Court, as against any State that siniilarlyaccepts the jurisdiction by Declaration. The Declaration may be unconditiollal or conditional. In order to encourage States to accept the jurisdiction of the Court, if not fully at least partially, it is provided that the Declaration may be with reservations stated in the Declaration. Generally Declarafions made by States are with con6ifions regarding the time when the dispute arises or the category to which the dispute belongs. Reciprocity is an essential condition; thus not only the State that makes a reservation regarding any particular type of disputes may claim the benefit of it but also its opponent before the Court. In other words, unless the dispute is within the scope of the Declbations of both the parties to the dispute the Court cannot have jurisdiction. I The

judgment given by the Court is binding only on the parties and in respect of that particular dispute. l'he Court frequently cites its previous decision and follows, but ths is as a matter of practice and in order to maintain uniformity in the standard of justice, but cot as a matter of legal requirement as in the common law systems derived from English law. European systems of law derived from the civil law system have no such legal requirement. Though the jurisdiction of the Court is limited, it has given judgments on a large number of cases, along with the opinions of dissenting judges. Many of these cases are not the ones in which the parties would have gone to war to settle them. They have indeed given quietus to the controversies involved. Parties rather seem to prefer adjudication in those cases where the Governments concerned do not feel the interests involved to be vital, but would need an authoritative decision to satisfy the domestic public for giving up a claim.

9.4.2 European Community

European Community has developed a special constitutional structure bringing about a certain degree of integration. It has established the Court of European Communities at Luxembourg, which adjudicates disputes arising from the obligations under the Community treaty.

9.4.3 European Conventibn of Human Rights and the European Cotirt of Human

Rights

Under the European Convention of Human Rights and Fundamental Freedoms adopted in Rome, 1950, the European Court of Human Rights was established and it started functioning from 1960. The Convention provided for the establishment of a Commission of Human Rights. Any party to the Convention may complain to the Commission that another party is violating human rights under the Convention. The Commission investigates the facts and , tries to effect a "friendly settlement" between the parties and reports that a settlement has been reached. If no settlement is reached, the Commission makes and submits its report to the Council of Ministers of the parties to the Convention. The Cobncil decides by a vote of two-thirds majority whether a violation has occurred

and what measures should be taken. The parties are bound to act in accordance with the decision of the Council of ministers. The Commission can receive complaints only from Governments, but if a party declares that the Commission is competent to receive complaints from individuals, groups of individuals and non-governmental organisations, and then it can receive complaints fram nongovernmental agencies and individuals as well. The European Court of Human Rights consists of as many judges of different nationalistic\ as there are members of the Council of Europe, established in 1949. Only States and the Commission on Human Rights can be parties before the Court. The jurisdiction of the Court is confined to following types of cases, (a) the cases which the parties submit by special agreement: (b) cases regarding which the parties have made declarations that would accept jurisdiction without special agreement, and (c) cases submitted by the Commission. If the Commission makes a report that it has failed to effect a "friendly settlement" between the disputing parties and submits the report to the Council of Ministers, and within three months from the transmission of the report to the Council of Ministers, submits the case to the Court of Human Rights, the Court decides the disputes Then the Committee of Ministers can only supervise the implementation of the decision. The Court's decision is an alternative to the decision of the Council of Ministers when the Commission reports failure to effect "friendly settlement", and submits the case to the Court within three months of making the report.

9.4.4 Inter-American Court of Human Rights

The American Convention of Human Rights, 1969, which entered into force in 1978, established an American Commission on Human Rights and the Inter-American ,Court of Human Rights. By 1990, ten State parties to the Convention accepted the jurisdiction of the Court, but not the United States. The Court has competence to decide contentious cases and gives advisory opinions on questions referred to it by any State accepting the Court's jurisdiction.

9.4.5 The International Criminal Court

During the 1990s the Security Council, acting under Chapter VII of the UN Charter, established The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). These were modelled after the international criminal tribunals that were established after the World War II, such as the Nuremberg Tribunal. The UN conveyed a diplomatic conference at Rome in 1998 and it adopted the Rome Statute for International Criminal Court. Britain, France, Russian Federation and the United States, besides others took active part in drafting the Statute. However, later the United States refused to become a party to the Statute. The objection of the United States is that the U.S. service men, acting in different parts of the world may be brought under the jurisdiction of the Tribunal. There are two principles underlying the Convention. First, the principle of complementarity, that is, the Court should assume jurisdiction only when the national legal system is unable or unwilling to exercise jurisdiction. Generally, only high official of States commit the offence and the State would be unwilling to exercise criminal jurisdiction over them and other States would not be willing. Second, the Court should deal only with crimes of serious concern to the international community. These crimes are: genocide, war crime crimes against humanity and the crime of aggression. The Statute of the Couit ciet~ned these The Court is based at The Hague with three Jivlblcms. (31 The pre-trial division which is concerned with the gathering of evrdcncc. the arrest of the accused. and the custody of the accused. (b) the Trial Division consisting of the registry, the projecution and the trial judges, and (c) the Appellate Division to give the convicted a chance.

9.4.6 The World Trade Organisation

The General Agreement on Trade and Tariffs (GATT) was converted into the World Trade Organisation (WTO) with some changes. The GA~ had a dispute settlement mechanism and the WTO mechanism was patterned on it. The Agreement establishing the WTO provides that its General Council, consisting of the representatives of all the parties to the

Agreement, has the responsibility to form a Dispute Settlement Body (DSB). The membership of the DSB is the same as that of the General Council, but has separate ples of procedure, staff, and document series. Disputes that arise under the WTO Agreements are submitted to panels constituting in accordance with the Understanding on the Rules and Procedure Governing Settlement of Disputes (DSU): A panel is an ad hoc body constituted for the particular dispute. The Secretariat of the DSB maintains a roster of "well qualified persons", i.e., persons who were involved previously in dispute settlement either as panelists, or counsel, or those who served in trade office, or in GATT secretariat or who have been teaching and writing on international trade law. When the Clause in the Agreement covering the dispute requires consultation, the complaining party must initiate the consultation with the other party and the other party must respond within ten days. All consultations must be completed within thirty days. If consultations do not fructify in a settlement, or the dates prescribed are not kept, a request may be made to the DSB to constitute a panel. The DSB constitutes a panel at its regular meeting or at a meeting called specially for the purpose. The panel must adhere to the prescribed rules of procedure of receiving written statements, oral presentations, and written rebuttals within the prescribed time limits. The panel must prepare a report, containing a descriptive part of the dispute, the undisputed parts of the ' dispute and the rival contentions of the parties. The draft of the report must be sent to the parties for their response. After receiving the response in time, an interim report is prepared and submitted to the parties. After receiving the comments of the parties the Final Report is sent to the DSB. All this process up to the DSB receiving the report must be completed within fourteen to eighteen weeks. The Final Report goes into effect unless the DSB by consensus disapproves the Report. The panel is thus an effective third-party decision maker but a safeguard is provided against possible mistakes. There is the Appellate Body holding office for a period of four years. Continuity is maintained in the Appellate Body by staggering the appointments. An appeal may be made within sixty days of the issuance of the Final Report of the panel. The Appellate Bodycan review only on questions of law. The Appellate Body gives its report to the DSB. If the

report finds that there is no violation of the agreement covering the dispute, the case is over and the losing party cannot resort to any retaliatory action concerning the alleged violation. On the other hand, if the report finds that there has been a violation, .the panel or the Appellate Body will "recommend to the aggrieved party to resort to retaliatory action.

The losing party may inform the DSB that it will comply with the report in a phased manner or within" reasonable period ", subject to the approval of the DSB. The "reasonable period" has the prescribed time limits, which in any case do not exceed fifteen months. If the losing party takes measures to comply with the report of the panel or Appellate Body, the issue will then be whether there was full compliance, and this again will be a dispute the submitted to a panel. The above is a novel system of third-party dispute resolution created to deal trade disputes, especially those concerning restrictions on trade and tariffs.

Check Your Progress 1

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

1. How do you know about the Peacekeeping, Peacemaking and Peace Building?

……

……

……

2. Discuss the Peacekeeping, Peacemaking and Peace Building in Practice.

……

……

……

3. How do you know the Adjudication?

……

……

……

9.5 LET US SUM UP

As we observed; violent conflicts that require UN intervention generally have three phawu. First, there is a ongoing violent conflict between two or more parties when assumes the role of the peacemaker in an effort to end the violence. Once the ce, .L ::re has been established, the second phase begins. Here, the UN takes the role of a peacekeeper to enforce the ceasefire. In the third phase, the UN's takes up peacebuilding efforts which seek to rebuild infrastructure, political institutions and trust in order to prevent future conflict. These phases can overlap. Though peacekeeping generally occurs after peace has been negotiated, however fragile that may be, as we saw in the numerous examples, peacekeeping and peacemaking can go on at the same time. We the principal methods of peacemalung are negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement etc., in actual practice, it may include coercive methods and even violent interventions while some have suggested that judicial settlements can be effectively used for peacemaking, it should be noted that the international judicial system is still rudimentary. The jurisdiction of the ICJ is limited to States and that too to States which have consented to accept, in one form of the other, the jurisdiction of the Court. Moreover, there is no mechanism for the enforcement of the decisions of the ICJ. There are other judicial bodies such as the European Court of Human Rights, WTO etc. but their jurisdiction is limited.

9.6 KEY WORDS

Peace keeping: Peacekeeping comprises activities intended to create conditions that favour lasting peace. Research generally finds that peacekeeping reduces civilian and battlefield deaths and reduces the risk of renewed warfare.

Peacemaking: Peacemaking is practical conflict transformation focused upon establishing equitable power relationships robust enough to forestall future conflict, often including the establishment of means of agreeing.

9.7 QUESTIONS FOR REVIEW

1. How do you know about the Peacekeeping, Peacemaking and Peace Building?
2. Discuss the Peacekeeping, Peacemaking in practice.
3. Discuss the Peace Building in Practice.
4. Discuss the importance of Adjudication?

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9.9 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. See Section 9.2
2. See Section 9.3
3. See Section 9.4

UNIT 10 : STRATEGIES OF PEACE-DIPLOMACY; INTERNATIONAL LAW

STRUCTURE

10.0 OBJECTIVES

After this unit, we can able to know:

- To know the Strategies of Peace
- To discuss the Diplomacy
- To know International Law
- What is the Role of Law in Society?
- How is Law made?
- What are the Sources of Law?

10.1 INTRODUCTION

First described by peace researcher, Johan Gultung, in 1982, these three major approaches to peace outlined below are now well known. The three strategies for peace are not meant to function separately or in a particular order. Strategies can be applied proactively, to prevent violence occurring or reactively to reduce the likelihood of violence

reoccurring. Each strategy on its own cannot really be effective in creating peace without the application of the other strategies.

Peacekeeping

Peacekeeping is often the most urgent and immediate of all peace strategies as the primary aim is to intervene in actual violence and prevent further violence occurring. Peacekeeping strategies deal directly with the actors involved with violence. Peacekeeping approaches are often 'dissociative' – aimed at keeping opponents apart from each other by the use of direct interposition, 'buffer zones', or 'peace zones' but can also include monitoring and observation and protective accompaniment of threatened activists. Establishing a level of physical safety is the primary goal. Often peacekeeping will aim to create the pre-conditions necessary to allow peacemaking or peacebuilding work to occur or continue.

Johan Galtung warns that peacekeeping can be effective when used in situations of 'horizontal violence' (between parties of relatively equal power) but can serve to maintain the status quo when used in situations of 'vertical violence'. Approaches such as protective accompaniment or observer teams may be more suitable when violence is between parties of unequal power.

Peacemaking

Peacemaking is primarily concerned with the search for a negotiated settlement between the parties. Peacemaking activities include bringing the parties together in dialogue about a possible resolution to the conflict. Typical peacemaking activities include mediation, conflict resolution workshops and dialog meetings at various levels. There are a wide variety of negotiated, third-party or facilitated

approaches. The application of the law would be seen as a peacemaking approach. Focus is on the parties interests and positions in a conflict and the aim is to shift parties onto the path of positive and nonviolent conflict resolution.

Peacebuilding

Peacebuilding is seen as a strategy aimed at changing the underlying conditions which allowed or caused the conflict or violence to occur in the first place. It focuses on longer-term change at the attitudinal –social level and changing the structural cause of the violence. Peacebuilding generally has a long-term perspective and includes a huge range of activities and approaches aimed at reducing fear, prejudice and mistrust, humanizing former opponents and building positive relationships. This is often done via mutual social, sport or cultural activities or working on shared concerns. Peacebuilding works to develop a 'peace–culture' where nonviolent methods of dealing with conflict are well socialised and prominent. Psycho/social healing processes such as debriefing, ongoing emotional support for traumatized people, reconciliation processes and ensuring justice is seen to be done is crucial peacebuilding activities after periods of violence.

On a social/economic level, peacebuilding works towards the meeting of basic needs by establishing just and equitable economic and political systems.

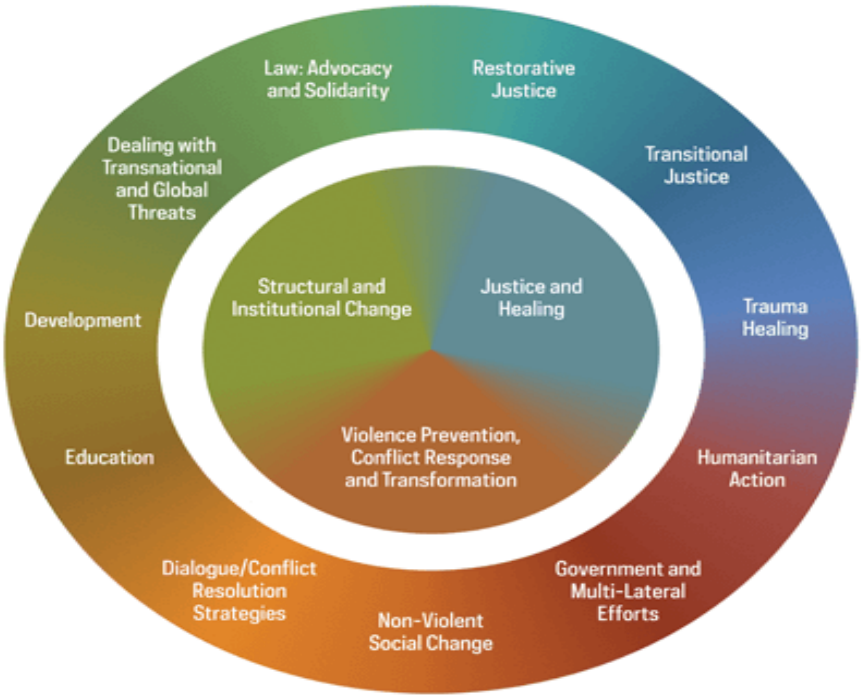
10.2 STRATEGIES OF PEACE

Peacebuilding is the development of constructive personal, group, and political relationships across ethnic, religious, class, national, and racial boundaries. It aims to resolve injustice in nonviolent ways and to transform the structural conditions that generate deadly conflict. Peacebuilding can include conflict prevention; conflict management; conflict resolution and transformation, and post-conflict reconciliation.

Peacebuilding becomes strategic when it works over the long run and at all levels of society to establish and sustain relationships among people locally and globally. Strategic peacebuilding connects people and groups "on the ground" (community and religious groups, grassroots organizations, etc.) with policymakers and powerbrokers (governments, the United Nations, corporations, banks, etc.) It aims not only to resolve conflicts, but to build societies, institutions, policies, and relationships that are better able to sustain peace and justice.

Strategic peacebuilders address issues of human rights, economic prosperity, and environmental sustainability as well as violence. Research on stragtegic peacebuilding »

Strategic peacebuilding stretches across generations. While it engages immediate crises, strategic peacebuilding recognizes that peacemaking is a long-term vocation that requires the building of cross-group networks and alliances that will survive intermittent conflicts and create a platform for sustainable human development and security.



This unit comprises a discussion among a wide range of expert scholars and practitioners on what defines and distinguishes the concept of strategic peacebuilding. The authors respond reflexively to the failures of peacebuilding and constructively press forward an emergent paradigm shift that questions the assumptions of a state-centric and liberal approach to peace. Strategic peacebuilding, they argue, is an intentional approach to the complexity of post-conflict environments that recognizes the interdependence of sectors, actors, and policies and develops strategies to maximize the impact of initiatives through strengthening these linkages. The volume first builds a theory of strategic peacebuilding, distinguishing it from past efforts and exploring the myriad ways strategic approaches can make peacebuilding more

effective. It then explores the role of international institutions, particularly the International Criminal Court and United Nations, highlighting ways forward for building more sustainable and locally informed peace. Importantly, this volume reflects the multiplicity of actors and practices involved in strategic peacebuilding, focusing on the roles of civil society, educational institutions, and cultural and religious leaders in promoting justice and reconciliation. Employing a diverse array of methods, disciplines, and practices, the authors of this volume demonstrate that a strategic approach to peacebuilding is imperative for achieving an inclusive, locally informed and self-sustaining justpeace.

10.3 DIPLOMACY

Diplomacy, the established method of influencing the decisions and behaviour of foreign governments and peoples through dialogue, negotiation, and other measures short of war or violence. Modern diplomatic practices are a product of the post-Renaissance European state system. Historically, diplomacy meant the conduct of official (usually bilateral) relations between sovereign states. By the 20th century, however, the diplomatic practices pioneered in Europe had been adopted throughout the world, and diplomacy had expanded to cover summit meetings and other international conferences, parliamentary diplomacy, the international activities of supranational and subnational entities, unofficial diplomacy by nongovernmental elements, and the work of international civil servants.

The term diplomacy is derived via French from the ancient Greek diplōma, composed of diplo, meaning “folded in two,” and the suffix -ma, meaning “an object.” The folded document conferred a privilege—often a permit to travel—on the bearer, and the term came to denote documents through which princes granted such favours. Later it applied to all solemn documents issued by chancelleries, especially those containing agreements between sovereigns. Diplomacy later became identified with international relations, and the direct tie to documents lapsed (except in diplomatics, which is the science of authenticating old official documents). In the 18th century the French term diplomate

("diplomat" or "diplomatist") came to refer to a person authorized to negotiate on behalf of a state.

This article discusses the nature of diplomacy, its history, and the ways in which modern diplomacy is conducted, including the selection and training of diplomats and the organization of diplomatic bodies. For a discussion of the legal rules governing diplomatic negotiation and the preparation of treaties and other agreements, see international law. One venue for diplomacy, the United Nations (UN), is considered in detail under that title.

00:00

02:17

Nature And Purpose

Diplomacy is often confused with foreign policy, but the terms are not synonymous. Diplomacy is the chief, but not the only, instrument of foreign policy, which is set by political leaders, though diplomats (in addition to military and intelligence officers) may advise them. Foreign policy establishes goals, prescribes strategies, and sets the broad tactics to be used in their accomplishment. It may employ secret agents, subversion, war, or other forms of violence as well as diplomacy to achieve its objectives. Diplomacy is the principal substitute for the use of force or underhanded means in statecraft; it is how comprehensive national power is applied to the peaceful adjustment of differences between states. It may be coercive (i.e., backed by the threat to apply punitive measures or to use force) but is overtly nonviolent. Its primary tools are international dialogue and negotiation, primarily conducted by accredited envoys (a term derived from the French envoyé, meaning "one who is sent") and other political leaders. Unlike foreign policy, which generally is enunciated publicly, most diplomacy is conducted in confidence, though both the fact that it is in progress and its results are almost always made public in contemporary international relations.

The purpose of foreign policy is to further a state's interests, which are derived from geography, history, economics, and the distribution of international power. Safeguarding national independence, security, and integrity—territorial, political, economic, and moral—is viewed as a country's primary obligation, followed by preserving a wide freedom of action for the state. The political leaders, traditionally of sovereign states, who devise foreign policy pursue what they perceive to be the national interest, adjusting national policies to changes in external conditions and technology. Primary responsibility for supervising the execution of policy may lie with the head of state or government, a cabinet or a nominally nongovernmental collective leadership, the staff of the country's leader, or a minister who presides over the foreign ministry, directs policy execution, supervises the ministry's officials, and instructs the country's diplomats abroad.

The purpose of diplomacy is to strengthen the state, nation, or organization it serves in relation to others by advancing the interests in its charge. To this end, diplomatic activity endeavours to maximize a group's advantages without the risk and expense of using force and preferably without causing resentment. It habitually, but not invariably, strives to preserve peace; diplomacy is strongly inclined toward negotiation to achieve agreements and resolve issues between states. Even in times of peace, diplomacy may involve coercive threats of economic or other punitive measures or demonstrations of the capability to impose unilateral solutions to disputes by the application of military power. However, diplomacy normally seeks to develop goodwill toward the state it represents, nurturing relations with foreign states and peoples that will ensure their cooperation or—failing that—their neutrality.

When diplomacy fails, war may ensue; however, diplomacy is useful even during war. It conducts the passages from protest to menace, dialogue to negotiation, ultimatum to reprisal, and war to peace and reconciliation with other states. Diplomacy builds and tends the coalitions that deter or make war. It disrupts the alliances of enemies and sustains the passivity of potentially hostile powers. It contrives war's termination, and it forms, strengthens, and sustains the peace that follows conflict. Over the long term, diplomacy strives to build an international

order conducive to the nonviolent resolution of disputes and expanded cooperation between states.

Diplomats are the primary—but far from the only—practitioners of diplomacy. They are specialists in carrying messages and negotiating adjustments in relations and the resolution of quarrels between states and peoples. Their weapons are words, backed by the power of the state or organization they represent. Diplomats help leaders to understand the attitudes and actions of foreigners and to develop strategies and tactics that will shape the behaviour of foreigners, especially foreign governments. The wise use of diplomats is a key to successful foreign policy.

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Diplomacy

KEY PEOPLE

Thomas Jefferson

Benjamin Franklin

Otto von Bismarck

Niccolò Machiavelli

John Quincy Adams

John Adams

Peter Paul Rubens

Klemens von Metternich

Saint John XXIII

Charles-Maurice de Talleyrand, prince de Bénévent

RELATED TOPICS

International relations

Diplomatic immunity

Extraterritoriality

Public diplomacy

Foreign service

Mediation

Ambassador

Legate

Chargé d'affaires

Doyen

History Of Diplomacy

The ancient world

The view in late medieval Europe that the first diplomats were angels, or messengers from heaven to earth, is perhaps fanciful, but some elements of diplomacy predate recorded history. Early societies had some attributes of states, and the first international law arose from intertribal relations. Tribes negotiated marriages and regulations on trade and hunting. Messengers and envoys were accredited, sacred, and inviolable; they usually carried some emblem, such as a message stick, and were received with elaborate ceremonies. Women often were used as envoys because of their perceived mysterious sanctity and their use of "sexual wiles"; it is believed that women regularly were entrusted with the vitally important task of negotiating peace in primitive cultures.

Information regarding the diplomacy of early peoples is based on sparse evidence. There are traces of Egyptian diplomacy dating to the 14th century BCE, but none has been found in western Africa before the 9th century CE. The inscriptions on the walls of abandoned Mayan cities indicate that exchanges of envoys were frequent, though almost nothing is known of the substance or style of Mayan and other pre-Columbian Central American diplomacy. In South America the dispatch of envoys by the expanding Inca empire appears to have been a prelude to conquest rather than an exercise in bargaining between sovereigns.

The greatest knowledge of early diplomacy comes from the Middle East, the Mediterranean, China, and India. Records of treaties between Mesopotamian city-states date from about 2850 BCE. Thereafter, Akkadian (Babylonian) became the first diplomatic language, serving as the international tongue of the Middle East until it was replaced by Aramaic. A diplomatic correspondence from the 14th century BCE existed between the Egyptian court and a Hittite king on cuneiform tablets in Akkadian—the language of neither. The oldest treaties of which full texts survive, from about 1280 BCE, were between Ramses II of Egypt and Hittite leaders. There is significant evidence of Assyrian

diplomacy in the 7th century and, chiefly in the Bible, of the relations of Jewish tribes with each other and other peoples.

Ramses II

Ramses II

A larger-than-life Ramses II towering over his prisoners and clutching them by the hair. Limestone bas-relief from Memphis, Egypt, 1290–24 BCE; in the Egyptian Museum, Cairo.

Egyptian Museum, Cairo; photograph, O. Louis Mazzatenta/National Geographic Image Collection

China

The first records of Chinese and Indian diplomacy date from the 1st millennium BCE. By the 8th century BCE the Chinese had leagues, missions, and an organized system of polite discourse between their many "warring states," including resident envoys who served as hostages to the good behaviour of those who sent them. The sophistication of this tradition, which emphasized the practical virtues of ethical behaviour in relations between states (no doubt in reaction to actual amorality), is well documented in the Chinese classics. Its essence is perhaps best captured by the advice of Zhuangzi to "diplomats" at the beginning of the 3rd century BCE. He advised them that

Zhuangzi, detail, ink on silk; in the National Palace Museum, Taipei, Taiwan.

Courtesy of the National Palace Museum, Taiwan, Republic of China

if relations between states are close, they may establish mutual trust through daily interaction; but if relations are distant, mutual confidence can only be established by exchanges of messages. Messages must be conveyed by messengers [diplomats]. Their contents may be either pleasing to both sides or likely to engender anger between them. Faithfully conveying such messages is the most difficult task under the heavens, for if the words are such as to evoke a positive response on both sides, there will be the temptation to exaggerate them with flattery and, if they are unpleasant, there will be a tendency to make them even more

biting. In either case, the truth will be lost. If truth is lost, mutual trust will also be lost. If mutual trust is lost, the messenger himself may be imperiled. Therefore, I say to you that it is a wise rule: "always to speak the truth and never to embellish it. In this way, you will avoid much harm to yourselves."

This tradition of equal diplomatic dealings between contending states within China was ended by the country's unification under the Qin emperor in 221 BCE and the consolidation of unity under the Han dynasty in 206 BCE. Under the Han and succeeding dynasties, China emerged as the largest, most populous, technologically most-advanced, and best-governed society in the world. The arguments of earlier Chinese philosophers, such as Mencius, prevailed; the best way for a state to exercise influence abroad, they had said, was to develop a moral society worthy of emulation by admiring foreigners and to wait confidently for them to come to China to learn.

Once each succeeding Chinese dynasty had consolidated its rule at home and established its borders with the non-Chinese world, its foreign relations with the outside world were typically limited to the defense of China's borders against foreign attacks or incursions, the reception of emissaries from neighbouring states seeking to ingratiate themselves and to trade with the Chinese state, and the control of foreign merchants in specific ports designated for foreign trade. With rare exceptions (e.g., official missions to study and collect Buddhist scriptures in India in the 5th and 7th centuries and the famous voyages of discovery of the Ming admiral Zheng He in the early 15th century), Chinese leaders and diplomats waited at home for foreigners to pay their respects rather than venturing abroad themselves. This "tributary system" lasted until European colonialism overwhelmed it and introduced to Asia the European concepts of sovereignty, suzerainty, spheres of influence, and other diplomatic norms, traditions, and practices.

India

Ancient India was home to an equally sophisticated but very different diplomatic tradition. This tradition was systematized and described in the Artha-shastra (one of the oldest books in secular Sanskrit literature) by Kautilya, a clever and reputedly unscrupulous scholar-statesman who helped the young Chandragupta to overthrow Macedonian rule in northern India and to establish the Mauryan dynasty at the end of the 4th century BCE. The ruthlessly realistic state system codified in the Artha-shastra insisted that foreign relations be determined by self-interest rather than by ethical considerations. It graded state power with respect to five factors and emphasized espionage, diplomatic maneuver, and contention by 12 categories of states within a complex geopolitical matrix. It also posited four expedients of statecraft (conciliation, seduction, subversion, and coercion) and six forms of state policy (peace, war, nonalignment, alliances, shows of force, and double-dealing). To execute policies derived from these strategic geometries, ancient India fielded three categories of diplomats (plenipotentiaries, envoys entrusted with a single issue or mission, and royal messengers); a type of consular agent (similar to the Greek proxenos), who was charged with managing commercial relations and transactions; and two kinds of spies (those charged with the collection of intelligence and those entrusted with subversion and other forms of covert action).

Kautilya

Statue of the Indian statesman and philosopher Kautilya, Nagpur, Maharashtra, India.

Vence1234

Detailed rules regulated diplomatic immunities and privileges, the inauguration and termination of diplomatic missions, and the selection and duties of envoys. Thus, Kautilya describes the “duties of an envoy” as “sending information to his king, ensuring maintenance of the terms of a treaty, upholding his king’s honour, acquiring allies, instigating dissension among the friends of his enemy, conveying secret agents and troops [into enemy territory], suborning the kinsmen of the enemy to his own king’s side, acquiring clandestinely gems and other valuable material for his own king, ascertaining secret information and showing

valour in liberating hostages [held by the enemy].” He further stipulates that no envoys should ever be harmed, and, even if they deliver an “unpleasant” message, they should not be detained.

The region within which this system operated was separated from its neighbours by deserts, seas, and the Himalayas. India had very little political connection to the affairs of other regions of the world until Alexander the Great conquered its northern regions in 326 BCE. The subsequent establishment of the native Mauryan empire ushered in a new era in Indian diplomatic history that was marked by efforts to extend both Indian religious doctrines (i.e., Buddhism) and political influence beyond South Asia. The Mauryan emperor Ashoka was particularly active, receiving several emissaries from the Macedonian-ruled kingdoms and dispatching numerous Brahman-led missions of his own to West, Central, and Southeast Asia. Such contacts continued for centuries until the ascendancy of the Rajput kingdoms (8th to 13th century CE) again isolated northern India from the rest of the world. Outside the Chola dynasty and other Dravidian kingdoms of South India, which continued diplomatic and cultural exchanges with Southeast Asia and China and preserved the text and memories of the Artha-shastra, India’s distinctive mode of diplomatic reasoning and early traditions were forgotten and replaced by those of its Muslim and British conquerors.

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SIMILAR TOPICS

Intelligence

War

Arms control

Arms race

Multilateralism

Liberal internationalism

War on terrorism

Humanitarian intervention

Epistemic community

Confidence-building measure

Greece

The tradition that ultimately inspired the birth of modern diplomacy in post-Renaissance Europe and that led to the present world system of international relations began in ancient Greece. The earliest evidence of Greek diplomacy can be found in its literature, notably in Homer's Iliad and Odyssey. Otherwise, the first traces of interstate relations concern the Olympic Games of 776 BCE. In the 6th century BCE the amphictyonic leagues maintained interstate assemblies with extraterritorial rights and permanent secretariats. Sparta was actively forming alliances in the mid-6th century BCE, and by 500 BCE it had created the Peloponnesian League. In the 5th century BCE, Athens led the Delian League during the Greco-Persian Wars.

Encyclopædia Britannica: first edition, map of Europe

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history of Europe: Diplomacy in the age of the Reformation

This was a golden era for diplomats and international lawyers. To the network of alliances that became established throughout Europe during…

Greek diplomacy took many forms. Heralds, references to whom can be found in prehistory, were the first diplomats and were protected by the gods with an immunity that other envoys lacked. Their protector was Hermes, the messenger of the gods, who became associated with all diplomacy. The herald of Zeus, Hermes was noted for persuasiveness and eloquence but also for knavery, shiftiness, and dishonesty, imparting to diplomacy a reputation that its practitioners still try to live down.

Hermes

Hermes bearing a caduceus, Roman copy, c. 1st century CE, of a Greek sculpture, c. 350 BCE; in the British Museum.

Courtesy of the trustees of the British Museum

Because heralds were inviolable, they were the favoured channels of contact in wartime. They preceded envoys to arrange for safe passage. Whereas heralds traveled alone, envoys journeyed in small groups, to ensure each other's loyalty. They usually were at least 50 years old and

were politically prominent figures. Because they were expected to sway foreign assemblies, envoys were chosen for their oratorical skills. Although such missions were frequent, Greek diplomacy was episodic rather than continuous. Unlike modern ambassadors, heralds and envoys were short-term visitors in the city-states whose policies they sought to influence.

In marked contrast to diplomatic relations, commercial and other apolitical relations between city-states were conducted on a continuous basis. Greek consular agents, or proxeni, were citizens of the city in which they resided, not of the city-state that employed them. Like envoys, they had a secondary task of gathering information, but their primary responsibility was trade. Although proxeni initially represented one Greek city-state in another, eventually they became far-flung; in his famed work History, Herodotus indicates that there were Greek consuls in Egypt in about 550 BCE.

The Greeks developed archives, a diplomatic vocabulary, principles of international conduct that anticipated international law, and many other elements of modern diplomacy. Their envoys and entourages enjoyed diplomatic immunity for their official correspondence and personal property. Truces, neutrality, commercial conventions, conferences, treaties, and alliances were common. In one 25-year period of the 4th century BCE, for example, there were eight Greco-Persian congresses, where even the smallest states had the right to be heard.

Rome

Rome inherited what the Greeks devised and adapted it to the task of imperial administration. As Rome expanded, it often negotiated with representatives of conquered areas, to which it granted partial self-government by way of a treaty. Treaties were made with other states under Greek international law. During the Roman Republic the Senate conducted foreign policy, though a department for foreign affairs was established. Later, under the Empire, the emperor was the ultimate decision maker in foreign affairs. Envoys were received with ceremony and magnificence, and they and their aides were granted immunity.

Roman envoys were sent abroad with written instructions from their government. Sometimes a messenger, or nuntius, was sent, usually to towns. For larger responsibilities a legatio (embassy) of 10 or 12 legati (ambassadors) was organized under a president. The legati, who were leading citizens chosen for their skill at oratory, were inviolable. Rome also created sophisticated archives, which were staffed by trained archivists. Paleographic techniques were developed to decipher and authenticate ancient documents. Other archivists specialized in diplomatic precedents and procedures, which became formalized. For centuries these archive-based activities were the major preoccupation of diplomacy in and around the Roman Empire.

Advertisement

Roman law, which stressed the sanctity of contracts, became the basis of treaties. Late in the Republican era, the laws applied by the Romans to foreigners and to foreign envoys were merged with the Greek concept of natural law, an ideal code applying to all people, to create a "law of nations." The sanctity of treaties and the law of nations were absorbed by the Roman Catholic Church and preserved in the centuries after the Western Roman Empire collapsed, and a foundation was thus provided for the more-sophisticated doctrines of international law that began to emerge along with the European nation-state a millennium later.

The middle Ages

When the Western Empire disintegrated in the 5th century CE, most of its diplomatic traditions disappeared. However, even as monarchs negotiated directly with nearby rulers or at a distance through envoys from the 5th through the 9th century, the papacy continued to use legati. Both forms of diplomacy intensified in the next three centuries. Moreover, the eastern half of the Roman Empire continued for nearly 1,000 years as the Byzantine Empire. Its court at Constantinople, to which the papacy sent envoys from the mid-5th century, had a department of foreign affairs and a bureau to deal with foreign envoys. Aiming to awe and intimidate foreign envoys, Byzantium's rulers

marked the arrival of diplomats with spectacular ceremonies calculated to suggest greater power than the empire actually possessed.

Islam

Inspired by their religious faith, followers of Islam in Arabia conquered significant territory beginning in the 7th century, first by taking Byzantium's southern and North African provinces and then by uniting Arabs, Persians, and ultimately Turks and other Central Asian peoples in centuries of occasionally bloody conflict with the Christian Byzantines. The community of Islam aspired to a single human society in which secular institutions such as the state would have no significant role. In such a society there would be political interaction but no requirement for diplomatic missions between one independent ruler and another. Theoretically, since non-Muslim states eventually would accept the message of Islam, the need for diplomatic exchanges between them and the Islamic community also would be purely temporary. In practice, however, diplomatic missions, both to other Muslim states and to non-Muslim states, existed from the time of Muhammad, and early Islamic rulers and jurists developed an elaborate set of protections and rules to facilitate the exchange of emissaries. As Muslims came to dominate vast territories in Africa, Asia, and Europe, the experience of contention with Byzantium shaped Islamic diplomatic tradition along Byzantine lines.

Byzantium

Byzantium produced the first professional diplomats. They were issued written instructions and were enjoined to be polite, to entertain as lavishly as funds permitted, and to sell Byzantine wares to lower their costs and encourage trade. From the 12th century their role as gatherers of information about conditions in their host states became increasingly vital to the survival of the Byzantine state. As its strength waned, timely intelligence from Byzantine diplomats enabled the emperors to play foreign nations off against each other. Byzantium's use of diplomats as licensed spies and its employment of the information they gathered to devise skillful and subtle policies to compensate for a lack of real power inspired neighbouring peoples (e.g., Arabs, Persians, and Turks) as well

as others farther away in Rome and the Italian city-states. After the Byzantine Empire's collapse, major elements of its diplomatic tradition lived on in the Ottoman Empire and in Renaissance Italy.

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Diplomacy of the Roman Catholic Church

As Byzantium crumbled, the West revived. Indeed, even in its period of greatest weakness, the Roman Catholic Church conducted an active diplomacy, especially at Constantinople and in its 13th-century struggle against the Holy Roman emperors. Popes served as arbiters, and papal legates served as peacemakers. The prestige of the church was such that, at every court, papal emissaries took precedence over secular envoys, a tradition that continues in countries where Roman Catholicism is the official religion. The Roman emphasis on the sanctity of legates became part of canon law, and church lawyers developed increasingly elaborate rules governing the status, privileges, and conduct of papal envoys, rules that were adapted later for secular use. Still later, rules devised for late medieval church councils provided guidelines for modern international conferences.

From the 6th century, both legates and (lesser-ranking) nuncii (messengers) carried letters of credence to assure the rulers to whom they were accredited of the extent of their authority as agents of the pope, a practice later adopted for lay envoys. A nuncius (English: nuncio) was a messenger who represented and acted legally for the pope; nuncii could negotiate draft agreements but could not commit the pope without referral. In time, the terms legate and nuncius came to be used for the diplomatic representatives of secular rulers as well as the pope. By the 12th century the secular use of nuncii as diplomatic agents was commonplace.

When diplomacy was confined to nearby states and meetings of rulers were easily arranged, a visiting messenger such as the nuncius sufficed. However, as trade revived, negotiations at a distance became increasingly common. Envoys no longer could refer the details of negotiations to their masters on a timely basis. They therefore needed the discretionary authority to decide matters on their own. To meet this need,

in the 12th century the concept of a procurator with plena potens (full powers) was revived from Roman civil law. This plenipotentiary could negotiate and conclude an agreement, but, unlike a nuncius, he could not represent his principal ceremonially. As a result, one emissary was often given both offices.

Venice

At the end of the 12th century, the term ambassador appeared, initially in Italy. Derived from the medieval Latin ambactiare, meaning "to go on a mission," the term was used to describe various envoys, some of whom were not agents of sovereigns. Common in both Italy and France in the 13th century, it first appeared in English in 1374 in Troilus and Criseyde by Geoffrey Chaucer. By the late 15th century, the envoys of secular rulers were commonly called ambassadors, though the papacy continued to send legates and nuncii. Each ambassador carried a letter of credence, though he could not commit his principal unless granted plenipotentiary authority.

The Crusades and the revival of trade increased Europe's contact with the eastern Mediterranean and West Asia. Venice's location afforded that leading Italian city-state early ties with Constantinople, from which it absorbed major elements of the Byzantine diplomatic system. On the basis of Byzantine precedents, Venice gave its envoys written instructions, a practice otherwise unknown in the West, and established a systematic archive. (The Venetian archives contain a registry of all diplomatic documents from 883.) Venice later developed an extensive diplomacy on the Byzantine model, which emphasized the reporting of conditions in the host country. Initially, returning Venetian envoys presented their relazione (final report) orally, but, beginning in the 15th century, such reports were presented in writing. Other Italian city-states, followed by France and Spain, copied Venetian diplomatic methods and style.

The Renaissance to 1815

The development of Italian diplomacy

It is unclear which Italian city-state had the first permanent envoy. In the late Middle Ages and early Renaissance period, most embassies were temporary, lasting from three months to two years. As early as the late 14th and early 15th centuries, however, Venice, Milan, and Mantua sent resident envoys to each other, to the popes, and to the Holy Roman emperors. At this time, envoys generally did not travel with their wives (who were assumed to be indiscreet), but their missions usually employed cooks for purposes of hospitality and to avoid being poisoned. Resident embassies became the norm in Italy in the late 15th century, and after 1500 the practice spread northward. A permanent Milanese envoy to the French court of Louis XI arrived in 1463 and was later joined by a Venetian representative. Ambassadors served a variety of roles, including reporting events to their government and negotiating with their hosts. In addition, they absorbed the role of commercial consuls, who were not then diplomatic agents.

Italy's early economic revival, geographic location, and small size fostered the creation of a European state system in microcosm. As the peninsula was fully organized into states, wars were frequent, and the maintenance of an equilibrium ("balance of power") necessitated constant diplomatic interaction. Whereas meetings of rulers aroused expectations and were considered risky, unobtrusive diplomacy by resident envoys was deemed safer and more effective. Thus, the system of permanent agents took root, with members of the upper middle class or younger sons of great families serving as envoys.

Rome became the centre of Italian diplomacy and of intrigue, information gathering, and spying. Popes received ambassadors but did not send them. The papal court had the first organized diplomatic corps: the popes addressed the envoys jointly, seated them as a group for ceremonies, and established rules for their collective governance.

As resident missions became the norm, ceremonial and social occasions came to dominate the relations between diplomats and their hosts, especially because the dignity of the sovereign being represented was at stake. Papal envoys took precedence over those of temporal rulers. Beyond that there was little agreement on the relative status of envoys, and there was frequent strife. Pope Julius II established a list of

precedence in 1504, but this did not solve the problem. Spain did not accept inferiority to France; power fluctuated among the states; papal power declined; and the Protestant revolt complicated matters—not least regarding the pope's own position. By the 16th century the title of ambassador was being used only for envoys of crowned heads and the republic of Venice. Latin remained the international language of diplomacy.

The French invasion of 1494 confronted the Italian states with intervention by a power greater than any within their own state system. They were driven to substitute subtle diplomacy and expedient, if short-lived, compromise for the force they lacked. This tendency, plus their enthusiasm for diplomatic nuances and the 16th-century writings of Niccolò Machiavelli, gave Italian diplomacy a reputation for being devious. But it was no more so than that of other states, and Machiavelli, himself a Florentine diplomat, argued that an envoy needed integrity, reliability, and honesty, along with tact and skill in the use of occasional equivocation and selective abridgment of aspects of the truth unfavourable to his cause—views seconded since by virtually every authority.

Machiavelli, Niccolò

Niccolò Machiavelli, oil painting by Santi di Tito; in the Palazzo Vecchio, Florence.

Mondadori Portfolio/age fotostock

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The spread of the Italian diplomatic system

The 16th-century wars in Italy, the emergence of strong states north of the Alps, and the Protestant revolt ended the Italian Renaissance but spread the Italian system of diplomacy. Henry VII of England was among the first to adopt the Italian diplomatic system, and he initially even used Italian envoys. By the 1520s Thomas Cardinal Wolsey, Henry VIII's chancellor, had created an English diplomatic service. Under Francis I, France adopted the Italian system in the 1520s and had a corps of resident envoys by the 1530s, when the title of "envoy extraordinary" gained currency, originally for special ceremonial missions.

Wolsey, Thomas Cardinal

Thomas Cardinal Wolsey, detail of a painting by Sampson Strong, 1526; in Christ Church, Oxford.

Courtesy of the Governing Body of Christ Church, Oxford

In the 16th and early 17th centuries, bureaucracies scarcely existed. Courtiers initially filled this role, but, by the middle of the 16th century, royal secretaries had taken charge of foreign affairs amid their other duties. Envoys remained personal emissaries of one ruler to another. Because they were highly trusted and communications were slow, ambassadors enjoyed considerable freedom of action. Their task was complicated by the ongoing religious wars, which generated distrust, narrowed contacts, and jeopardized the reporting that was essential before newspapers were widespread.

The religious wars of the early 17th century were an Austro-French power struggle. During the Thirty Years' War, innovations occurred in the theory and practice of international relations. In 1625 the Dutch jurist Hugo Grotius published De Jure Belli ac Pacis (On the Law of War and Peace), in which the laws of war were most numerous. Grotius deplored the strife of the era, which had undermined the traditional props of customary and canon law. In an effort to convert the law of nations into a law among nations and to provide it with a new secular rationale acceptable to both sides in the religious quarrel, Grotius fell back on the classical view of natural law and the rule of reason. His book—considered the first definitive work of international law despite its debt to earlier scholars—enunciated the concepts of state sovereignty and the equality of sovereign states, both basic to the modern diplomatic system.

Hugo Grotius, detail of a portrait by Michiel Janszoon van Mierevelt; in the Rijksmuseum, Amsterdam.

Courtesy of the Rijksmuseum, Amsterdam

The development of the foreign ministry and embassies

The first modern foreign ministry was established in 1626 in France by Cardinal Richelieu. Richelieu saw diplomacy as a continuous process of negotiation, arguing that a diplomat should have one master and one policy. He created the Ministry of External Affairs to centralize policy

and to ensure his control of envoys as he pursued the raison d'état (national interest). Richelieu rejected the view that policy should be based on dynastic or sentimental concerns or a ruler's wishes, holding instead that the state transcended crown and land, prince and people, and had interests and needs independent of all these elements. He asserted that the art of government lay in recognizing these interests and acting according to them, regardless of ethical or religious considerations. In this, Richelieu enunciated principles that leaders throughout the world now accept as axioms of statecraft.

Cardinal Richelieu

Full-length portrait of Cardinal Richelieu, French prelate and statesman, 19th century.

Richelieu's practice of raison d'état led him to ally Roman Catholic France with the Protestant powers (equally pursuing raison d'état) in the Thirty Years' War against France's great rival, Austria. He largely succeeded, for the Peace of Westphalia of 1648 weakened Austria and enhanced French power. The four years of meetings before its signature were the first great international congresses of modern history. Princes attended, but diplomats did most of the work in secret meetings, especially because by this time there was a corps of experienced diplomats who were mutually well acquainted. However, the task of the diplomats was complicated by the need for two simultaneous congresses, because the problem of precedence was otherwise insoluble.

The Treaty of Westphalia did not solve precedence disputes, which reflected rivalry between states. The war between France and Spain, which continued from 1648 to 1659, was partly about this issue. Shortly thereafter, in 1661, there was a diplomatic dispute in London concerning whether the French ambassador's carriage would precede that of his Spanish rival. War was narrowly averted, but questions of precedence continued to bedevil European diplomacy. As larger states emerged after the Thirty Years' War, a network of embassies and legations crisscrossed Europe.

To communicate securely with its own installations, England established the first modern courier service in 1641, and several states used ciphers. A wide variety of people had been employed as ambassadors, ministers, or residents (a more economical envoy usually reserved for lesser tasks). The glittering court of Louis XIV late in the 17th century transformed this situation dramatically. Because a king's honour at such a court required that his emissaries be well-born, aristocratic envoys became common, not least because of the expense involved. Also, as kings became better established, nobles were more willing to serve them. Thus, diplomacy became a profession dominated by the aristocracy. Another result of Louis XIV's preeminence was that French became the language of diplomacy, superseding Latin. French continued as the lingua franca of diplomacy until the 20th century.

Louis XIV personally directed French foreign policy and read the dispatches of his ambassadors himself. The foreign minister belonged to the Council of State and directed a small ministry and a sizable diplomatic corps under the king's supervision. Envoys were assigned for three or four years and given letters of credence, instructions, and ciphers for secret correspondence. Because ambassadors chose and paid for their own staff, they were required to have great wealth. Louis XIV's frequent wars concluded in peace congresses, which were attended by diplomats. To counter the cost of the king's wars, the French foreign minister stressed commerce and commercial diplomacy.

Some states regularized the position of consuls as state officials, though they were not considered diplomats. The French system was imitated in the 18th century as other major states established foreign ministries. The ambassadors they sent forth were true plenipotentiaries, able to conclude treaties on their own authority. The title of ambassador was used only for the envoys of kings (and for those from Venice). The diplomacy of the time recognized the existence of great powers by according special rank and responsibility to the representatives of these countries. New among these was Russia, which entered European diplomacy in the 18th century. Its diplomatic tradition married elements derived directly from Byzantium to the now essentially mature diplomatic system that had arisen in western Europe.

At the century's end an independent power of the second rank appeared outside Europe: the United States. The founders of American diplomacy—people such as Benjamin Franklin and Thomas Jefferson—accepted the norms of European diplomacy but declined to wear court dress or to adopt usages they considered unrepublican. To this day, U.S. ambassadors, unlike those of other countries, are addressed not as "Your Excellency" but simply as "Mr. Ambassador."

By the 18th century diplomacy had begun to generate a sizable literature, written mostly by its practitioners. Most of these authors argued that to be effective, ambassadors needed to exercise intelligence, trustworthiness, humaneness, foresight, courage, a sense of humour, and sternness (if only to compensate for the not-infrequent lack of these qualities in the national leaders in whose names they acted). One of the earliest such writers, the Dutch diplomat Abraham de Wicquefort, in 1679 termed an envoy "an honourable spy" and "a messenger of peace" who should be charming, silent, and indirect, though, he asserted, deceit was invariably counterproductive. The French diplomat François de Callières, who wrote a manual of diplomacy in 1716 that is still read and regarded by diplomats as a classic, argued in favour of the professionalization of diplomacy, declaring that "even in those cases where success has attended the efforts of an amateur diplomatist, the example must be regarded as an exception, for it is a commonplace of human experience that skilled work requires a skilled workman." By 1737 another French diplomat-theorist, Antoine Pecquet, had declared diplomacy to be a sacred calling requiring discretion, patience, accurate reporting, and absolute honesty, themes that have been repeated through succeeding centuries.

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The Concert of Europe to the outbreak of World War I

Balance of power and the Concert of Europe

Through the many wars and peace congresses of the 18th century, European diplomacy strove to maintain a balance between five great powers: Britain, France, Austria, Russia, and Prussia. At the century's end, however, the French Revolution, France's efforts to export it, and

the attempts of Napoleon I to conquer Europe first unbalanced and then overthrew the continent's state system. After Napoleon's defeat, the Congress of Vienna was convened in 1814–15 to set new boundaries, re-create the balance of power, and guard against future French hegemony. It also dealt with international problems internationally, taking up issues such as rivers, the slave trade, and the rules of diplomacy. The Final Act of Vienna of 1815, as amended at the Congress of Aix-la-Chapelle (Aachen) in 1818, established four classes of heads of diplomatic missions—precedence within each class being determined by the date of presentation of credentials—and a system for signing treaties in French alphabetical order by country name. Thus ended the battles over precedence. Unwritten rules also were established. At Vienna, for example, a distinction was made between great powers and "powers with limited interests." Only great powers exchanged ambassadors. Until 1893 the United States had no ambassadors; like those of other lesser states, its envoys were only ministers.

More unwritten rules were soon developed. Napoleon's return and second defeat required a new peace treaty with France at Paris in November 1815. On that occasion the four great victors (Britain, Austria, Russia, and Prussia) formally signed the Quadruple Alliance, which called for periodic meetings of the signatories to consult on common interests, to ensure the "repose and prosperity of the Nations," and to maintain the peace of Europe. This clause, which created a Concert of Europe, entailed cooperation and restraint as well as a tacit code: the great powers would make all important decisions; internal changes in any member of the Concert had to be sanctioned by the great powers; the great powers were not to challenge each other; and the Concert would decide all disputes. The Concert thus constituted a rudimentary system of international governance by a consortium of great powers.

Initially, meetings of the Concert were attended by rulers, chancellors, and foreign ministers. The first meeting, which was held at Aix-la-Chapelle in 1818, resulted in the admittance of France to the Concert and the secret renewal of the Quadruple Alliance against it. The meeting also refined diplomatic rules and tackled other international questions. Aix

was the first international congress held in peacetime and the first to attract coverage by the press, relations with whom were conducted by the secretary-general of the congress. Thus was born the public relations aspect of diplomacy and the press communiqué.

Thereafter, congresses met in response to crises. Owing to disputes between the powers, after 1822 the meetings ceased, though the Concert of Europe itself continued unobtrusively. Beginning in 1816 an ambassadorial conference was established in Paris to address issues arising from the 1815 treaty with France. Other conferences of ambassadors followed—usually in London, Vienna, or Paris—to address specific international problems and to sanction change when it seemed advisable or unavoidable. Diplomats continued to adjust and amend the European system with conferences, ranging from the meeting held in London in 1830 that endorsed Belgian independence to the meeting in 1912–13, also held in London, to resolve the Balkan Wars. The Concert was stretched and then disregarded altogether between 1854 and 1870, during the Crimean War and the unifications of Italy and Germany. The century during which it existed (1815–1914) was generally peaceful, marred only by short, limited wars; the bloodshed of one of these wars, the second war of Italian independence, inspired the creation in the 1860s of the International Committee for the Relief of the Wounded (later the International Red Cross) as an international nongovernmental agency.

Conference diplomacy and the impact of democratization

After three decades Europe reverted to conference diplomacy at the foreign ministerial level. The Congress of Paris of 1856 not only ended the Crimean War but also resulted in the codification of a significant amount of international law. As European powers extended their sway throughout the world, colonies and spheres of influence in areas remote from Europe came increasingly to preoccupy their diplomacy. Conferences in Berlin in 1878 and 1884–85 prevented conflagrations over the so-called “Eastern” and “African” questions—euphemisms, respectively, for intervention on behalf of Christian interests in the decaying Ottoman Empire and the carving up of Africa into European-ruled colonies. Furthermore, multilateral diplomacy was institutionalized

in a permanent form. The Paris Congress created an International Commission of the Danube to match Vienna's 1815 Commission of the Rhine and established the Universal Telegraph Union (later the International Telecommunication Union). In 1874 the General Postal Union (later the Universal Postal Union) was established. Afterward, specialized agencies like these proliferated. The peace conferences at The Hague (1899–1907), which resulted in conventions aimed at codifying the laws of war and encouraging disarmament, were harbingers of the future.

During the 19th century the world underwent a series of political transformations, and diplomacy changed with it. In Europe power shifted from royal courts to cabinets. Kings were replaced by ministers at international meetings, and foreign policy became a matter of increasingly democratized politics. This, plus mass literacy and the advent of inexpensive newspapers, made foreign policy and diplomacy concerns of public opinion. Domestic politics thus gained increasing influence over European foreign policy making.

Meanwhile, European culture and its diplomatic norms spread throughout the world. Most Latin American colonies became independent, which increased the number of sovereign states. With their European heritage, Latin American countries adopted the existing system without question, as the United States had done earlier. The British Empire, through the East India Company, gnawed away at the Mughal dynasty and India's many independent states and principalities and then united all of the subcontinent for the first time under a single sovereignty. In the middle of the 19th century, an American naval flotilla forced Japan to open its society to the rest of the world. Afterward, Japan embarked on a rapid program of modernization based on the wholesale adoption of Western norms of political and economic behaviour, including European notions of sovereignty and diplomatic practice.

The spread of European diplomatic norms

In the late 18th and early 19th centuries, European emissaries to China faced demands to prostrate themselves ("kowtow") to the Chinese

emperor in order to be formally received by him in Beijing, a humiliating practice that Europeans had not encountered since the era of Byzantium. As plenipotentiary representatives of foreign sovereigns, they viewed it as completely inconsistent with the Westphalian concept of sovereign equality. The Chinese, for their part, neither understanding nor accepting diplomatic concepts and practices elaborated in Europe, were vexed and insulted by the incivility of Western representatives unwilling to respect the long-established ceremonial requirements of the Chinese court. In the ensuing argument between Western and Chinese concepts of diplomatic protocol, Europeans prevailed by force of arms. In 1860 British and French forces sacked and pillaged the emperor's summer palace and some areas around Beijing. They refused to withdraw until the Chinese court had agreed to receive ambassadors on terms consistent with Western practices and to make other concessions. This was merely one of several Western military interventions undertaken to force Chinese acceptance of Western-dictated terms of engagement with the outside world.

Western diplomacy beyond Europe initially was conducted at a leisurely pace, given the vastly greater distances and times required for communication. For non-European countries such as the United States, this was an unavoidable reality, but, for the European great powers, it was a novelty. Fortunately, the dispatch of far-flung legations developed almost simultaneously with advances in transportation and communications, which made frequent contact possible. The railway, the telegraph, the steamship, and undersea cable sped the transmittal of instructions and information. Although the days of Robert Stewart, Viscount Castlereagh—who as British foreign secretary negotiated for months at the Congress of Vienna almost without communication with the cabinet in London—were over, the ambassador's role was more changed than reduced. Lacking instructions and fearing mistakes, earlier emissaries had often done nothing. Similarly, capitals often felt poorly informed about developments of interest to them. (At the dawn of the 19th century, U.S. President Thomas Jefferson famously instructed his secretary of state: "We have heard nothing from our ambassador in Spain for two years. If we do not hear from him this year, let us write him a

letter.") Improvements in technology now made referral to the capital possible and ensured that capitals heard from their envoys abroad, even in the most distant places, on a more frequent and timely basis. Cabinets consulted the ambassador as their "man on the spot" who knew and understood the local conditions, politics, and leaders.

Speedier communication, more involvement in commercial diplomacy as trade became crucial to prosperity, and, especially, the advent of typewriters and mimeograph machines all contributed to a significant increase in the number of diplomatic reports. Yet diplomacy remained a relatively gilded and leisurely profession, one that the British author Harold Nicolson was able to take up shortly before World War I in order to give himself time to write books. It also remained a relatively small profession despite the advent of newcomers. Before 1914 there were 14 missions in Washington, D.C.; by the beginning of the 21st century, the number of missions had increased more than 12-fold. Diplomats were gentlemen who knew each other and shared a similar education, ideology, and culture. They saw themselves as an elite and carefully upheld the fiction that they still were personal envoys of one monarch to another.

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Diplomacy since World War I

The Soviet model

World War I accelerated many changes in diplomacy. Sparked by the world war, the Russian Revolution of 1917 produced a great power regime that rejected the views of the Western world and that used political language—including the terms democracy, propaganda, and subversion—in new ways. The communist government of the new Soviet Union abolished diplomatic ranks and published the secret treaties it found in the czarist archives. In so doing it sought not only to contrive a dramatic contrast to the aristocratic traditions of European diplomacy but also to discredit the cozy dealings between rulers that had so often taken place without regard to the interests or views of those they ruled or affected. Without delay the People's Commissariat of Foreign Affairs (known by its Russian acronym, the Narkomindel) organized a press

bureau and a bureau for international revolutionary propaganda. As Russia entered peace negotiations with Germany, it substituted propaganda for the power it lacked, appealing openly to the urban workers of other states to exert pressure on their governments. It also established the Communist International (also called the Third International) as a nominally independent entity that meddled in the politics of capitalist countries in ways no embassy could.

The League of Nations and the revival of conference diplomacy

Despite its risks and inherent complexity, conference diplomacy was revived during World War I and continued afterward, especially during the 1920s. Following the armistice that ended the war, the Paris Peace Conference took place amid much publicity, which was intensified by the newsreels made of the event. United States President Woodrow Wilson had enunciated his peace program in January 1918, including "open covenants of peace openly arrived at" as a major goal for diplomacy in the post-World War I period. His phrasemaking, which entangled process and result, caused confusion. Hundreds of journalists went to the conference only to discover that all but the plenary sessions were closed. Wilson had intended that the results of diplomatic negotiations be made public, with treaties published and approved by legislatures. He largely achieved this goal, as the Covenant of the League of Nations—one of the key treaties set out for signature at Versailles at the end of the Paris conference—required that treaties be registered at the League before they became binding.

The Paris conference adopted many of the Congress of Vienna's procedures, including the differentiation of "powers with general interests" and "powers with special interests," private meetings of heads of great-power delegations, and the convening of a Conference of Ambassadors afterward in Paris. The peace conference, the treaties, and the later conferences were conducted bilingually in English and French after the United States joined Britain in world councils. As at Vienna, political leaders attended, but kings and princes were strikingly absent in an era of cabinet government and widening electorates. Even more than at Vienna, nongovernmental organizations, most representing national

entities seeking independence, sought a hearing at the court of the great powers. Ultimately, some European peoples gained independence, which resulted in an increase in the number of sovereign states.

The chief innovation of the peace negotiations was the creation of the League of Nations as the first permanent major international organization, with a secretariat of international civil servants. The League introduced parliamentary diplomacy in a two-chamber body, acknowledging the equality of states in its lower house and the supremacy of great powers in its upper one. As neither chamber had much power, however, the sovereignty of members was not infringed. The League of Nations sponsored conferences—especially on economic questions and disarmament—and supervised specialized agencies (e.g., the Universal Postal Union). New specialized agencies were established to handle new areas of diplomacy. The International Labour Organization addressed domestic issues and included nongovernmental representatives, and the Mandates Commission exercised slight supervision over colonies of the defeated powers, which had been distributed to the victors technically as mandates of the League.

League of Nations

Despite the presence of a Latin American bloc and a few independent or quasi-independent states of Africa and Asia, the League of Nations was a European club. Diplomats became orators again in the halls of Geneva, but the topics of parliamentary diplomacy were often trivial. Decisions taken in public were rehearsed in secret sessions. On important matters foreign ministers attending League councils met privately in hotel rooms. In 1923 the League revealed its impotence by dodging action in the Corfu crisis, in which Italian troops occupied the Greek island following the murder of an Italian general on Greek soil. In later years the League failed to improve its record in dealing with international crises.

The weakness of the League of Nations was aggravated by the absence of the United States, whose Senate refused to ratify the peace treaties by which the League was created. The Senate's inaction raised questions about the country's reliability—the basis of effective diplomacy—and drew attention to the blurring of the line between foreign and domestic

policy and, in the view of some, the irresponsibility of democratic electorates. The public conceived of diplomacy as a kind of athletic contest, cheering its side and booing the opponents, seeking great victories and humiliation of the foe, and fixing on the next score and not on the long term. This attitude rendered good diplomacy—which is based on compromise, mutual advantage, and lasting interests—extremely difficult.

In Europe, where electorates were constantly preoccupied with foreign policy, this problem was most acute. Statesmen, trailed by the popular press, engaged in personal diplomacy at frequent conferences. Foreign offices, diplomats, and quiet negotiation were eclipsed as prime ministers and their staffs executed policy in a blaze of publicity. Governments, led by Britain and Germany, manipulated this publicity to influence public opinion in favour of their policies. As the masses became concerned with such matters, unprecedented steps were taken to bribe the foreign press, to plant stories, and to use public occasions for propaganda speeches aimed at foreign audiences. Because public opinion set the parameters in which foreign policy operated in democratic societies, these efforts had an effect.

Despite these changes, the "new diplomacy" of the early 20th century was, in fact, not so new. For all the oratory at Geneva, the summits of the 1920s, and the specialized conferences and agencies, the negotiating process remained the same. Talks continued to be held in secret, and usually only their results were announced to the public. Meanwhile, diplomats deplored the decline of elite influence and the effects of expanded democracy—e.g., press scrutiny, public attention, and the involvement of politicians—on the diplomatic process.

Totalitarian regimes

Diplomacy was equally affected by the advent of totalitarian regimes with strong ideologies; more often than not, these regimes honoured established diplomatic rules only when it suited them, and they generally eschewed negotiation and compromise. The government of the Soviet Union, for example, viewed all capitalist states as enemies. Especially under the leadership of Joseph Stalin, it used each concession it won as a

basis to press for another, and it viewed diplomacy as war, not as a process of mutual compromise. Nazi Germany under Adolf Hitler was equally indifferent to accommodation and Western opinion once it achieved rearmament; Hitler signed treaties with the intention of keeping them only as long as the terms suited him, regarded with contempt those who tried to accommodate him, and cowed foreign leaders with tantrums and threats.

Summit diplomacy

After a lull the tensions of the 1930s revived conference diplomacy, which continued during World War II. Thereafter, summit meetings between heads of government became the norm as technology again quickened the tempo of diplomacy. In the 1930s statesmen began to telephone each other, a practice that was epitomized in the 1960s by the Soviet-American "hot line." Similarly, the flights of British Prime Minister Neville Chamberlain to Germany in 1938, which resulted in the Munich agreement that allowed Germany to annex the Sudetenland in western Czechoslovakia, started a trend in diplomacy. With airplanes at their disposal, leaders met often in the postwar world. As Kojo Debrah, a Ghanaian diplomat, later remarked, "Radio enables people to hear all evil, television enables them to see all evil, and the jet plane enables them to go off and do all evil."

Decolonization and the beginnings of the Cold War

After World War II the world divided into two tight blocs, one dominated by the United States and one by the Soviet Union, with a fragile nonaligned movement (mostly of newly independent countries) lying precariously in between. The Cold War took place under the threat of nuclear catastrophe and gave rise to two major alliances—the North Atlantic Treaty Organization, led by the United States, and the Warsaw Pact, led by the Soviet Union—along with a conventional and nuclear arms race, endless disarmament negotiations, much conference diplomacy, many summits, and periodic crisis management, a form of negotiation aimed at living with a problem, not solving it. As a result, a

premium was placed on the diplomatic art of continuing to talk until a crisis ceased to boil.

World War I had produced a few new states as eastern European empires crumbled. World War II sounded the death knell for global empires. The immediate postwar period saw the reemergence into full independence of several great civilizations that the age of imperialism had placed under generations of European tutelage. These reborn countries had taken to heart the doctrines of European diplomacy. With the zeal of new converts, they were, in many ways, more insistent on the concepts of sovereignty, territorial integrity, and noninterference in internal affairs than their former colonial masters now were.

After a long struggle for independence, Indians formed two proudly assertive but mutually antagonistic states, India and Pakistan. China's century-long humiliation at the hands of the West exploded in a series of violent revolutions seeking to restore the country to wealth, power, and a place of dignity internationally. In 1949 Mao Zedong proclaimed that, with the founding of his People's Republic of China, the Chinese people had once again "stood up"; but, with U.S. support, Mao's defeated rival in the Chinese civil war, Chiang Kai-shek, continued for two decades to speak for China in the United Nations (UN). The question of China's international representation became one of the great diplomatic issues of the 1950s and '60s. The states and principalities of the Arab world resumed their independence and then insisted, over the objections of their former colonial masters, on exercising full sovereignty throughout their own territories, as Egypt did with respect to the Suez Canal. Anti-imperialist sentiment soon made colonialism globally unacceptable. By the late 1950s and '60s, new states, mainly in Africa, were being established on an almost monthly basis.

The United Nations and the changing world order

The UN, which replaced the League of Nations in 1946, was founded with 51 members. By the beginning of the 21st century, its membership had nearly quadrupled, though not all the world's countries had joined. The new states were often undeveloped and technologically weak, with a limited pool of educated elites for the establishment of a modern

diplomatic corps. After the larger colonies gained independence, smaller ones, where this problem was more acute, followed suit. The trend continued until even "microstates" of small area and population became sovereign. (For example, at its independence in 1968, Nauru had a population of fewer than 7,000.)

These small new states, which achieved independence suddenly, were unable to conduct much diplomacy at first. Many of them accredited ambassadors only to the former colonial power, a key neighbouring state, and the UN. For financial reasons envoys often were sent only to the European Community (EC), the Commonwealth Secretariat, the Organization of Petroleum Exporting Countries (OPEC), or major powers that might extend military and financial assistance. Over time, the larger of the newly independent states built sizable foreign services modeled on that of the former colonial power or those of the similarly organized services of Brazil and India, which were not complicit in colonialism. (The Brazilian foreign ministry and diplomatic service are organized and staffed along European lines; they have long had reputations as the most professional such organizations in Latin America. The Indian Foreign Service, modeled on the highly respected Indian Administrative Service and initially staffed from its ranks, quickly emerged as a practitioner of competent diplomacy by a nonaligned, non-Western potential great power.) The microstates mounted a few tiny missions and experimented with joint representation and shared facilities, multiple accreditation of one envoy to several capitals, and meeting with foreign envoys in their own capitals. A very few nominally independent states had no foreign ministry and relied on regional powers to represent them.

The new states shared the diplomatic forms of the industrialized democracies of the West but not their political culture. Many new states were ill at ease with the values of their former colonial masters and cast about for alternatives drawn from their own histories and national experiences. Others accepted Western norms but castigated the West for hypocrisy and challenged it to live up to its own ideals. Envoys began to

appear in Western capitals dressed in indigenous regalia to symbolize their assertion of ancient non-Western cultural identities. As they gained a majority at the UN, the newly independent states fundamentally altered the organization's stance toward colonies, racial issues, and indigenous peoples. Beyond the East-West division of the Cold War, there developed a "North-South" divide between the wealthier former imperial powers of the north and their less-developed former colonies, many of which called for a worldwide redistribution of wealth.

The UN was no more successful at healing the North-South rift than it was at healing the East-West one. It was, according to former Indian permanent representative Arthur Lall, "a forum and not a force." Useful mainly for its specialized agencies and as a forum for propaganda and a venue for quiet contacts, it played only a marginal role in major questions and conflicts, though secretaries-general and their deputies made intense efforts to solve serious but secondary problems such as the resettlement of refugees and persons displaced by war. In the end, the UN has remained only, as Dag Hammarskjöld, UN secretary-general from 1953 to 1961, remarked, "a complement to the normal diplomatic machinery of the governments" that are its members, not a substitute.

Regional organizations sometimes were more successful. The European Union (EU) was effective in promoting trade and cooperation with member states, and the Organization of African Unity and the Arab League enhanced the international bargaining power of regional groupings of new states by providing a coherent foreign policy and diplomatic strategy. By contrast, the extreme political, economic, and cultural diversity of Asia made it harder to organize effectively; the Organization of American States suffered from the enormous imbalance between the United States and its smaller, poorer, and less-powerful members; and the nonaligned movement was too disparate for long-term cohesion. None of these entities solved the problem of harmonizing the views of the industrialized democracies, the Soviet bloc, and those newly independent countries struggling for wealth, power, and cultural identity.

The exponential growth in the number of states complicated diplomacy by requiring countries—especially the major powers—to staff many different diplomatic missions at once. As state, transnational, and quasi-diplomatic entities proliferated, so did the functions of diplomacy. Although leaders met often, there was more, not less, for diplomats to do. Thus, the size of the missions of major powers increased enormously, to the point where some U.S. diplomatic missions were three times larger than the foreign ministry of the state to which they were accredited.

Subnational entities, representing peoples aspiring to statehood or to the creation of radically different regimes in their homelands, also complicated the crowded international scene. Foremost among these entities was the Palestine Liberation Organization (PLO), which had observer status at the UN, membership in the Arab League, and envoys in most of the world's capitals, many with diplomatic status. The African National Congress (ANC) and the South West African People's Organization (SWAPO) also conducted a long and varied diplomacy before achieving power in South Africa and Namibia, respectively.

New topics of diplomacy also abounded, including economic and military aid, commodity-price stabilization, food sales, aviation, and allocations of radio frequencies. Career diplomats tended to be generalists drawn from foreign ministries, and specialists increasingly came from other agencies as attachés or counselors. Disarmament negotiations, for example, required specialized knowledge beyond the scope of military attachés. Environmental abuse gave rise to a host of topics, such as the law of the sea, global warming, and means of preventing or abating pollution. The complexity of diplomatic missions increased accordingly. By the 1960s, for example, U.S. missions had instituted "country teams," including the ambassador and the heads of all attached missions, which met at least once each week to unify policy and reporting efforts and to prevent different elements under the ambassador from working at cross-purposes.

Not only were there new tasks for diplomacy to perform, but there was also a new emphasis on old tasks. The widening Cold War entailed more espionage, of which ambassadors were officially ignorant but which was conducted by attachés and chauffeurs alike; thus, large embassies

appeared in small but strategic countries. Propaganda, the export of officially sanctioned information, and so-called “cultural diplomacy”—as typified by the international tours of Russian dance companies and the cultural programs of the Alliance Française, the British Council, and various American libraries—expanded as well. Cold War competition also extended to international arms transfers. Gifts or sales of weapons and military training were a means of influencing foreign armed forces and consolidating long-term relationships with key elements of foreign governments. The increasing complexity and expense of modern weapons systems also made military exports essential for preserving industrial capacity and employment in the arms industries of the major powers. Diplomats thus became arms merchants, competing with allies and enemies alike for sales to their host governments.

The multiplicity of diplomatic tasks reflected a world that was not only more interdependent but also more fragmented and divided. This dangerous combination led to a search for a new international system to manage the Cold War in order to prevent a nuclear holocaust. Neither the UN nor the Western policy of containment provided an answer. As the two blocs congealed, a balance of terror in the 1960s was followed by an era of détente in the 1970s and then by a return to deterrence in the 1980s. But the 45 years of the Cold War did not produce an organizing principle of any duration. Great power conflict was conducted by proxy through client states in developing areas. Wars, which were numerous but small, were not declared, and diplomatic relations often continued during the fighting.

10.4 INTERNATIONAL LAW

International law, also called public international law or law of nations, the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors. The term was coined by the English philosopher Jeremy Bentham (1748–1832).

Jeremy Bentham, detail of an oil painting by H.W. Pickersgill, 1829; in the National Portrait Gallery, London

Jeremy Bentham, detail of an oil painting by H.W. Pickersgill, 1829; in the National Portrait Gallery, London

Courtesy of the National Portrait Gallery, London

The Nature And Development Of International Law

Definition and scope

According to Bentham's classic definition, international law is a collection of rules governing relations between states. It is a mark of how far international law has evolved that this original definition omits individuals and international organizations—two of the most dynamic and vital elements of modern international law. Furthermore, it is no longer accurate to view international law as simply a collection of rules; rather, it is a rapidly developing complex of rules and influential—though not directly binding—principles, practices, and assertions coupled with increasingly sophisticated structures and processes. In its broadest sense, international law provides normative guidelines as well as methods, mechanisms, and a common conceptual language to international actors—i.e., primarily sovereign states but also increasingly international organizations and some individuals. The range of subjects and actors directly concerned with international law has widened considerably, moving beyond the classical questions of war, peace, and diplomacy to include human rights, economic and trade issues, space law, and international organizations. Although international law is a legal order and not an ethical one, it has been influenced significantly by ethical principles and concerns, particularly in the sphere of human rights.

International law is distinct from international comity, which comprises legally nonbinding practices adopted by states for reasons of courtesy (e.g., the saluting of the flags of foreign warships at sea). In addition, the study of international law, or public international law, is distinguished from the field of conflict of laws, or private international law, which is concerned with the rules of municipal law—as international lawyers term the domestic law of states—of different countries where foreign elements are involved.

International law is an independent system of law existing outside the legal orders of particular states. It differs from domestic legal systems in a number of respects. For example, although the United Nations (UN) General Assembly, which consists of representatives of some 190 countries, has the outward appearances of a legislature, it has no power to issue binding laws. Rather, its resolutions serve only as recommendations—except in specific cases and for certain purposes within the UN system, such as determining the UN budget, admitting new members of the UN, and, with the involvement of the Security Council, electing new judges to the International Court of Justice (ICJ). Also, there is no system of courts with comprehensive jurisdiction in international law. The ICJ's jurisdiction in contentious cases is founded upon the consent of the particular states involved. There is no international police force or comprehensive system of law enforcement, and there also is no supreme executive authority. The UN Security Council may authorize the use of force to compel states to comply with its decisions, but only in specific and limited circumstances; essentially, there must be a prior act of aggression or the threat of such an act. Moreover, any such enforcement action can be vetoed by any of the council's five permanent members (China, France, Russia, the United Kingdom, and the United States). Because there is no standing UN military, the forces involved must be assembled from member states on an ad hoc basis.

International law is a distinctive part of the general structure of international relations. In contemplating responses to a particular international situation, states usually consider relevant international laws. Although considerable attention is invariably focused on violations of international law, states generally are careful to ensure that their actions conform to the rules and principles of international law, because acting otherwise would be regarded negatively by the international community. The rules of international law are rarely enforced by military means or even by the use of economic sanctions. Instead, the system is sustained

by reciprocity or a sense of enlightened self-interest. States that breach international rules suffer a decline in credibility that may prejudice them in future relations with other states. Thus, a violation of a treaty by one state to its advantage may induce other states to breach other treaties and thereby cause harm to the original violator. Furthermore, it is generally realized that consistent rule violations would jeopardize the value that the system brings to the community of states, international organizations, and other actors. This value consists in the certainty, predictability, and sense of common purpose in international affairs that derives from the existence of a set of rules accepted by all international actors. International law also provides a framework and a set of procedures for international interaction, as well as a common set of concepts for understanding it.

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International law
KEY PEOPLE
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Historical development

International law reflects the establishment and subsequent modification of a world system founded almost exclusively on the notion that independent sovereign states are the only relevant actors in the international system. The essential structure of international law was mapped out during the European Renaissance, though its origins lay deep in history and can be traced to cooperative agreements between peoples in the ancient Middle East. Among the earliest of these agreements were a treaty between the rulers of Lagash and Umma (in the area of Mesopotamia) in approximately 2100 BCE and an agreement between the Egyptian pharaoh Ramses II and Hattusilis III, the king of the Hittites, concluded in 1258 BCE. A number of pacts were subsequently negotiated by various Middle Eastern empires. The long and rich cultural traditions of ancient Israel, the Indian subcontinent, and China were also vital in the development of international law. In addition, basic notions of governance, of political relations, and of the interaction of independent units provided by ancient Greek political philosophy and the relations between the Greek city-states constituted important sources for the evolution of the international legal system.

Many of the concepts that today underpin the international legal order were established during the Roman Empire. The jus gentium (Latin: "law of nations"), for example, was invented by the Romans to govern the status of foreigners and the relations between foreigners and Roman citizens. In accord with the Greek concept of natural law, which they adopted, the Romans conceived of the jus gentium as having universal application. In the Middle Ages, the concept of natural law, infused with religious principles through the writings of the Jewish philosopher Moses Maimonides (1135–1204) and the theologian St. Thomas Aquinas (1224/25–1274), became the intellectual foundation of the new discipline of the law of nations, regarded as that part of natural law that applied to the relations between sovereign states.

After the collapse of the western Roman Empire in the 5th century CE, Europe suffered from frequent warring for nearly 500 years. Eventually, a group of nation-states emerged, and a number of supranational sets of rules were developed to govern interstate relations, including canon law, the law merchant (which governed trade), and various codes of maritime law—e.g., the 12th-century Rolls of Oléron, named for an island off the west coast of France, and the Laws of Wisby (Visby), the seat of the Hanseatic League until 1361. In the 15th century the arrival of Greek scholars in Europe from the collapsing Byzantine Empire and the introduction of the printing press spurred the development of scientific, humanistic, and individualist thought, while the expansion of ocean navigation by European explorers spread European norms throughout the world and broadened the intellectual and geographic horizons of western Europe. The subsequent consolidation of European states with increasing wealth and ambitions, coupled with the growth in trade, necessitated the establishment of a set of rules to regulate their relations. In the 16th century the concept of sovereignty provided a basis for the entrenchment of power in the person of the king and was later transformed into a principle of collective sovereignty as the divine right of kings gave way constitutionally to parliamentary or representative forms of government. Sovereignty also acquired an external meaning, referring to independence within a system of competing nation-states.

Early writers who dealt with questions of governance and relations between nations included the Italian lawyers Bartolo da Sassoferrato (1313/14–1357), regarded as the founder of the modern study of private international law, and Baldo degli Ubaldi (1327–1400), a famed teacher, papal adviser, and authority on Roman and feudal law. The essence of the new approach, however, can be more directly traced to the philosophers of the Spanish Golden Age of the 16th and 17th centuries. Both Francisco de Vitoria (1486–1546), who was particularly concerned with the treatment of the indigenous peoples of South America by the conquering Spanish forces, and Francisco Suárez (1548–1617) emphasized that international law was founded upon the law of nature. In 1598 Italian jurist Alberico Gentili (1552–1608), considered the originator of the secular school of thought in international law, published

De jure belli libri tres (1598; Three Books on the Law of War), which contained a comprehensive discussion of the laws of war and treaties. Gentili's work initiated a transformation of the law of nature from a theological concept to a concept of secular philosophy founded on reason. The Dutch jurist Hugo Grotius (1583–1645) has influenced the development of the field to an extent unequaled by any other theorist, though his reputation as the father of international law has perhaps been exaggerated. Grotius excised theology from international law and organized it into a comprehensive system, especially in De Jure Belli ac Pacis (1625; On the Law of War and Peace). Grotius emphasized the freedom of the high seas, a notion that rapidly gained acceptance among the northern European powers that were embarking upon extensive missions of exploration and colonization around the world.

Hugo Grotius, detail of a portrait by Michiel Janszoon van Mierevelt; in the Rijksmuseum, Amsterdam.

Courtesy of the Rijksmuseum, Amsterdam

The scholars who followed Grotius can be grouped into two schools, the naturalists and the positivists. The former camp included the German jurist Samuel von Pufendorf (1632–94), who stressed the supremacy of the law of nature. In contrast, positivist writers, such as Richard Zouche (1590–1661) in England and Cornelis van Bynkershoek (1673–1743) in the Netherlands, emphasized the actual practice of contemporary states over concepts derived from biblical sources, Greek thought, or Roman law. These new writings also focused greater attention on the law of peace and the conduct of interstate relations than on the law of war, as the focus of international law shifted away from the conditions necessary to justify the resort to force in order to deal with increasingly sophisticated interstate relations in areas such as the law of the sea and commercial treaties. The positivist school made use of the new scientific method and was in that respect consistent with the empiricist and inductive approach to philosophy that was then gaining acceptance in Europe. Elements of both positivism and natural law appear in the works of the German philosopher Christian Wolff (1679–1754) and the Swiss jurist Emerich de Vattel (1714–67), both of whom attempted to develop

an approach that avoided the extremes of each school. During the 18th century, the naturalist school was gradually eclipsed by the positivist tradition, though, at the same time, the concept of natural rights—which played a prominent role in the American and French revolutions—was becoming a vital element in international politics. In international law, however, the concept of natural rights had only marginal significance until the 20th century.

Positivism's influence peaked during the expansionist and industrial 19th century, when the notion of state sovereignty was buttressed by the ideas of exclusive domestic jurisdiction and nonintervention in the affairs of other states—ideas that had been spread throughout the world by the European imperial powers. In the 20th century, however, positivism's dominance in international law was undermined by the impact of two world wars, the resulting growth of international organizations—e.g., the League of Nations, founded in 1919, and the UN, founded in 1945—and the increasing importance of human rights. Having become geographically international through the colonial expansion of the European powers, international law became truly international in the first decades after World War II, when decolonization resulted in the establishment of scores of newly independent states. The varying political and economic interests and needs of these states, along with their diverse cultural backgrounds, infused the hitherto European-dominated principles and practices of international law with new influences.

The development of international law—both its rules and its institutions—is inevitably shaped by international political events. From the end of World War II until the 1990s, most events that threatened international peace and security were connected to the Cold War between the Soviet Union and its allies and the U.S.-led Western alliance. The UN Security Council was unable to function as intended, because resolutions proposed by one side were likely to be vetoed by the other. The bipolar system of alliances prompted the development of regional organizations—e.g., the Warsaw Pact organized by the Soviet Union and the North Atlantic Treaty Organization (NATO) established by the United States—and encouraged the proliferation of conflicts on the

peripheries of the two blocs, including in Korea, Vietnam, and Berlin. Furthermore, the development of norms for protecting human rights proceeded unevenly, slowed by sharp ideological divisions.

The Cold War also gave rise to the coalescence of a group of nonaligned and often newly decolonized states, the so-called “Third World,” whose support was eagerly sought by both the United States and the Soviet Union. The developing world’s increased prominence focused attention upon the interests of those states, particularly as they related to decolonization, racial discrimination, and economic aid. It also fostered greater universalism in international politics and international law. The ICJ’s statute, for example, declared that the organization of the court must reflect the main forms of civilization and the principal legal systems of the world. Similarly, an informal agreement among members of the UN requires that nonpermanent seats on the Security Council be apportioned to ensure equitable regional representation; 5 of the 10 seats have regularly gone to Africa or Asia, two to Latin America, and the remainder to Europe or other states. Other UN organs are structured in a similar fashion.

The collapse of the Soviet Union and the end of the Cold War in the early 1990s increased political cooperation between the United States and Russia and their allies across the Northern Hemisphere, but tensions also increased between states of the north and those of the south, especially on issues such as trade, human rights, and the law of the sea. Technology and globalization—the rapidly escalating growth in the international movement in goods, services, currency, information, and persons—also became significant forces, spurring international cooperation and somewhat reducing the ideological barriers that divided the world, though globalization also led to increasing trade tensions between allies such as the United States and the European Union (EU).

Since the 1980s, globalization has increased the number and sphere of influence of international and regional organizations and required the expansion of international law to cover the rights and obligations of these actors. Because of its complexity and the sheer number of actors it

affects, new international law is now frequently created through processes that require near-universal consensus. In the area of the environment, for example, bilateral negotiations have been supplemented—and in some cases replaced—by multilateral ones, transmuting the process of individual state consent into community acceptance. Various environmental agreements and the Law of the Sea treaty (1982) have been negotiated through this consensus-building process. International law as a system is complex. Although in principle it is "horizontal," in the sense of being founded upon the concept of the equality of states—one of the basic principles of international law—in reality some states continue to be more important than others in creating and maintaining international law.

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International law and municipal law

In principle, international law operates only at the international level and not within domestic legal systems—a perspective consistent with positivism, which recognizes international law and municipal law as distinct and independent systems. Conversely, advocates of natural law maintain that municipal and international law form a single legal system, an approach sometimes referred to as monism. Such a system, according to monists, may arise either out of a unified ethical approach emphasizing universal human rights or out of a formalistic, hierarchical

approach positing the existence of one fundamental norm underpinning both international law and municipal law.

Passenger ship in a shipyard at Papenburg, Ger.

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A principle recognized both in international case law (e.g., the Alabama claims case between the United States and the United Kingdom following the American Civil War) and in treaties (e.g., Article 27 of the 1969 Vienna Convention on the Law of Treaties) is that no municipal rule may be relied upon as a justification for violating international law. The position of international law within municipal law is more complex and depends upon a country's domestic legislation. In particular, treaties must be distinguished from customary international law. Treaties are written agreements that are signed and ratified by the parties and binding on them. Customary international law consists of those rules that have arisen as a consequence of practices engaged in by states.

The Constitution of the United States stipulates (Article VI, Section 2) that treaties "shall be the supreme Law of the Land." Treaties are negotiated by the president but can be ratified only with the approval of two-thirds of the Senate (Article II)—except in the case of executive agreements, which are made by the president on his own authority. Further, a treaty may be either self-executing or non-self-executing, depending upon whether domestic legislation must be enacted in order for the treaty to enter into force. In the United States, self-executing treaties apply directly as part of the supreme law of the land without the need for further action. Whether a treaty is deemed to be self-executing depends upon the intention of the signatories and the interpretation of the courts. In Sei Fujii v. State of California (1952), for example, the California Supreme Court held that the UN Charter was not self-executing because its relevant principles concerning human rights lacked the mandatory quality and certainty required to create justiciable rights for private persons upon its ratification; since then the ruling has been

consistently applied by other courts in the United States. In contrast, customary international law was interpreted as part of federal law in the Paquette Habana case (1900), in which the U.S. Supreme Court ruled that international law forbade the U.S. Navy from selling, as prizes of war, Cuban fishing vessels it had seized. Domestic legislation is supreme in the United States even if it breaches international law, though the government may be held liable for such a breach at the international level. In order to mitigate such a possibility, there is a presumption that the U.S. Congress will not legislate contrary to the country's international obligations.

The United Kingdom takes an incorporationist view, holding that customary international law forms part of the common law. British law, however, views treaties as purely executive, rather than legislative, acts. Thus, a treaty becomes part of domestic law only if relevant legislation is adopted. The same principle applies in other countries where the English common law has been accepted (e.g., the majority of Commonwealth states and Israel). Although the incorporationist view regards customary law as part of the law of the land and presumes that municipal laws should not be inconsistent with international law, municipal laws take precedence over international law in cases of conflict. Those common-law countries that have adopted a written constitution generally have taken slightly different positions on the incorporation of international law into municipal law. Ireland's constitution, for example, states that the country will not be bound by any treaty involving public funds without the consent of the national legislature, and in Cyprus treaties concluded in accordance with its constitution have a status superior to municipal law on the condition of reciprocity.

In most civil-law countries, the adoption of a treaty is a legislative act. The relationship between municipal and international law varies, and the status of an international treaty within domestic law is determined by the country's constitutional provisions. In federal systems, the application of international law is complex, and the rules of international law are generally deemed to be part of the federal law. Although a treaty generally becomes operative only when it has been ratified by a national legislature, EU countries have agreed that regulations and decisions

emanating from EU institutions are directly applicable and enforceable without the need for enabling legislation—except for legislation permitting this form of lawmaking, which is adopted upon the country's entry into the union (e.g., Britain's adoption of the European Communities Act in 1972).

Sources Of International Law

Article 38 (1) of the ICJ's statute identifies three sources of international law: treaties, custom, and general principles. Because the system of international law is horizontal and decentralized, the creation of international laws is inevitably more complicated than the creation of laws in domestic systems.

Treaties

Treaties are known by a variety of terms—conventions, agreements, pacts, general acts, charters, and covenants—all of which signify written instruments in which the participants (usually but not always states) agree to be bound by the negotiated terms. Some agreements are governed by municipal law (e.g., commercial accords between states and international enterprises), in which case international law is inapplicable. Informal, nonbinding political statements or declarations are excluded from the category of treaties.

Treaties may be bilateral or multilateral. Treaties with a number of parties are more likely to have international significance, though many of the most important treaties (e.g., those emanating from Strategic Arms Limitation Talks) have been bilateral. A number of contemporary treaties, such as the Geneva Conventions (1949) and the Law of the Sea treaty (1982; formally the United Nations Convention on the Law of the Sea), have more than 150 parties to them, reflecting both their importance and the evolution of the treaty as a method of general legislation in international law. Other significant treaties include the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the Vienna Convention on Diplomatic Relations (1961), the Antarctic Treaty (1959), and the Rome Statute establishing the International Criminal Court (1998). Whereas some treaties create

international organizations and provide their constitutions (e.g., the UN Charter of 1945), others deal with more mundane issues (e.g., visa regulations, travel arrangements, and bilateral economic assistance).

Countries that do not sign and ratify a treaty are not bound by its provisions. Nevertheless, treaty provisions may form the basis of an international custom in certain circumstances, provided that the provision in question is capable of such generalization or is "of a fundamentally norm-creating character," as the ICJ termed the process in the North Sea Continental Shelf cases (1969). A treaty is based on the consent of the parties to it, is binding, and must be executed in good faith. The concept known by the Latin formula pacta sunt servanda ("agreements must be kept") is arguably the oldest principle of international law. Without such a rule, no international agreement would be binding or enforceable. Pacta sunt servanda is directly referred to in many international agreements governing treaties, including the Vienna Convention on the Law of Treaties (1969), which concerns treaties between states, and the Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations (1986).

There is no prescribed form or procedure for making or concluding treaties. They may be drafted between heads of state or between government departments. The most crucial element in the conclusion of a treaty is the signaling of the state's consent, which may be done by signature, an exchange of instruments, ratification, or accession. Ratification is the usual method of declaring consent—unless the agreement is a low-level one, in which case a signature is usually sufficient. Ratification procedures vary, depending on the country's constitutional structure.

Treaties may allow signatories to opt out of a particular provision, a tactic that enables countries that accept the basic principles of a treaty to become a party to it even though they may have concerns about peripheral issues. These concerns are referred to as "reservations," which are distinguished from interpretative declarations, which have no binding effect. States may make reservations to a treaty where the treaty does not prevent doing so and provided that the reservation is not incompatible with the treaty's object and purpose. Other states may accept or object to

such reservations. In the former case, the treaty as modified by the terms of the reservations comes into force between the states concerned. In the latter case, the treaty comes into force between the states concerned except for the provisions to which the reservations relate and to the extent of the reservations. An obvious defect of this system is that each government determines whether the reservations are permissible, and there can be disagreement regarding the legal consequences if a reservation is deemed impermissible.

A set of rules to interpret treaties has evolved. A treaty is expected to be interpreted in good faith and in accordance with the ordinary meanings of its terms, given the context, object, and purpose of the treaty. Supplementary means of interpretation, including the use of travaux préparatoires (French: "preparatory works") and consideration of the circumstances surrounding the conclusion of the treaty, may be used when the treaty's text is ambiguous. In certain cases, a more flexible method of treaty interpretation, based on the principle of effectiveness (i.e., an interpretation that would not allow the provision in question to be rendered useless) coupled with a broader-purposes approach (i.e., taking into account the basic purposes of the treaty in interpreting a particular provision), has been adopted. Where the treaty is also the constitutional document of an international organization, a more programmatic or purpose-oriented approach is used in order to assist the organization in coping with change. A purpose-oriented approach also has been deemed appropriate for what have been described as "living instruments," such as human rights treaties that establish an implementation system; in the case of the European Convention on Human Rights of 1950, this approach has allowed the criminalization of homosexuality to be regarded as a violation of human rights in the contemporary period despite the fact that it was the norm when the treaty itself was signed.

A treaty may be terminated or suspended in accordance with one of its provisions (if any exist) or by the consent of the parties. If neither is the case, other provisions may become relevant. If a material breach of a bilateral treaty occurs, the innocent party may invoke that breach as a ground for terminating the treaty or suspending its operation. The

termination of multilateral treaties is more complex. By unanimous agreement, all the parties may terminate or suspend the treaty in whole or in part, and a party specially affected by a breach may suspend the agreement between itself and the defaulting state. Any other party may suspend either the entire agreement or part of it in cases where the treaty is such that a material breach will radically change the position of every party with regard to its obligations under the treaty. The ICJ, for example, issued an advisory opinion in 1971 that regarded as legitimate the General Assembly's termination of the mandate for South West Africa. A breach of a treaty is generally regarded as material if there is an impermissible repudiation of the treaty or if there is a violation of a provision essential to the treaty's object or purpose.

The concept of rebus sic stantibus (Latin: "things standing thus") stipulates that, where there has been a fundamental change of circumstances, a party may withdraw from or terminate the treaty in question. An obvious example would be one in which a relevant island has become submerged. A fundamental change of circumstances, however, is not sufficient for termination or withdrawal unless the existence of the original circumstances was an essential basis of the consent of the parties to be bound by the treaty and the change radically transforms the extent of obligations still to be performed. This exception does not apply if the treaty establishes a boundary or if the fundamental change is the result of a breach by the party invoking it of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

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Custom

The ICJ's statute refers to "international custom, as evidence of a general practice accepted as law," as a second source of international law. Custom, whose importance reflects the decentralized nature of the international system, involves two fundamental elements: the actual practice of states and the acceptance by states of that practice as law. The actual practice of states (termed the "material fact") covers various elements, including the duration, consistency, repetition, and generality

of a particular kind of behaviour by states. All such elements are relevant in determining whether a practice may form the basis of a binding international custom. The ICJ has required that practices amount to a "constant and uniform usage" or be "extensive and virtually uniform" to be considered binding. Although all states may contribute to the development of a new or modified custom, they are not all equal in the process. The major states generally possess a greater significance in the establishment of customs. For example, during the 1960s the United States and the Soviet Union played a far more crucial role in the development of customs relating to space law than did the states that had little or no practice in this area. After a practice has been established, a second element converts a mere usage into a binding custom—the practice must be accepted as opinio juris sive necessitatis (Latin: "opinion that an act is necessary by rule of law"). In the North Sea Continental Shelf cases, the ICJ stated that the practice in question must have "occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved."

Once a practice becomes a custom, all states in the international community are bound by it whether or not individual states have expressly consented—except in cases where a state has objected from the start of the custom, a stringent test to demonstrate. A particular practice may be restricted to a specified group of states (e.g., the Latin American states) or even to two states, in which cases the standard for acceptance as a custom is generally high. Customs can develop from a generalizable treaty provision, and a binding customary rule and a multilateral treaty provision on the same subject matter (e.g., the right to self-defense) may exist at the same time.

General principles of law

A third source of international law identified by the ICJ's statute is "the general principles of law recognized by civilized nations." These principles essentially provide a mechanism to address international issues not already subject either to treaty provisions or to binding customary rules. Such general principles may arise either through municipal law or through international law, and many are in fact procedural or evidential

principles or those that deal with the machinery of the judicial process—e.g., the principle, established in Chorzow Factory (1927–28), that the breach of an engagement involves an obligation to make reparation. Accordingly, in the Chorzow Factory case, Poland was obliged to pay compensation to Germany for the illegal expropriation of a factory.

Perhaps the most important principle of international law is that of good faith. It governs the creation and performance of legal obligations and is the foundation of treaty law. Another important general principle is that of equity, which permits international law to have a degree of flexibility in its application and enforcement. The Law of the Sea treaty, for example, called for the delimitation on the basis of equity of exclusive economic zones and continental shelves between states with opposing or adjacent coasts.

Other sources

Article 38 (1) of the ICJ's statute also recognizes judicial decisions and scholarly writings as subsidiary means for the determination of the law. Both municipal and international judicial decisions can serve to establish new principles and rules. In municipal cases, international legal rules can become clear through their consistent application by the courts of a number of states. A clearer method of law determination, however, is constituted by the international judicial decisions of bodies such as the ICJ at The Hague, the UN International Tribunal for the Law of the Sea at Hamburg (Germany), and international arbitral tribunals.

International law can arise indirectly through other mechanisms. UN General Assembly resolutions, for example, are not binding—except with respect to certain organizational procedures—but they can be extremely influential. Resolutions may assist in the creation of new customary rules, both in terms of state practice and in the process of establishing a custom by demonstrating the acceptance by states of the practice "as law" (the opinio juris). For this to occur, a resolution must contain generalizable provisions and attract substantial support from countries with diverse ideological, cultural, and political perspectives. Examples of such resolutions include the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), the Declaration

on the Legal Principles Governing Activities of States in the Exploration and Use of Outer Space (1963), and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States (1970).

Unilateral actions by a state may give rise to legal obligations when it is clear that the state intends to be bound by the obligation and when its intention is publicly announced. An example of such a case was France's decision to stop atmospheric nuclear testing during litigation at the ICJ between it and Australia and New Zealand (1974) concerning the legality of such testing. Unilateral statements also may constitute evidence of a state's views on a particular issue. Even when an instrument or document does not entail a legal obligation, it may be influential within the international community. The Helsinki Accords (1975), which attempted to reduce tensions between the Soviet Union and the United States during the Cold War, was expressly not binding but had immense political effects. In certain areas, such as environmental law and economic law, a range of recommendations, guidelines, codes of practice, and standards may produce what is termed "soft law"—that is, an instrument that has no strict legal value but constitutes an important statement.

Hierarchies of sources and norms

General principles are complementary to treaty law and custom. Sources that are of more recent origin are generally accepted as more authoritative, and specific rules take precedence over general rules. Jus cogens (Latin: "compelling law") rules are peremptory norms that cannot be deviated from by states; they possess a higher status than jus dispositivum (Latin: "law subject to the dispensation of the parties"), or normal international rules, and can be altered only by subsequent norms of the same status. Rules in the former category include the prohibitions against genocide, slavery, and piracy and the outlawing of aggression. Other examples of jus cogens rules are more controversial. The Vienna Convention on the Law of Treaties provides (Article 53) that a treaty will be void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. Further, the wrongfulness of a state action is precluded if the act is required by a peremptory norm of general

international law. For a jus cogens norm to be created, the principle must first be established as a rule of international law and then recognized by the international community as a peremptory rule of law from which no derogation is permitted.

International law also has established a category of erga omnes (Latin: "toward all") obligations, which apply to all states. Whereas in ordinary obligations the defaulting state bears responsibility toward particular interested states (e.g., other parties to the treaty that has been breached), in the breach of erga omnes obligations, all states have an interest and may take appropriate actions in response.

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States In International Law

Although states are not the only entities with international legal standing and are not the exclusive international actors, they are the primary subjects of international law and possess the greatest range of rights and obligations. Unlike states, which possess rights and obligations automatically, international organizations, individuals, and others derive their rights and duties in international law directly from particular instruments. Individuals may, for example, assert their rights under international law under the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights, both of which entered into force in 1976.

Statehood

Creation of states

The process of creating new states is a mixture of fact and law, involving the establishment of particular factual conditions and compliance with relevant rules. The accepted criteria of statehood were laid down in the Montevideo Convention (1933), which provided that a state must possess a permanent population, a defined territory, a government, and the capacity to conduct international relations.

The need for a permanent population and a defined territory is clear, though boundary disputes—e.g., those concerning Albania after World War I and Israel in 1948—do not preclude statehood. The international

community (including the UN) has recognized some states while they were embroiled in a civil war (e.g., the Congo in 1960 and Angola in 1975), thus eroding the effective-government criterion. Croatia and Bosnia and Herzegovina were also recognized as new states by much of the international community in 1992, though at the time neither was able to exercise any effective control over significant parts of its territory. Although independence is required, it need not be more than formal constitutional independence.

States may become extinct through merger (North and South Yemen in 1990), absorption (the accession of the Länder [states] of the German Democratic Republic into the Federal Republic of Germany in 1990), dissolution and reestablishment as new and separate states (the creation of separate Czech and Slovak republics from Czechoslovakia in 1993), limited dismemberment with a territorially smaller state continuing the identity of the larger state coupled with the emergence of new states from part of the territory of the latter (the Soviet Union in 1991), or, historically, annexation (Nazi Germany's Anschluss of Austria in 1938).

Recognition

Recognition is a process whereby certain facts are accepted and endowed with a certain legal status, such as statehood, sovereignty over newly acquired territory, or the international effects of the grant of nationality. The process of recognizing as a state a new entity that conforms with the criteria of statehood is a political one, each country deciding for itself whether to extend such acknowledgment. Normal sovereign and diplomatic immunities are generally extended only after a state's executive authority has formally recognized another state (see diplomatic immunity). International recognition is important evidence that the factual criteria of statehood actually have been fulfilled. A large number of recognitions may buttress a claim to statehood even in circumstances where the conditions for statehood have been fulfilled imperfectly (e.g., Bosnia and Herzegovina in 1992). According to the "declaratory" theory of recognition, which is supported by international practice, the act of recognition signifies no more than the acceptance of an already-existing factual situation—i.e., conformity with the criteria of statehood. The

"constitutive" theory, in contrast, contends that the act of recognition itself actually creates the state.

Before granting recognition, states may require the fulfillment of additional conditions. The European Community (ultimately succeeded by the EU), for example, issued declarations in 1991 on the new states that were then forming in eastern Europe, the former Soviet Union, and Yugoslavia that required, inter alia, respect for minority rights, the inviolability of frontiers, and commitments to disarmament and nuclear nonproliferation. The timing of any recognition is crucial—particularly when a new state has been formed partly from an existing one. Premature recognition in a case of secession can amount to intervention in a state's internal affairs, a violation of one of the fundamental principles of international law. Recognition of governments is distinguished from the recognition of a state. The contemporary trend is in fact no longer to recognize governments formally but to focus instead upon the continuation (or discontinuation) of diplomatic relations. By this change, states seek to avoid the political difficulties involved in deciding whether or not to "recognize" new regimes taking power by nonconstitutional means.

Although states are not obliged to recognize new claimants to statehood, circumstances sometimes arise that make it a positive duty not to recognize a state. During the 1930s, U.S. Secretary of State Henry Stimson propounded the doctrine of the nonrecognition of situations created as a result of aggression, an approach that has been reinforced since the end of World War II. In the 1960s, the UN Security Council "called upon" all states not to recognize the Rhodesian white-minority regime's declaration of independence and imposed economic sanctions. Similar international action was taken in the 1970s and '80s in response to South Africa's creation of Bantustans, or homelands, which were territories that the white-minority government designated as "independent states" as part of its policy of apartheid. The Security Council also pronounced the purported independence of Turkish-occupied northern Cyprus as "legally invalid" (1983) and declared "null and void" Iraq's annexation of Kuwait (1990). The UN also has declared that Israel's purported annexation of the Golan Heights (conquered from

Syria in 1967) is invalid and has ruled similarly with regard to Israel's extension of its jurisdiction to formerly Jordanian-controlled East Jerusalem.

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The responsibility of states

The rights accorded to states under international law imply responsibilities. States are liable for breaches of their obligations, provided that the breach is attributable to the state itself. A state is responsible for direct violations of international law—e.g., the breach of a treaty or the violation of another state's territory. A state also is liable for breaches committed by its internal institutions, however they are defined by its domestic law; by entities and persons exercising governmental authority; and by persons acting under the direction or control of the state. These responsibilities exist even if the organ or entity exceeded its authority. Further, the state is internationally responsible for the private activities of persons to the extent that they are subsequently adopted by the state. In 1979, for example, the Iranian government officially supported the seizure of the U.S. embassy by militants and the subsequent holding of diplomats and other embassy staff as hostages. A state is not internationally responsible if its conduct was required by a peremptory norm of general international law, if it was taken in conformity with the right to self-defense under the UN Charter, if it constituted a legitimate measure to pressure another state to comply with its international obligations, if it was taken as a result of a force majeure (French: "greater force") beyond the state's control, if it could not reasonably be avoided in order to save a life or lives, or if it constituted the only means of safeguarding an essential interest of the state against a grave and imminent peril, where no essential interest of the states toward which the obligation exists (or of the international community) was impaired.

A state must make full reparation for any injury caused by an illegal act for which it is internationally responsible. Reparation consists of restitution of the original situation if possible, compensation where this is not possible, or satisfaction (i.e., acknowledgment of and apology for the breach) if neither is possible.

One controversial aspect of international law has been the suggestion, made by the International Law Commission in its 1996 draft on State Responsibility, that states can be held responsible for "international crimes" (comprising internationally wrongful acts resulting from the breach by a state of an international obligation so essential for the protection of the international community's fundamental interests that its breach is recognized as a crime by that community). Examples given included aggression, colonial domination, and genocide. In addition to the argument that states (as distinct from individuals) could not be guilty of crimes as such, serious definitional problems arose, and there was concern over the consequences of such crimes for states. Accordingly, in its draft articles finally adopted in 2001, the International Law Commission dispensed with this politically divisive approach but retained the idea of a more serious form of international wrong. The commission emphasized the concept of serious breaches of obligations arising under a peremptory norm of international law (i.e., the rules of jus cogens, or those deemed essential for the protection of fundamental international interests). In such circumstances, all states are under an obligation not to recognize such a situation and to cooperate in ending it.

States may take up the claims of individuals injured because of the acts or omissions of another state. In such circumstances, the injured persons must have exhausted all domestic remedies to hold the state responsible unless these are ineffective. Further, the injured person must be a national of the state adopting the claim. Although states alone possess the right to grant nationality, if the claim is pleaded against another state, the grant of nationality must conform to the requirements of international law and, in particular, demonstrate the existence of a genuine link between the individual and the state concerned.

Spatial definition of states

Territory

The sovereignty of a state is confined to a defined piece of territory, which is subject to the exclusive jurisdiction of the state and is protected by international law from violation by other states. Although frontier disputes do not detract from the sovereignty or independence of a particular state, it is inherent in statehood that there should be a core territory that is subject to the effective control of the authorities of the state. Additional territory may be acquired by states through cession from other states (the Island of Palmas case in 1928); by the occupation of territory that is terra nullius (Latin: "the land of no one")—i.e., land not under the sovereignty or control of any other state or socially or politically organized grouping; or by prescription, where a state acquires territory through a continued period of uncontested sovereignty.

Under the UN Charter, sovereign title to territory cannot be acquired purely and simply by the use of force. Express or implied consent is required under international law for recognition of territory acquired by force, whether or not the use of force was legal. When states are created from the dissolution or dismemberment of existing countries, it is presumed that the frontiers of the new states will conform to the boundaries of prior internal administrative divisions. This doctrine, known as uti possidetis (Latin: "as you possess"), was established to ensure the stability of newly independent states whose colonial boundaries were often drawn arbitrarily.

Maritime spaces and boundaries

The sovereign territory of a state extends to its recognized land boundaries and to the border of airspace and outer space above them. A state that has a coastal boundary also possesses certain areas of the sea. Sovereignty over bodies of water is regulated by four separate 1958 conventions—the Convention on the Territorial Sea and Contiguous Zone, the Convention on the Continental Shelf, the Convention on the High Seas, and the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas—and by the comprehensive Law of the Sea treaty (1982), which entered into force in 1994.

The territory of states includes internal waters (i.e., harbours, lakes, and rivers that are on the landward side of the baselines from which the territorial sea and other maritime zones are measured), over which the state has full and complete sovereignty and exclusive jurisdiction. Through the Law of the Sea treaty and now under customary international law, a state may claim a territorial sea of up to 12 nautical miles from the baselines (essentially the low-water mark around the coasts of the state concerned), though, in cases where a coast is heavily indented, a series of straight baselines from projecting points may be drawn. A state has sovereignty over its territorial seas, but they are subject to the right of innocent passage—i.e., the right of all shipping to pass through the territorial waters of states, provided that the passage is not prejudicial. Examples of prejudicial conduct include the threat or use of force, spying, willful and serious pollution, breaches of customs, sanitary, fiscal, and immigration regulations, and fishing. Coastal states may exercise a limited degree of criminal jurisdiction with regard to foreign ships that are engaged in innocent passage through their territorial seas (e.g., in cases where the consequences of the crime alleged extend to the coastal state or where such measures are necessary for the suppression of the traffic of illicit drugs).

The 1958 Convention on the Territorial Sea and Contiguous Zone provided that states cannot suspend the innocent passage of foreign ships through straits that are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state. The 1982 treaty established a new right of transit passage for the purpose of continuous and expeditious transit in straits used for international navigation between one part of the high seas or exclusive economic zone and another. Some international straits are subject to special regimes. The controversial Straits Question, for example, concerned restrictions in the 19th and 20th centuries that limited naval access to the Bosporus and Dardanelles—which connect the Black Sea with the Sea of Marmara and the Mediterranean Sea—to countries bordering the Black Sea.

A series of other maritime zones extend beyond territorial seas. A contiguous zone—which must be claimed and, unlike territorial seas, does not exist automatically—allows coastal states to exercise the control necessary to prevent and punish infringements of customs, sanitary, fiscal, and immigration regulations within and beyond its territory or territorial sea. The zone originally extended 12 nautical miles from the baselines but was doubled by the 1982 treaty. The exclusive economic zone developed out of claims to fishing zones. The 1982 treaty allowed states to claim such a zone, extending 200 nautical miles from the baselines, in which they would possess sovereign rights to explore, exploit, conserve, and manage the natural resources of the seas and seabed; to exercise jurisdiction over artificial installations and scientific research; and to protect and preserve the marine environment. The zone was accepted as part of customary international law in the ICJ's 1985 decision in the dispute between Libya and Malta, which concerned the delimitation of the continental shelf between them.

A state is automatically entitled to exercise sovereign rights to explore and exploit the natural resources in an adjacent continental shelf (i.e., the ledges projecting from the land into and under the sea). The shelf may extend either to the outer edge of the continental margin or to 200 miles from the baselines where the outer edge of the continental margin does not reach that distance. Thus, the continental shelf as a concept in international law becomes a legal fiction where the shelf does not in fact extend as far as 200 miles.

Problems have arisen over the delimitation of the various maritime zones between adjacent and opposing states. International law generally requires equitable resolutions of maritime territorial disputes. Although the definition of equity is unclear, relevant factors include the impact of natural prolongation of the land territory (i.e., the basic principle that the continental shelf is a continuation of the land territory into the sea), proportionality between the length of a disputing party's coastline and the extent of continental shelf it controls, the principle of equidistance (i.e., a line of equal distance from the two shores in question), and the existence (if any) of islands between the coastlines.

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Jurisdiction

Jurisdiction refers to the power of a state to affect persons, property, and circumstances within its territory. It may be exercised through legislative, executive, or judicial actions. International law particularly addresses questions of criminal law and essentially leaves civil jurisdiction to national control. According to the territorial principle, states have exclusive authority to deal with criminal issues arising within their territories; this principle has been modified to permit officials from one state to act within another state in certain circumstances (e.g., the Channel Tunnel arrangements between the United Kingdom and France and the 1994 peace treaty between Israel and Jordan). The nationality principle permits a country to exercise criminal jurisdiction over any of its nationals accused of criminal offenses in another state. Historically, this principle has been associated more closely with civil-law systems than with common-law ones, though its use in common-law systems increased in the late 20th century (e.g., the adoption in Britain of the War Crimes Act in 1991 and the Sex Offenders Act in 1997). Ships and aircraft have the nationality of the state whose flag they fly or in which they are registered and are subject to its jurisdiction.

The passive personality principle allows states, in limited cases, to claim jurisdiction to try a foreign national for offenses committed abroad that affect its own citizens. This principle has been used by the United States to prosecute terrorists and even to arrest (in 1989–90) the de facto leader of Panama, Manuel Noriega, who was subsequently convicted by an American court of cocaine trafficking, racketeering, and money laundering. The principle appears in a number of conventions, including the International Convention Against the Taking of Hostages (1979), the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (1973), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). The protective principle, which is included in the hostages and aircraft-hijacking conventions and the Convention on the Safety of United Nations and Associated Personnel (1994), can be invoked by a state in cases where an alien has committed an act abroad

deemed prejudicial to that state's interests, as distinct from harming the interests of nationals (the passive personality principle). Finally, the universality principle allows for the assertion of jurisdiction in cases where the alleged crime may be prosecuted by all states (e.g., war crimes, crimes against the peace, crimes against humanity, slavery, and piracy).

Jurisdictional immunity exists in certain contexts. Diplomatic personnel, for example, have immunity from prosecution in the state in which they operate. In the 1960s, however, the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations stipulated that the level of immunity varies according to the official's rank. Immunity is generally more extensive in criminal than in civil matters. A country's diplomatic mission and archives also are protected. International organizations possess immunity from local jurisdiction in accordance with international conventions (e.g., the General Convention on the Privileges and Immunities of the United Nations of 1946) and agreements signed with the state in which they are based. Certain immunities also extend to the judges of international courts and to visiting armed forces.

Disputes between states

Peaceful settlement

International law provides a variety of methods for settling disputes peacefully, none of which takes precedence over any other. Nonbinding mechanisms include direct negotiations between the parties and the involvement of third parties through good offices, mediation, inquiry, and conciliation. The involvement of regional and global international organizations has increased dramatically since the end of World War II, as many of their charters contain specific peaceful-settlement mechanisms applicable to disputes between member states. The UN may be utilized at several levels. The secretary-general, for example, may use his good offices to suggest the terms or modalities of a settlement, and the General Assembly may recommend particular solutions or methods to resolve disputes. Similarly, the Security Council may recommend solutions (e.g., its resolution in 1967 regarding the Arab-Israeli conflict)

or, if there is a threat to or a breach of international peace and security or an act of aggression, issue binding decisions to impose economic sanctions or to authorize the use of military force (e.g., in Korea in 1950 and in Kuwait in 1990). Regional organizations, such as the Organization of American States and the African Union, also have played active roles in resolving interstate disputes.

Additional methods of binding dispute resolution include arbitration and judicial settlement. Arbitration occurs when the disputing states place their conflict before a binding tribunal. In some cases, the tribunal is required to make a number of decisions involving different claimants (e.g., in the dispute between the United States and Iran arising out of the 1979 Iranian revolution), while in others the tribunal will exercise jurisdiction over a single issue only. In a judicial settlement, a dispute is placed before an existing independent court. The most important and comprehensive of these courts is the ICJ, the successor of the Permanent Court of International Justice, created in 1920. Established by the UN Charter (Article 92) as the UN's principal judicial organ, the ICJ consists of 15 judges who represent the main forms of civilization and principal legal systems of the world. They are elected by the General Assembly and Security Council for nine-year terms.

The ICJ, whose decisions are binding upon the parties and extremely influential generally, possesses both contentious and advisory jurisdiction. Contentious jurisdiction enables the court to hear cases between states, provided that the states concerned have given their consent. This consent may be signaled through a special agreement, or compromis (French: "compromise"); through a convention that gives the court jurisdiction over matters that include the dispute in question (e.g., the genocide convention); or through the so-called optional clause, in which a state makes a declaration in advance accepting the ICJ's jurisdiction over matters relating to the dispute. The ICJ has issued rulings in numerous important cases, ranging from the Corfu Channel case (1949), in which Albania was ordered to pay compensation to Britain for the damage caused by Albania's mining of the channel, to the territorial dispute between Botswana and Namibia (1999), in which the ICJ favoured Botswana's claim over Sedudu (Kasikili) Island. The ICJ's

advisory jurisdiction enables it to give opinions on legal questions put to it by any body authorized by or acting in accordance with the UN Charter.

Other important international judicial bodies are the European Court of Human Rights, established by the European Convention on Human Rights; the Inter-American Court of Human Rights, created by the Inter-American Convention on Human Rights; and the International Tribunal for the Law of the Sea, set up under the Law of the Sea treaty. The World Trade Organization (WTO), established in 1995 to supervise and liberalize world trade, also has created dispute-settlement mechanisms.

Use of force

The UN Charter prohibits the threat or the use of force against the territorial integrity or political independence of states or in any other manner inconsistent with the purposes of the Charter; these proscriptions also are part of customary international law. Force may be used by states only for self-defense or pursuant to a UN Security Council decision giving appropriate authorization (e.g., the decision to authorize the use of force against Iraq by the United States and its allies in the Persian Gulf War in 1990–91). The right of self-defense exists in customary international law and permits states to resort to force if there is an instant and overwhelming need to act, but the use of such force must be proportionate to the threat. The right to self-defense is slightly more restricted under Article 51 of the UN Charter, which refers to the "inherent right of individual or collective self-defence if an armed attack occurs" until the Security Council has taken action. In a series of binding resolutions adopted after the terrorist September 11 attacks in 2001 against the World Trade Center and the Pentagon in the United States, the Security Council emphasized that the right to self-defense also applies with regard to international terrorism. Preemptive strikes by countries that reasonably believe that an attack upon them is imminent are controversial but permissible under international law, provided that the criteria of necessity and proportionality are present.

It has been argued that force may be used without prior UN authorization in cases of extreme domestic human rights abuses (e.g., the actions taken by NATO with regard to Kosovo in 1999 or India's intervention in East Pakistan [now Bangladesh] in 1971). Nonetheless, humanitarian interventions are deeply controversial, because they contradict the principle of nonintervention in the domestic affairs of other states.

The use of force is regulated by the rules and principles of international humanitarian law. The Geneva Conventions (1949) and their additional protocols (1977) deal with, among other topics, prisoners of war, the sick and wounded, war at sea, occupied territories, and the treatment of civilians. In addition, a number of conventions and declarations detail the types of weapons that may not be used in warfare. So-called "dum-dum bullets," which cause extensive tissue damage, poisonous gases, and chemical weapons are prohibited, and the use of mines has been restricted. Whether the use of nuclear weapons is per se illegal under international law is an issue of some controversy; in any event, the criteria of necessity and proportionality would have to be met.

International cooperation

States have opted to cooperate in a number of areas beyond merely the allocation and regulation of sovereign rights.

High seas and seabed

Traditionally, the high seas beyond the territorial waters of states have been regarded as open to all and incapable of appropriation. The definition of the high seas has changed somewhat since the creation of the various maritime zones, so that they now are considered to be those waters not included in the exclusive economic zone, territorial sea, or internal waters of states or in the archipelagic waters of archipelagic states. The high seas are open to all states, with each state possessing the freedoms of navigation and overflight and the freedom to lay submarine cables and pipelines, to conduct scientific research, and to fish. On ships on the high seas, jurisdiction is exercised by the flag state (i.e., the state whose flag is flown by the particular ship). Nevertheless, warships have the right to board a ship that is suspected of engaging in piracy, the slave trade, or unauthorized broadcasting. There also is a right of "hot pursuit," provided that the pursuit itself is continuous, onto the high seas from the

territorial sea or economic zone of the pursuing state in order to detain a vessel suspected of violating the laws of the coastal state in question.

The international seabed (i.e., the seabed beyond the limits of national jurisdiction), parts of which are believed to be rich in minerals, is not subject to national appropriation and has been designated a "common heritage of mankind" by the Declaration of Principles Governing the Seabed (1970) and the Law of the Sea treaty. Activities in the international seabed, also known as "the Area," are expected to be carried out in the collective interests of all states, and benefits are expected to be shared equitably.

Outer space

Outer space lies beyond the currently undefined upper limit of a state's sovereign airspace. It was declared free for exploration and use by all states and incapable of national appropriation by a 1963 UN General Assembly resolution. The Outer Space Treaty (1967) reiterated these principles and provided that the exploration and use of outer space should be carried out for the benefit of all countries. The Moon Treaty (1979) provided for the demilitarization of the Moon and other celestial bodies and declared the Moon and its resources to be a "common heritage of mankind." A number of agreements concerning space objects (1972 and 1974) and the rescue of astronauts (1968) also have been signed.

Antarctica

The Antarctic Treaty (1959) prevents militarization of the Antarctic continent and suspends territorial claims by states for the life of the treaty. Because it provides no mechanism for its termination, however, a continuing and open-ended regime has been created. There also are various agreements that protect Antarctica's environment.

Protection of the environment

Because the rules of state responsibility require attributions of wrongful acts to particular states—something that is difficult to prove conclusively in cases of harm to the environment—it was recognized that protecting the environment would have to be accomplished by means other than individual state responsibility. Instead, an international cooperative approach has been adopted. For several kinds of pollutants, for example,

states have agreed to impose progressively reduced limits on their permissible emissions.

The Stockholm Declaration (1972) and the Rio Declaration (1992), which was issued by the United Nations Conference on Environment and Development, enjoined states to ensure that activities within their jurisdiction do not cause environmental damage to other states or areas. Other agreements have addressed the need for early consultation on potential environmental problems, notification of existing problems, and wider use of environmental-impact assessments. Supervisory and monitoring mechanisms also have been established by several of these agreements, including the Convention on Long-Range Transboundary Air Pollution (1979), the Law of the Sea treaty, the Vienna Convention for the Protection of the Ozone Layer (1985), the amended Convention on Marine Pollution from Land-Based Sources (1986), the Convention on Environmental Impact Assessment in a Transboundary Context (1991), the Convention on Biological Diversity (1992), the United Nations Framework Convention on Climate Change (1992), and the Kyoto Protocol (1997).

Historically, states were the only subjects of international law. During the 20th century, however, a growing body of international law was devoted to defining the rights and responsibilities of individuals. The rights of individuals under international law are detailed in various human rights instruments and agreements. Although references to the protection of human rights appear in the UN Charter, the principal engine of the process was the Universal Declaration of Human Rights (1948; UDHR). The UDHR has been supplemented by an impressive range of international treaties, including the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), and the Convention on the Rights of the Child (1989). With the exception of the

convention on genocide, these agreements also have established monitoring committees, which, depending on the terms of the particular agreement, may examine the regular reports required of states, issue general and state-specific comments, and entertain petitions from individuals. The committee against torture may commence an inquiry on its own motion. The broad rights protected in these conventions include the right to life and due process, freedom from discrimination and torture, and freedom of expression and assembly. The right to self-determination and the rights of persons belonging to minority groups are protected by the convention on civil and political rights. In addition, the UN has established a range of organs and mechanisms to protect human rights, including the Commission on Human Rights (replaced in 2006 by the Human Rights Council). Human rights protections also exist at the regional level. The best-developed system was established by the European Convention on Human Rights, which has more than 40 state parties as well as a court that can hear both interstate and individual applications. Other examples are the Inter-American Convention on Human Rights, which has a commission and a court, and the African Charter on Human and Peoples' Rights (1982), which has a commission and is developing a court.

In addition to the rights granted to individuals, international law also has endowed them with responsibilities. In particular, following the Nürnberg Charter (1945) and the subsequent establishment of a tribunal to prosecute Nazi war criminals, individuals have been subject to international criminal responsibility and have been directly liable for breaches of international law, irrespective of domestic legal considerations. Individual responsibility was affirmed in the Geneva Conventions and their additional protocols and was affirmed and put into effect by the statutes that created war crimes tribunals for Yugoslavia (1993) and Rwanda (1994), both of which prosecuted, convicted, and sentenced persons accused of war crimes. The Rome Statute of the International Criminal Court, which entered into force in 2002, also provides for individual international criminal responsibility.

International organizations

A major difference between 19th- and 21st-century international law is the prominent position now occupied by international organizations. The size and scope of international organizations vary. They may be bilateral, subregional, regional, or global, and they may address relatively narrow or very broad concerns. The powers and duties allocated to international organizations also differ widely. Some international organizations are legally recognized as international actors—and thus are liable for breaches of international legal obligations—while others are not.

Since the end of World War II, the leading international organization has been the UN. Although the General Assembly may pass only nonbinding resolutions, the Security Council can authorize the use of force if there is a threat to or a breach of international peace and security or an act of aggression. Since the end of the Cold War, the council has extended the definition of a threat to or a breach of international peace and security to encompass not only international conflicts but also internal conflicts (e.g., in Yugoslavia, Somalia, Liberia, and Rwanda) and even the overthrow of a democratic government and subsequent upheavals and refugee movements (e.g., in Haiti).

Other international organizations have developed significant roles in international relations. They include the World Bank, which provides aid to promote economic development, the International Monetary Fund, which helps countries manage their balance-of-payments problems, and the WTO, which supervises and regulates international trade. Regional organizations and agreements, such as the EU and the North American Free Trade Agreement between Canada, Mexico, and the United States, govern areas that traditionally have fallen within the domestic jurisdiction of states (e.g., trade, the environment, and labour standards). At the beginning of the 21st century, it was apparent that individuals and international organizations would play an increasingly vital role in international relations and international law.

Current Trends

International law has been transformed from a European-based system enabling sovereign states to interact in a relatively limited number of areas to a truly international order with profound and increasingly cooperative requirements. Globalization has ensured that the doctrine of

the sovereignty of states has in practice been modified, as the proliferation of regional and global international organizations demonstrates. In an increasing number of cases, certain sovereign powers of states have been delegated to international institutions. Furthermore, the growth of large trading blocs has underscored both regional and international interdependence, though it also has stimulated and institutionalized rivalries between different blocs. The striking development of the movement for universal human rights since the conclusion of World War II has led to essentially unresolved conflicts with some states that continue to observe traditional cultural values. The rules governing the use of force have focused particular attention on the UN, but violent disputes have not disappeared, and the development of increasingly deadly armaments—including biological, chemical, and nuclear weapons (so-called "weapons of mass destruction")—has placed all states in a more vulnerable position. Particular challenges are posed when such weapons are possessed by states that have used them or threaten to do so. In 2003 the United States and Britain led an attack against Iraq and overthrew its government because they believed that the country continued to possess weapons of mass destruction in defiance of binding Security Council resolutions; the attack proceeded despite opposition from a majority of the council to a proposed resolution explicitly authorizing the use of force. Although terrorism is not a new phenomenon, the increasing scale of the destruction it may cause, as well as the use by terrorists of modern forms of communication such as computers and mobile phones, has raised serious new challenges for international law—ones that may affect the interpretation of the right of self-defense and pose a critical test for the UN.

The United Nations, like the League of Nations, has played a major role in defining, codifying, and expanding the realm of international law. The International Law Commission, established by the General Assembly in 1947, is the primary institution responsible for these activities. The Legal…

Solon.

Crimes against humanity consist of various acts—murder, extermination, enslavement, torture, forcible transfers of populations, imprisonment, rape, persecution, enforced disappearance, and apartheid, among others—when, according to the ICC , those are "committed as part of a widespread or systematic attack directed against any civilian population." The term also has a broader use in condemning other acts that, in a phrase often used, "shock the conscience of mankind." World poverty, human-made environmental disasters, and terrorist attacks have thus been described as crimes against humanity. The broader use of the term may be intended only to register the highest possible level of moral outrage, or the intention may be to suggest that such offenses be recognized, formally, as legal offenses.

Considered either as a legal offense or as a moral category, the concept of crimes against humanity embodies the idea that individuals who either make or follow state policy can be held accountable by the international community. It thus modifies traditional notions of sovereignty according to which state leaders and those who obeyed them enjoyed immunity. Political and legal theorists have justified that challenge to the idea of sovereignty in several ways. For some, a crime against humanity is simply an inhumanity of an especially gross type. For others, major atrocities have the potential to damage international peace, for they are either a prelude to external aggression or have effects that spill over state borders. For still others, genocide is at the core of crimes against humanity; the term crime against humanity was first officially used in condemning the Armenian Genocide and was first adopted in law as a response to the Holocaust. Genocidal attacks on people on the basis of group membership implicitly deny the victims' human status, according to that view, thus affronting all human beings. Yet others reject those views and focus rather on the basic nature of state authority: states are justified only by their capacity to protect their citizens, and, when their powers turn atrociously against a state's own citizens, they lose all warrant, and those who direct and obey them become subject to judgment and sanction by the entire human community. How to distribute blame between those who direct and those who follow is, however, a contested issue in both morality and law.

Marriage law, the body of legal specifications and requirements and other laws that regulate the initiation, continuation, and validity of marriages. Marriage is a legally sanctioned union usually between one man and one woman. Beginning with the Netherlands in 2001, a number of countries as well as several U.S. states have also legalized same-sex marriage. In addition, some jurisdictions (e.g., several European countries and some U.S. states) have implemented civil unions or domestic partnerships, which afford gay couples many of the same rights and obligations assumed by married couples. Other U.S. jurisdictions, while not recognizing civil unions or domestic partnerships, granted a range of legal rights to same-sex couples.

English common law adopted a regime of separate marital property in the late 12th and early 13th centuries. The wife had her property, the… Because marriage is viewed as a contractual agreement subject to legal processes, a newly married couple undergoes a radical change in their legal status. This change involves their assumption of certain rights and obligations to each other. In many societies, these obligations include living together in the same or nearby dwellings, the provision of domestic services such as child rearing, cooking, and housekeeping, and the provision of food, shelter, clothing, and other means of support. The rights of marriage include the shared ownership and inheritance of each other's property to varying degrees and, in monogamous marriages, the exclusive right to sexual intercourse with each other (see monogamy).

These generalizations notwithstanding, every past or present society has had its own concept of marriage, and many have created marriage laws that reflect their particular cultural standards and expectations concerning the institution. Ancient Roman law recognized three forms of marriage. Confarreatio was marked by a highly solemnized ceremony involving numerous witnesses and animal sacrifice. It was usually reserved for patrician families. Coemptio, used by many plebeians, was effectively marriage by purchase, while usus, the most informal variety, was marriage simply by mutual consent and evidence of extended cohabitation. Roman law generally placed the woman under the control of her husband and on the same footing as children. Under Roman law no slave could contract marriage with either another slave or a free

person, but the union of male and female slaves was recognized for various purposes.

The canon law of the Roman Catholic Church was the only law governing matrimonial relations between Christians in western Europe until the Reformation and still has considerable authority in some Roman Catholic countries. The church historically regarded marriage as a lifelong and sacred union that could be dissolved only by the death of one of the spouses. This exalted view of marriage envisaged the husband and wife as made of "one flesh" by the act of God, and marriage was thus transformed from a terminable civil contract under Roman law to a sacrament and a mystic union of souls and bodies never to be divided. In canon law the free and mutual consent of the parties was regarded as essential to marriage. Marriage was regarded as completed between baptized persons by consent and then consummation. Canon law held a marriage to be null and void in cases in which the parties were within prohibited degrees of close blood relationship (consanguinity and affinity).

Marriage law as it developed in England specified the requisites of marriage as being the following: each party shall have attained a certain age; each shall be sexually competent and mentally capable; each shall be free to marry; each shall give his or her consent to marry; the parties shall be outside the prohibited degrees of blood relationship to each other (consanguinity and affinity); and the marriage ceremony shall conform with the statutory formalities.

The marriage law of most western European nations and that of the United States (which is itself based on English marriage law) is the product of canon law that has been greatly modified by the changed cultural and social conditions of modern industrialized and urbanized life. Modern marriage law regards marriage as a civil transaction and allows only monogamous unions. In general, the legal capacity of a person to marry is the same in most of the Western world and is subject

only to impediments such as consanguinity and affinity, age limitations (which have been revised upward in most countries from a minimum of 12 years old or younger to between 15 and 21 years old), and restraints due to mental incapacity. In the United States the federal Defense of Marriage Act (1996) defined marriage as a legal union between one man and one woman only and allowed states to refuse to recognize same-sex marriages performed in other states. Many U.S. states passed laws similar to the Defense of Marriage Act or amended their constitutions to the same effect. In 2013, however, the U.S. Supreme Court declared the act's definition of marriage to be unconstitutional.

Divorce is almost universally allowed, with restrictions on divorce undergoing gradual relaxation in Catholic countries. In Russia only registered civil marriage is recognized. Monogamy is strictly enforced there, and marriage must be completely voluntary between the parties, who must be over 18 years of age. Caste and social standing continue to influence the incidence of divorce in areas of South Asia.

In Muslim countries of the Middle East, Asia, and North Africa, the prevailing Islamic law regards marriage as a contract between the two spouses for the "legalization of intercourse and the procreation of children," though it is always seen nonetheless as a gift from God or a kind of service to God. The terms of the marriage depend on the will of the consenting parties, and it may be constituted without any ceremonial. The essential requirement of marriage is offer and acceptance, expressed at one meeting. Islamic law has historically permitted the practice of limited polygamy, though it has been waning for some time in virtually all Muslim countries.

Polygamous marriages are still permitted under customary laws in many African nations, but there is a growing tendency toward monogamy. Many developing nations in Africa and elsewhere are markedly different from Western nations in that there is no uniform marriage law. The regulation of marital relations is based either on religion or on the customary laws of the territory. This leads to a diversity of laws within one territorial unit and often gives rise to complex problems in the case of tribal, ethnic, or religious intermarriage. In Japan polygamous marriage is prohibited, and age limits of 18 years for men and 16 years

for women are specified before marriage can take place. Consanguinity to a close degree is prohibited, and all marriages must be registered in accordance with law. Polygamy is also forbidden in China. Formality in the marriage celebration has been abandoned, but the civil marriage must be duly registered to be valid.

Check Your Progress 1

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

1. How do you know the Strategies of Peace?

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2. Discuss the Diplomacy.

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3. How do you know International Law.

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10.5 WHAT IS THE ROLE OF LAW IN SOCIETY?

Law is closely linked with the society. As the society develops, law also develops. Law goes on changing with the changes in society. This is known as dynamics of the society as well as of law. Law is considered as an instrument of social change since it is an effective method of social control. Law has close relationship with sociology, history,politics, economics, psychology,philosophy and so on.If the law isimplemented properly in today's time of democratic law making, law would certainly become an important instrument of social change. During the colonial rule, the law was little responsive to the needs of South Asian society. In fact with the advent of the British rule, the development of the native law came to a halt. The British rulers were rather interested in the

continuation of their rule than in the development of law. Therefore, those laws did not reflect the social needs of the region. After the independence of the nations in this region, fast progress of the society was needed. For that purpose, law, among other tools, was considered to be an important t,ool to accelerate the pace of the progress of the society. In today's time, the different societies of the world are progressing in a fast way. Information Technology revolution, biotechnological successes, faster modes of transport etc. have made the progress and interaction of the society possible. With this progress, regulation of the use and transmission of information, and bio-technology tools becomes important. How can the cyber crimes be controlled? What is the right of the citizen to get information from the Government? How can the misuse of drugs and cosmetics be controlled? Can a person possess any harmful weapon which is dangerous to society? Law is an effective tool to lay down norms in an area and the members of the society are expected to adhere to those norms. It is in the interest of the society to adhere to the norms laid down by law. Law protects human dignity by granting rights to human beings and imposing corresponding duties on other fellow human beings. The rights granted to human beings by domestic and intemationallaw is called 'human rights'. Some of those human rights are so basic in character and are considered by many legal systems as 'Fundamental Rights'. Other human rights are called Social, Cultural and Economic Rights. The violation of the fundamental rights is very serious matter and law ensures the protection of those fundamental rights and thus promotes human dignity. Some ofthe examples of those rights are right to equality, right to liberty, right to freedom, right to practice any religion. Who protects these rights? It is law which protectsthese rights. Human being is the unit of the society. Once human dignity is ensured in a society, society can prosper and human beings can commit themselves to the well-being of the whole humanity. . South Asian society, at present, seems to be at cross-roads as the countries of the region are confronted with many complex problems such as poverty, unemployment, social and economic backwardness, communalism, corruption, terrorism and so on. Selfish and individualistic approach is penetrating deep in South Asian life. That may shatter the regional

character of South Asia. Considered from this angle, the role of law and legislation has become all the more significant to tackle these burning issues in order to maintain social equilibrium by reconciling various conflicting interests of the members of South Asian society. In the South Asian context, at present there is a wide gap between the poor and the rich, the socially neglected and socially dominating class. This situation makes it imperative for the State to provide adequate protection to weaker sections of the society, prevent exploitation, corruption and malpractices. The State must ensure equitable distribution of wealth and material resources to subserve the common good. The new challenges before the region because of socio-economic and technological changes can be effectively met either by introducing new laws or amending the existing laws to meet the exigencies of law. The role of law in a civilized society may either be direct or indirect. To give examples, laws relating to compulsory primary education help indirectly in the progress ofthe society in the long run while the law relating to prohibition (alcoholic drinks) has a direct impact upon the social life and morality of the people. Likewise, the laws relating to protection of environmental pollution have a direct bearing upon public health. On the other hand, licensing laws indirectly affect the economy of the country.

10.6 HOW IS LAW MADE?

The power to make law may be called legislative power. Legislative power is vested primarily in the sovereign authority of a political community. The sovereign authority exercises legislative power through the institution of supreme legislature of a country. It depends upon the political structure of the country to lay dlown the procedures regarding making of the law. If the political structure is federal one then the law making power is vested in the supreme legislature of the whole country (viz., Parliament) and also in the supreme legislature of the provinces (viz., Legislative Assemblies) forming the federation. If the political structure is unitary one, then the law making power would be vested in the supreme legislature (which isthe Parliament) of the country only. Iflaw is made primarily by the supreme legislature of a country, can it be said that subordinate legislature is also given the power to make laws?

The answer is in affirmative. Subordinate legislative power may be vested in local units of selfgovernance, autonomous bodies, executive bodies, and higher judicial authorities. Why do we call subordinate legislative power? Subordinate legislative power is that legislative power which is enjoyed with the authority of the supreme legislature. If legislative power is exercised without the authority of supreme legislature, it would not be considered as law. The law made by supreme legislature (whether federal or unitary) is generally named as "Act", "Code", and "Statute". But the process of making law is slow. Ifin any area, law has to be made, the appropriate legislature introduces the draft of the proposed law which is called "Bill". If the Bill is passed in the legislature according to the established practice, it becomes law of the land when it receives the assent of the Head of the State. The date of coming into force of the law is generally notified, Unless there is no notification of law, law does not come into force.

The law made by subordinate legislature (whether autonomous or executive orjudicial or local) is generally named as "Rule", "Bye-laws", "Order", "Statute", and "Ordinance" etc. The term "delegated legislation" is used when executive makes law. Law making power is said to be delegated to the executive by the supreme legislature in any given area. Such legislation owes its existence, validity and continuance to the supreme legislature. Supreme legislature controls every aspectoflaw making by the subordinate legislature. The delegated authority to make law should not be misused by the executive. The autonomous bodies can also make law to govern itself. For example, University is an autonomous body which has got the powers to make law for itself. The Railway Company is also an autonomous body. Similarly, local bodies are powers to make law concerning their local matters. These are generally called "bye-laws". Bye-laws made by a local body operate within its respective locality. The examples of local bodies are: Municipal Corporations, Municipal Boards, Panchayats, etc. The higher judicial branch of the State machinery is also given the power to make law. Such powers are given to regulate their own procedure of dispensing justice. Rules as to the composition of the court (viz., single bench, double bench, and full bench) may be framed by the higher judiciary

themselves. Can the supreme legislator make any law as it wishes? Is there any control on the legislative power of the supreme legislature? The answer is in the affirmative. The control on the legislative power of the supreme legislature is exercised by the basic socio-economic philosophy of the nation on which it is standing. This basic socioeconomic philosophy is generally documented in every nation and is called "Constitution". The Constitution is the highest law of the land. It is the Constitution which lays down the extent of the legislative power of the supreme legislature. Thus, the supreme legislature can not make any law as it wishes. It should make only those laws which are according to the provisions of the Constitution and promoting the ideals of the Constitution. Another interesting question may be whether people of a country can make law by practice? The answer is again positive. But is a very difficult process to prove the practices of people amounting to law in the courtroom. Court may recognize the practices of people as law if it holds that the practice in question is custom. Such recognition by Court depends upon some factors, viz., duration of practice, consistency of practice, generality of practice, reasonableness, adherence to public policy and the existing Statute in the area. Unless a Court does not recognize the practice of people as customary law, such practice would not become law. Many practices of the people enjoying the status of customary law, right of pre-emption and 'sapta -padi' (amongst Hindus) in marriage. Sometimes you may also come to know that Court has made a law. Is it really possible? Can the Court make law? Yes, the Court can make law, but with certain conditions. One, that it is not the prerogative of all courts to make a law. Only higher Courts can, in certain circumstances, make law. Two, the circumstances in which the higher Courts could make law might be: absence of any law passed by the supreme legislature in the field, the meaning of the existing legislation (or words contained in legal provisions) is not clear, there is no commentary available on the point, the interpretation of a Constitutional provision etc. If the higher Courts, in these circumstances deliver a judgment, it is called 'judicial precedent' and it is also one way by which law can be made and that would be binding on the people. The examples of this way of law-making are some of the judgments of Supreme Court,

like Vishakha v. State of Rajasthan (prevention of sexual harassment at work places), Keshavanand Bharati v. State of Kerala (basic structure doctrine in the context of amendment of the Constitution), etc.

10.7 WHAT ARE THE SOURCES OF LAW?

Why do we need to know the sources of law? We need to know the sources of law because it helps us in identifying the reservoir oflaw, the location oflaw, the residence of law. Once we know the source or sources of law, we can use and apply it at our convenience; we can have access to it at any time as we know the residence and' location of it. Although sources of law differ from system to system and society to society, yet seven broad sources of law can be discussed here. Those sources are: Constitution, legislation, judicial precedent, custom, morality, equity, and opinion ofjurists. Some of these sources are called 'authoritative sources' and some are called 'nonauthoritative sources'. Authoritative sources are: Constitution (in those legal systems in which there is Constitution and which is enjoying the highest reverence), legislation, judicial precedent, and custom. Non-authoritative sources are: morality, equity, and opinion ofjurists. In most of the legal systems, the Constitution is generally regarded as the highest source of law. It is also called the ultimate source of law. All other sources of law are not enjoying the same status as is enjoyed by the Constitution because the Constitution isthe fundamental law of the land. The provisions of the Constitution lay down binding rules. Violation of the provisions can be checked and remedied by the Court action. But there are Constitutions like that of China, which simply lay down the rules for the guidance of the governance. Violation of the Chinese Constitutional provisions can be checked only at the political level, not at the level of the Court. Even though the Constitution of acountry enjoys, generally, a very high status, yet, legislation isthe most important and biggest source oflaw today. The term "legislation" means the making or enacting the law. Legislation is that source oflaw which consists in enactment of legal rules by a competent authority e.g., Parliament or State legislatures. Thus, legislation is long and thoughtful processoflegal evolution. It consists in the formulation of norms of human conduct in a given prescribed form through a given prescribed

process. Legislation includes Acts, Statutes, Codes, Ordinances, Rules, Regulations, Bye-laws, Orders, Directions, Notifications, etc. All these forms of legislation are the most important sources of law because these are precise and certain. These are easily accessible. The sections, clauses, sub-clauses, paragraphs of legislation are simple to be used. In Common Law legal system, judicial precedents constitute a very important and authoritative source oflaw. The term 'judicial precedent" refers to a previous decided case of an appellate court (like, High Courts and Supreme Court) which is, or may be, taken as an example or rule for subsequent cases or by which some similar acts or circumstances may be supported or justified. In short, it means the use of past decided cases as guides in the moulding of future decisions. The authority of precedent lies in the power exercised by appellate courts. If the appellate courts are not enjoying authority, then the authority of judicial precedent would be absent. But in Civil Law legalsystems(like,Russia, France, Germany, Italy,Japan and La~ American countries), decisions ofthe highest court does not enjoy the authority. Thus, those judicial decisions are not the source oflaw. Custom is the oldest source of law. Before the advent of legislation and precedent, custom was the most important source of law. Even though today the scenario has changed, custom remains to be an important source of law. Custom means uniform practice of the people under like circumstances. Certain practices are accepted by the people as good or beneficial and they go on practicing them which, in course of time, acquire the force of law. It is, however, not any practice that qualifies to become a legal custom, like wearing black clothes at funerals. To become a source of law, a practice must satisfy five essentials. First that the practice must be oflong standing. Single day practice would not make that practice a custom. Second, the practice must be continuous and certain. Continuous practice is an important factor here. Certainty of practice is also important. Practice should not be vague. Third, the practice must be reasonable one, not unreasonable. Reasonableness of a practice is tested according to the time when the practice started, not according to the contemporary time. Fourth, the practice must not be against any legislation or statute. Even if the practice is very old, yet it must not oppose legislation. Fifth, the practice

is compulsory for people in a particular given set of circumstances. People are obliged to act according to the expected practice in the given circumstances. If people practice without such feeling of obligation, it would not become custom. For example, the practice of presenting roses to beloved ones on Valentine's Day can be a custom only if such present is made with the obligatory feeling. If one is necessarily obliged to present roses on that day, then it would be a custom, otherwise not. Morals are not authoritative sources oflaw. Those are unauthoritative sources. Courts are not bound by moral norms. However, Courts may be influenced by moral norms or principles. The moral norms are abstract, not precise and concrete. This is the reason why moral norms are not binding. Mora"!norms lack the backing of the State. Equity rules are also not binding as authoritative source. 'Equity' is a combination of morals and law. Morals have a great influence on equity norms. The main ingredient of equity norms is conscience. You might have heard of some of the famous equity principles, like, 'he who comes to seek equity must come with clean hands', and 'he who seeks equity must do equity'. For example, a party seeking specific performance of an agreement for the transfer of land may be refused that equitable remedy by applying equitable principles as source of law if it is found that he has acted improperly in relation to that agreement (i.e.. does not have 'clean hands'), such as by denying its existence in previous court proceedings. Sometimes, the opinion of legal experts and eminent text book writers on law work as a source of law. In all the mature legal systems, they influence and mould the law. Although there is no sanction of the State behind them and there is no binding force of this source, this source is consulted by the Courts and is, sometimes, applied by them. For example, Pollock is regarded as an authority in Contract Law. Chalmers is regarded as an authority in Negotiable Instruments law. Oppenheim is regarded as authority in international law. In international law, new situations and problems constantly arise. The jurists express their opinions on such problems and in many cases they are followed by Courts and applied as source of law.

Check Your Progress 2

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

1. What is the Role of Law in Society?

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2. How is Law made?

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3. What are the Sources of Law?

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10.8 LET US SUM UP

In this Unit, we discussed the meaning ofthe terms 'law', 'rules of-law', 'rules in the nature oflaw', 'bye law', 'Ordinance', 'Act', 'Statute' etc. and how these terms differ in meaning from other rules and nature's law, moral law etc. We also discussed the role of law in the development of society. We discussed that a haphazard development of society is not preferred; rather a regulated system of society is preferred. Such regulation comes from an organized system of law, and institutions to enforce the law, and personnel who administer law. The problems in the South Asian region can be solved by using law as one of the several means.

10.9 KEY WORDS

Strategies: Strategy is a high level plan to achieve one or more goals under conditions of uncertainty. In the sense of the "art of the general", which included several subsets of skills including tactics, siegecraft.

International Law: International law, also known as public international law and law of nations, is the set of rules, norms, and standards generally accepted in relations between nations.

10.10 QUESTIONS FOR REVIEW

1. How the Strategies of Peace would are been described?
2. Discuss the Diplomacy in Global era.
3. Discuss the importance International Law?

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10.12 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. See Section 10.2
2. See Section 10.3
3. See Section 10.4

Check Your Progress 2

1. See Section 10.5
2. See Section 10.6
3. See Section 10.7

UNIT 11: APPROACHES- MEDIATION AND ARBITRATION

STRUCTURE

11.0 OBJECTIVES

This Unit will help you to understand:

- the concept of mediation and its utility in conflict resolution;
- the features and facets of reconciliation;
- the practice of peaceful conflict resolution through satyagraha and Shanti Sena; and
- the means and application of mediation and reconciliation by Gandhi.

11.1 INTRODUCTION

The term conflict is understood as any situation, event, or opinion in an inter-personal or other relations where there is more than one position and these are at variance with one another. When these variant positions are made to coexist within the same social matrix, conflict occurs. Thus, conflict is a process of rearrangement of variant positions to enable them to resolve differences and attempt coexistence. Conflict is seen, witnessed or experienced in every society at one point of time or the other but it is imperative that such a conflict is brought to an end if a

society has to rejuvenate itself, flourish and survive peacefully thereafter. One must also understand that conflict is not inherently adverse or unhealthy; it can be a productive occurrence and it can rather help a society to reinvent itself and learn to coexist peacefully. Conflict lends dynamism to a situation that allows for a dialogue and reconsideration of existing situation and a possible rearrangement of interpersonal or international relations. Every society goes through a process of social and political churning whenever internal and external situations warrant it. It is an inevitable part of the process of social development and change. Lewis Coser and Ralf Dahrendarf propose in their conflict theory that conflict can be used to resolve social tensions and maintain interpersonal relations. For them, conflict is a natural manifestation of social change because in this process some groups benefit more than the rest. Resolution of tensions through the use of conflict is more desirable than prolonging the differences. Such resolution of conflict is particularly marked in pluralistic, open societies as it provides avenues for citizens to challenge the established norms and institutions. Conflicts can be violent and non-violent, armed resistance or peaceful opposition. Whatever is the nature of conflict, while it is desirable to bring an end to the conflicts amicably and early, some conflicts are less amenable to resolution than others. Protracted conflicts elude solutions because of various factors such as complex and competing issues involved, divergent opinion on the possible solution, different methods adopted by the main actors, and a general lack of concert of interests in favour of a solution. Since all conflicts cannot be successfully resolved one way or the other, some conflicts and disputes have to be lived with. However, even as some conflicts are difficult to resolve, they must however be contained to a level that does not endanger human life and social existence in general. In this unit we will look at the concept of mediation and reconciliation as tools of conflict resolution, and their application by Gandhi in his efforts to resolve conflicts. While both mediation and reconciliation are important for conflict resolution, they are employed at different stages of conflict. Mediation is a method of peaceful resolution that is used to bring about a solution to an on-going conflict. Reconciliation, on the other hand, is a process of coming to terms with the reality at the end of

the conflict and of preparing oneself for a renewed coexistence with other groups. Usually, mediation as a procedure comes into prominence during a conflict when parties try to seek a way out of an imbroglio; reconciliation is a process that normally comes into effect after a conflict has come to an end to heal the wounds and help a community to march on with life.

11.2 GANDHI ON VIOLENCE, CONFLICT AND CONFLICT RESOLUTION

Gandhi's position on violence and conflict appears ambivalent on the face of it but a deeper inquiry shows that he had a considered opinion on both conflict and violence. While he unequivocally advocated non-violent resistance as a means of achieving resolution of conflict, he did believe that there might be situations in public life where violence cannot be wished away. Although he believed that violence thrives on counter-violence and begets the violent result that does no one good, he was not averse to the use of violence if the choice was only between violence and cowardice. It was better to wage a just war, take recourse to violence or use arms to safeguard one's people than be seen as coward and incapable of defending one's subjects. It is in this context that Gandhi supports war as a legitimate or just war if it is to save the annihilation of one's race. When Gandhi was fatally assaulted in 1908, his eldest son, Harilal Gandhi, asked him what was the right course of action he should have taken, 'whether he should have run away and seen his father killed or whether he should have used the physical force' to defend Gandhi, the father replied that 'it was his (Harilal's) duty to defend me even by using violence' (Weber, p.62). However, while practising satyagraha, Gandhi felt that it had to be employed at every level by those wanting to succeed in it. It had to be practised by applying it in everyday situations and in the larger social and political context. He added that 'he who fails to apply in the domestic sphere and seeks to apply it only in the political and social sphere will not succeed' (Weber, p.62). Gandhi does not take extreme or unqualified position on his opposition to war or support for non-violence. The Gandhian notion of conflict and the method of its resolution i.e., satyagraha, is premised on such sound beliefs as ahimsa,

truth and moral conviction. Satyagraha is Gandhi's articulation of conflict resolution. He held that hatred, fear, anger and cowardice lead to conflict. In order to be able to rid the society of conflict, one must first resolve conflict at the individual level. There is no redemption from social conflict unless the individual is at peace with his own self and can see his social goals clearly. The individual must seek both emancipation of the self and the opponent. The idea was to eliminate the evil and not the evil-doer. The intention of a satyagrahi is never to embarrass the wrong doer; his object 'is to convert, not coerce, the wrong doer' (Gandhi cited in Weber, 2006, pp.145-6). For him, the notion of mediation is not merely a procedural intervention of a third actor; it is the spiritual mediation powered by non-violence and selfintrospection for the ultimate realisation of truth. Gandhi is more concerned about 'the processes of conflict [and its resolution] rather than the substance' (Weber, p.13) or the types of conflict. Gandhi seeks to apply satyagraha as a means of conflict resolution at the level of the individual, community, society and the world outside. Insofar as the means of resolution of the conflict is concerned, Gandhi was unwavering in his conviction that coercion of any kind was to be avoided. There are some (e.g., Bondurant, 1967; Case, 1923) who argue that Gandhi's practice of non-violence and fasting were coercive in essence in forcing the opponent into submission. Gandhi's decision to undertake fast during the Ahmedabad mill workers' strike discussed later in this unit was construed to be so, although Gandhi himself acknowledges that he allowed the mill owners to stick to their reasoning so that his fast should not be seen as a pressure tactic. In fact, Case asserts that 'satyagraha is explicitly nonviolent and implicitly coercive' but Gandhi understood it as a means of arriving at truth and deciding on the right course of action, and not as a weapon of coercion (Case cited in Weber, p.57). Every means employed to the resolution of conflict had to be necessarily peaceful, nonviolent, non-coercive, leading to the realisation of truth.

11.3 THE CONCEPT OF MEDIATION

Mediation as a method and approach to peaceful resolution of conflict is characterised by the participation of a third party in the negotiations

besides the directly concerned parties. When parties to the conflict are either not agreeing to talk to each other or where negotiations fail to lead to a common ground, mediation is used to make headway in the negotiations. The mediator acts as a neutral third party to promote settlement without judging the merit of a case on either side. Such a mediator is a person or a group of persons who is impartial and trusted by all the parties to the conflict. The mediating party takes the thread of negotiations in its own hands and acts as a channel of communication between the conflicting sides. Once a mediator has been identified, the process consists of actual transmission of suggestions and solutions to the parties concerned. However, there is no compulsion that the parties must accept the solutions presented by the mediating side. It is this nature of voluntary acceptance of a solution and the cooperation of the parties to a conflict that makes mediation a peaceful process, devoid of any coercion. In order for mediation to be successful, two conditions are essential. Firstly, the mediator should be well informed about the problem at hand and should be able to project a neutral and an impartial image. If not, the mediator always runs the risk of alienating one or the other party. Such discontentment often acts as a hurdle in successful mediation when one of the parties is reluctant to accept the compromise solution. Secondly, both the parties should be willing to resort to mediation and the mediator should be acceptable to them. The consent to mediation and the confidence reposed by the conflicting parties in the mediator is crucial for the successful settlement of a conflict. Any deficit in trust, impartiality and confidence may jeopardise the process of mediation. Gandhi attempted to practise non-violence through mediation wherever it was required. Although he was not always successful, he persisted with his efforts again and again. He firmly held that non-violence never begot defeat; the inability to achieve the desired result is because of the lack of perfection in practising satyagraha. The first trace of mediation efforts by Gandhi is seen in his twenty years of life in South Africa. As a lawyer, he was bound to resolve the disputes through persuasive arguments in the court but he realised soon enough that it was possible and desirable to bring about private compromises and avoid the acrimony and defeat in an adversarial situation like litigation. His first

instance in mediation was a case involving Dada Abdullah Sheth and Sheth Tyeb Haji Khan Mohammed. There are many such instances where he successfully brought about reconciliation (Bhaskaran, pp.430-431). There are two instances of conflict in India in the early years of Gandhi's political life where he is said to have resorted to mediation between two conflicting parties. One was the conflict relating to farmers in Champaran in 1917 and the other was the conflict between the labourers and mill owners at Ahmedabad in 1918. The strike by the Ahmedabad mill workers was one of the first instances where Gandhi used strike, fasting and mediation as the methods of conflict resolution. When Gandhi initially received information about the workers' unrest at the textile mill, his opinion was that the case of the mill workers was strong. However, his own position was awkward because the main mill owner was his friend. He advised the mill owners to submit the dispute to arbitration but they refused. Then he advised the labourers to go on strike because he felt that they were perfectly in their right to do so in the face of mill owners' intransigence. Strike was also a peaceful form of protest when labourers had no other means of pressing for their demands. Gandhi himself joined the strike, attended the meetings and the mill workers every evening and took a pledge from them that they will not return to work until either their demands were met or the mill owners agreed to resort to arbitration. The strike continued successfully for a fortnight but thereafter the workers became anxious and showed signs of restlessness and anger. It was difficult to maintain the protest as a peaceful one and channelise the energies of the workers into fruitful and gainful engagement. In this whole process of being a part of the conflict, Gandhi reflects on the dilemmas and consternation faced by the mediator himself thus: 'The mill-hands had taken the pledge at my suggestion. They had repeated it before me day after day, and the very idea that they might now go back upon it was to me inconceivable. Was it pride or was it my love for the labourers and my passionate regard for truth that was at the back of this feeling–who can say?' (Jack, p.155). In order to resurrect a flagging strike, Gandhi decided to go on fast 'unless the strikers rally and continue the strike till a settlement is reached, or till they leave the mills altogether'. Gandhi's dilemma was once again in attendance on his

decision to go on strike since he 'enjoyed very close and cordial relations with the mill owners,' and his fast could have affected their position and decision on the dispute. On the face of it, it appeared that the fast was against the millowners but as a satyagrahi- in search of truth- Gandhi was certain that this was the only right course of action to induce the labourers to continue a non-violent protest that was agreed upon. He confessed that his 'fast was undertaken not on account of a lapse of the mill owners, but on account that of the labourers' in which he had a share. 'With mill owners, I could only plead; to fast against them would amount to coercion. Yet…I felt I could not help it' (Jack, p.156). The net result of Gandhi's cordial relations with both the disputants (the mill owners and the labourers), a non-violent strike coupled with the conviction that the mill hands were justified in their demand, and the eventual decision to fast in order to keep the labourers on strike from becoming violent and unruly, led to the creation of an atmosphere of goodwill and understanding that paved the way for the resolution of conflict. The mill owners agreed to submit the dispute to arbitration and the strike was called off within only three days of fasting. What is instructing in this episode is that although Gandhi could have taken up the case as litigation, he decided to initiate a form of peaceful protest as a means of resolving the conflict. Secondly, he decided to support the position of the labourers because he was convinced that labourers had genuine concerns in spite of the fact that one of the mill owners was his acquaintance. Thirdly, Gandhi believed that such change of heart and a climb down from their position (mill owners) was made possible in this case because the path of satyagraha and non-violence touched the hearts of the mill owners. They were equally keen to resolve the conflict and set about discovering some means for a settlement.

11.4 RECONCILIATION

Reconciliation as a concept is part of the process of rebuilding peace after the conflict has come to an end or when has been brought down to manageable levels. Every conflict passes through two stages. The first one is the process of conflict management that is effected through such methods as negotiation, mediation, dialogue, arbitration, etc. The second

stage involves reconciliation when the conflict has been resolved. Reconciliation is a challenging process because the entire process of peace building is hinged on it. It has a dual role to play in the resolution of conflict: one, successful conflict resolution is, in the immediate sense, premised on reconciliation; second, it prepares the conflicting communities to eventually coexist with each other and thus acts as the ultimate basis for lasting peace. Reconciliation requires developing a web of peaceful relationships between the communities and a change in socio-psychological and emotional outlook towards each other. This in turn is an uphill task when the communities have seen conflict for an extended period of time coupled with a general lack of confidence in the other group's intentions. It requires a tremendous leap of faith and belief to find emotional connection in each other so as to counter the trust deficit and renew efforts towards coexistence. Many a time, successful peace agreements have failed to establish lasting peace or to sustain negotiated solution in the absence of genuine reconciliation on the part of the communities. This is so because the peace agreements or blueprints for resolving the conflicts are negotiated by the leaders and political representatives of the warring factions but reconciliation depends on the active involvement of people and their perception about the other community. When there is incongruence between the popular perception of a conflict and the political calculations of the leaders involved in negotiations for its resolution, it is unlikely that the conflict will be successfully put to an end without effecting a change in that popular perception. Sometimes structural mechanisms for reconciliation are woven into peace agreements by way of creating interdependencies, linkages, affinities and other channels of interaction to create conducive atmosphere for mutual respect and understanding but there is no guarantee that such structures and mechanisms will necessarily bring about a change in popular perception and orientation towards each other (Bar-Tal, p.365). Thus, no matter how successfully peace has been negotiated, reconciliation is a necessary and inevitable process to sustain that negotiated peace. James Baker, the former US Secretary of State, once famously stated that no amount of 'international conciliation can replace national reconciliation' in bringing about lasting peace. The

process of reconciliation, by definition, is a gradual, reciprocal and voluntary one. It must involve respect for, forgiveness towards, and appreciation of the rival group and its socio-political position. Although it is extremely difficult to countenance such dramatic turn around in one's perception, it is commonly held that transition and acceptance of a group from rival to a legitimate partner and stakeholder in peace is necessary for reconciliation. Intra-social reconciliation must be based on four elements: truth, regard, justice and peace. Truth involves 'open revelation of the past, including admission, acknowledgement and transparency'; regard is a term used by Kriesberg to denote acceptance, forgiveness, and compassion; justice 'requires rectification, restitution, compensation and social restructuring'; and peace (or security in Kriesberg's view) calls for building 'common future, cooperation, coordination, well-being, harmony…and security for all the parties' (Lederach and Kriesberg quoted in Bar-Tal, pp.366-67). Influenced by this understanding of reconciliation and Gandhi's emphasis on spiritual aspect of it, the South African Commission was named as Truth and Reconciliation Commission. Social reconciliation is contingent upon many factors such as the perceptions of the incumbent leaders and the members of the community, levels of social cohesiveness, the ability of everyone to enmesh in the local cultural matrix (if it is an intra-community conflict), and traditional, emotional ties shared by a community. Social group as a repository of cohesive identity and cultural values gets disintegrated when dissimilar attitudes are made to coexist. Traditional values are sacrificed out of sheer necessity and desperation to survive in hostile conditions. Moreover, retrieving one's sense of selfesteem and emotional fabric is an arduous task for those who have seen conflict for too long. They tend to suffer from a sense of helplessness and seething anger at being forced to endure conflict. The problem gets amplified when an entire community shares such emotional attributes of anger, helplessness and retribution and continues to live with ruptured emotional balance and a deep sense of loss. These grievances must be known, acknowledged and redressed to the extent possible by those involved in conflict resolution. Since a conflict is rarely one-sided, its resolution requires forgiveness and healing on the part all those

involved in it. Usually reconciliation is understood in Western-Christian religious-cultural context. However, in Da Silva's view, 'Gandhi's satyagraha (truth force) is an Eastern articulation of reconciliation. [Satyagraha] sustains and drives nonviolent behaviours, which are expressions of forgiveness and reaching out to the other. Nonviolence is implied in forgiveness, since we cannot be violent and promote reconciliation at the same time. Reconciliation through nonviolence has much in common with the four dimensions of forgiveness, namely, moral judgment, forbearance, empathy, and repairing of broken relationships. The assumption of human interdependence that underlies ahimsa is also an important part of the reconciliation process that seeks to bring together the perpetrator, the victim, and the community through restorative justice' (Da Silva's views cited in Meiring, p.1395).

During the 1940s, until his death in 1948, Gandhi devoted much of his time and energies to Hindu-Muslim reconciliation in which Shanti Sena also had a major role (see the following section 12.5). He famously stated that '[a] bullet destroys the enemy; nonviolence converts the enemy into a friend', and has the ability to change the heart of even a hardcore fanatic. The last months of his life were spent in bringing about reconciliation between Hindus and Muslims in Noakhali, Bihar and Calcutta that had seen worst riots following the partition of the country. He travelled from village to village, accepted hospitality of Muslim families and addressed gatherings in the evenings in an effort to bring peace to the troubled communities. An incident that took place on 31 August 1947 in which a mob of unruly rioters arrived at his place and attacked him but the blow narrowly missed Gandhi. It made him realise that his efforts at resolving the differences had not been entirely successful. He undertook fast unto death on the following morning that continued for the next three days. That fast brought peace to the neighbourhood and forced leaders of rioting mobs, hooligans, representatives of communities and every conceivable group to rally around Gandhi and take a written pledge that there would not be communal tension in the area. Thereafter, communal disturbances occurred in many other parts of the country but Bengal remained largely

peaceful. Gandhi was ready to forgive and condone those who had killed others, even those who were not clear of blood on their hands, if they owned up to their crime and if there was a true repentance.

Check Your Progress 1

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

1. Discuss the concept of Gandhi on Violence, Conflict and Conflict Resolution.

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2. Discuss The Concept of Mediation.

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3. Describe Reconciliation.

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11.5 THE IDEA OF SHANTI SENA

Gandhi tried to develop alternative structures of conflict resolution to help sustain the idea of satyagraha in action. Shanti Sena is one such structure of non-violence. Gandhi's idea of Shanti Sena is important here both as a means of peaceful resistance as well as a method of achieving reconciliation in the society when it is torn by conflict. The earliest experiments in evolving the idea of Shanti Sena can be deduced from the peace march he held in Transvaal in October 1913 and the establishment of Tolstoy farm to rehabilitate the satyagrahi families in 1910 in South Africa. In India, his efforts in resolving the issue of Champaran agriculturists and Ahmedabad mill workers (both in 1917) are in the same league (Bhaskaran, p.431). The idea of Shanti Sena as a band of volunteers germinated during the communal riots in 1921 but it could not

be brought to fruition then. It was organised much later in 1947. He believed that just as there is an army to wage war, there must also be dedicated soldiers of peace and non-violence to hold the weave of social fabric together. The concept of Shanti Sena has been variously translated as peace brigade, peace army, shanti dal and soldiers of peace to denote a group of volunteers who are practitioners of non-violence and are soldiers aiming to resolve social conflicts peacefully. The Shanti Sainiks, as essential satyagrahis, must believe in fundamental concepts of satyagraha, which were: 'faith in human goodness, truth, non-violence, creative selfsuffering, means and ends, rejection of coercion, and fearlessness' (Weber, pp. 41-59). While these are the concepts in which Shanti Sainiks must believe, there are yet other principles, which they must ideally try to follow. The five guiding principles are search for truth, stopping and preventing direct violence, removing structural violence, nonviolent ethics and values, and self-realisation leading to inner peace. Since these guiding principles are difficult to follow in their entirety, Gandhi believed that they must abide by as many principles as they can while endeavouring to imbibe and emulate all of them. In Gandhi's philosophy, as in his strategy, perfection must be aimed for and attained through constant efforts; but lack of perfection need not lead to forsaking that effort altogether. He said that Shanti Sena cannot always consist of 'perfectly nonviolent people. It will be formed of those who will honestly endeavour to observe nonviolence' (Cited in Bhaskaran, p.431). The first guiding principle of search for truth has been discussed before in the unit on Truth is God (Unit 8 in Course 3). The second principle that believes in stopping and preventing direct violence involves the mechanisms of peaceful conflict resolution such as negotiation, mediation, dialogue, arbitration, and others. A Shanti Sainik must know to employ these methods skillfully as also to try and pre-empt the reasons that lead to conflict in the first place, such as structural violence. Structural violence is understood as the prevalence of inequality, exploitation, injustice or any form of discrimination like the system of untouchability that is the breeding ground for violence. It is the duty of the Shanti Sena to eliminate such structures of violence so that social cohesion can be established. The fourth principle of nonviolent

ethics and values has to be followed all along, even in the face of conflict. A Shanti Sainik must only offer peaceful resistance without resorting to violent counter attack; he should prefer to die rather than kill others. It is pertinent to note here that Shanti Sena was predominantly meant for resolving social conflicts such as communal riots and caste conflicts within a country although he did envisage its larger role as a substitute for police and eventually even the army. Though the latter part of his dream was difficult to be realised within his lifetime or thereafter, Shanti Sena (with a band of 79 volunteers) did play a major role in dousing the flames of communal conflict in the aftermath of the partition and the riots that followed in Noakhali, Calcutta and other parts of Bengal in 1947. Thus, Shanti Sena was to act as a neutral mediator of peace during a conflict as also to act as a healer in the process of reconciliation and coexistence in the aftermath of violence. It was a useful idea at every stage of the conflict resolution even while following the avowed principle of non-violence. This context and original mandate of Shanti Sena was not appreciated in right perspective in the post-independence period by Gandhi's followers. Two reasons can be ascribed for this loss of direction. Firstly, Gandhi was assassinated within months of successfully resolving the communal tension at Noakhali where Shanti Sena had been an active agent of restoring peace. It was robbed of the vision and guidance that Gandhi could have offered for its larger role in national and international affairs. Secondly, there were competing opinions about the role of Shanti Sena among the followers of Gandhi in the post-independence period. While one section led by Jayaprakash Narayan assumed the position that it should replace the army and fight the armed soldiers of China through peaceful resistance, the other opinion held by Vinoba Bhave understood its role more moderately as that of working towards rural reconstruction and building a peaceful society, free from internal conflicts (Weber, 2006, pp.236-238 and Upadhyaya, p.75). Shanti Sena became a splintered group torn between these two competing positions.

11.6 THE CONCEPT OF ARBITRATION

Arbitration is a form of Alternative Dispute Resolution in which the parties work out the disputed issue without going to court. An impartial third party, known as an Arbitrator, is chosen by the parties to listen to their case and make a decision. The meeting takes place outside court, but is much like a hearing, in that both sides present testimony and evidence. As arbitration has been set as a method of relieving the congestion of court calendars, the decision the arbitrator makes is almost always final, and the courts will only rarely reconsider the matter. To explore this concept, consider the following arbitration definition.

Definition of Arbitration

Noun

1. The hearing and settling of a dispute by a third party agreed to by them.

Origin

1350 – 1400 Middle English *arbitration*

What is Arbitration?

The process of arbitration is overseen by a professional arbitrator, who facilitates communication between two sides of a dispute. An arbitrator may or may not be an attorney, and many retired judges take positions as arbitrators. Often the most effective arbitrators have knowledge of, and experience in, the subject of the disputes they hear. For instance, an employment law attorney, or retired administrator in the state's employment division, may be effective in resolving an employment dispute.

Mandatory Arbitration

In some cases, mandatory arbitration may be ordered by the court. In mandatory arbitration, a single arbitrator usually hears the case. If arbitration is voluntary, the parties may agree to a single arbitrator, or choose a panel of arbitrators. The arbitrator in a voluntary case is chosen, or agreed upon, by the parties. If the parties cannot come to an agreement, the court may assign an arbitrator.

How to Find Arbitration Services

The truth is, anyone can claim the title of Arbitrator, since no specific qualifications or certification exists. Most people prefer to choose an

arbitrator experienced in a specific field of law, or experts in the topic of the dispute. The first step qualified arbitration services is to contact local attorneys in the field to discover which arbitrators they use. The local bar association, and local trade unions often maintain lists of recommended arbitrators and arbitration services. Finally, the American Arbitration Association can provide a list of arbitrators in any area of the country, as well as procedures and additional information on arbitration.

Examples of Cases Settled in Arbitration

Since arbitration became a popular method of settling disputes while avoiding overcrowded court calendars in the 1970s, many cases large and small have been settled by professional arbitrators. Many such cases involving large companies or large settlements have been highlighted on the news.

Midwest Airlines Flight Attendants Contract Dispute

Following the 2009 Republic Airways Holdings purchase of Midwest Airlines, more than 400 Midwest Airlines flight attendants complained of a contract violation, as hundreds founds themselves laid off in favor of non-Midwest employees paid as much as 70 percent less. As it turned out, the Midwest flight attendants' union contract contained specific provisions protecting their jobs in the event the airline was purchased by another company. As these provisions had been violated, the Association of Flight Attendants (AFA) filed a grievance accusing Republic Airways of violating their contract.

The AFA struck a major victory in the March 2011 arbitration ruling that required a settlement to be negotiated between Republic Airways and the union to be in the best interest of the former Midwest flight attendants.

NFL 2012 Bounty Scandal

In 2012, several players for the New Orleans Saints were accused of engaging in a 2009-2011 bounty program in which Saints players allegedly earned bonus payments for intentionally inflicting game-ending injuries on players for the opposing teams. As none of the injury-causing hits were ever penalized by officials during the game, the question arose as to how high the conspiracy rose, gaining the name "Bountygate" from

the news media and fans alike. In the wake of the controversy, NFL Commissioner Roger Goodell handed out the most severe sanctions in NFL history. Following the sanctions, a federal judge in New Orleans ruled that Commissioner Goodell overstepped his authority in sanctioning the players involved, and subsequently all the suspensions were overturned.

At this point, the issue was whether the NFL Commissioner had the authority to take disciplinary action in what the players' association stated was a salary-cap issue. The arbitrator ruled, on June 12, 2012, that the players' actions were "conduct detrimental," which made them subject to collectively bargained discipline and, therefore, Commissioner Goodell's authority. This arbitration decision not only gives strong backing to the NFL and its Commissioner, but sets a precedent for similar cases that may arise in the future.

The Arbitration Process

The arbitration process begins when one party files a claim, detailing the dispute, including the individuals or entities involved, dates, and type of relief sought, whether monetary, interest, or specific performance. The party filing the claim is called the "Claimant," and the party against whom the claim is filed is called the "Respondent." The Respondent then files a written Answer, specifying the facts and defenses to the stated claim.

An Arbitrator is then selected by the parties. This may be a single arbitrator the parties have approved of, or an arbitration panel, usually made up of three or more arbitrators, to which the parties have agreed.

The arbitration process then proceeds much in the same manner a court case would, with a prehearing conference, which may occur by phone, and "discovery," which is the exchange of documents, information, and evidence between the parties.

The format of the arbitration hearing is similar to that of a trial, however the setting is substantially less formal. The hearing typically takes place in a conference room, either at the arbitrator's office or at the offices of one of the parties, the parties, their attorneys, the arbitrator, and a court

reporter sitting around a large table. Because arbitration hearings often span several days, and may last weeks, frequent breaks are taken.

Testimony is heard by the parties and their respective witnesses, with cross examination allowed. Additional evidence, in the form of testimonials, documents, or other items may be submitted, and expert witnesses may testify. After all testimony has been heard, and all evidence submitted, the attorneys make closing arguments. After the hearing, the arbitrator, or arbitration panel, considers all of the evidence and makes a decision, notifying the parties, usually in 30-90 days.

The Difference Between Arbitration and Mediation

While both arbitration and mediation are forms of Alternative Dispute Resolution, there are some fundamental differences between the two. The primary difference is that an arbitrator hands down a decision on the matter which is usually binding, much like a judge hands down a judgment. A mediator assists the parties in working out a settlement that both can agree to. Such a settlement agreement is put in writing and signed by the parties, becoming a contract of sorts.

Arbitration is used as a way to obtain a binding, court-like decision without actually going through the overcrowded court system. Mediation, on the other hand, is seen as a non-binding process in which the parties are not obligated to go on with the process once it has started, nor are they required to agree to a settlement. Mediation is often used in conjunction with litigation, giving the parties the opportunity to reach a settlement and cancel the court proceedings.

In some situations, mediators not only facilitate communication between the parties, but also make recommendations to the court in the event a resolution or settlement cannot be reached. One example of this is the mediation required in many jurisdictions between parents in child custody cases.

Arbitration Clause

Arbitration clauses exist in many types of agreements, from employment contracts to credit card agreements, consumer contracts such as cell phone terms of service, and even contracts for medical care. An

arbitration clause basically requires that, if a dispute arises related to the service or contract, it will be resolved through arbitration, rather than going to court.

Binding Arbitration

An arbitration clause of any contract may simply state claims will be settled through arbitration, or may set out specifics, such as how the arbitrator is to be chosen, where it will take place, and how pays for it. The contract may have a binding arbitration clause specifying that the arbitrator's decision on any matter is "binding." The arbitrator's decision in binding arbitration is final, and cannot later be taken to court, except in rare cases of fraud or misuse of power during the process.

Arbitration Award

An arbitration award is the award of damages to a party in the arbitrator's decision. In the arbitrator's decision, the result is referred to as an "award," even if the original claimant was unsuccessful, and no money is to be paid to either party. Roughly equivalent to a judgment in a court trial, an arbitration award may provide a range of relief. Examples of remedies that may be awarded by an arbitrator include:

- The payment of a specific sum of money, called "conventional damages"
- An order for a party to the proceeding to do or not do something, called "injunctive relief"
- An order for a party to perform a specific act stated in a contract, called "specific performance"
- An order for a specific change to a document or contract, called "rectification"

Challenging an Arbitration Award

While it is possible to challenge an award made by an arbitrator in court, the court will generally only overturn such a decision in rare cases. For the court to take such an action, it would be necessary to prove that:

- The arbitrator had a serious conflict of interest

- Fraud was committed by any party during the arbitration, and that it influenced the decision
- The award was not final, and therefore there was no conclusion to the matter
- The award was somehow outside the scope of the arbitration agreement

When a matter requesting the court vacate or overturn an arbitration award, the judge often only considers the procedural details of the arbitration itself, not the actual evidence and testimony presented. Unless the request is made on the grounds that the award itself was unethical or unreasonable, the court is loathe to overturn the decision.

Arbitration, a form of alternative dispute resolution (ADR), is a way to resolve disputes outside the courts. The dispute will be decided by one or more persons (the "arbitrators", "arbiters" or "arbitral tribunal"), which renders the "arbitration award". An arbitration award is legally binding on both sides and enforceable in the courts.

Arbitration is often used for the resolution of commercial disputes, particularly in the context of international commercial transactions. In certain countries such as the United States, arbitration is also frequently employed in consumer and employment matters, where arbitration may be mandated by the terms of employment or commercial contracts and may include a waiver of the right to bring a class action claim. Mandatory consumer and employment arbitration should be distinguished from consensual arbitration, particularly commercial arbitration.

Arbitration can be either voluntary or mandatory (although mandatory arbitration can only come from a statute or from a contract that one party imposes on the other, in which the parties agree to hold all existing or future disputes to arbitration, without necessarily knowing, specifically, what disputes will ever occur) and can be either binding or non-binding. Non-binding arbitration is similar to mediation in that a decision cannot be imposed on the parties. However, the principal distinction is that whereas a mediator will try to help the parties find a middle ground on which to compromise, the (non-binding) arbiter remains totally removed from the settlement process and will only give a determination of liability

and, if appropriate, an indication of the quantum of damages payable. By one definition arbitration is binding and non-binding arbitration is therefore technically not arbitration.

Arbitration is a proceeding in which a dispute is resolved by an impartial adjudicator whose decision the parties to the dispute have agreed, or legislation has decreed, will be final and binding. There are limited rights of review and appeal of arbitration awards. Arbitration is not the same as: judicial proceedings (although in some jurisdictions, court proceedings are sometimes referred as arbitrations), alternative dispute resolution (ADR), expert determination, mediation (a form of settlement negotiation facilitated by a neutral third party).

Advantages and disadvantages

Parties often seek to resolve disputes through arbitration because of a number of perceived potential advantages over judicial proceedings. Companies often require arbitration with their customers, but prefer the advantages of courts in disputes with competitors:

- In contrast to litigation, where one cannot "choose the judge", arbitration allows the parties to choose their own tribunal. This is especially useful when the subject matter of the dispute is highly technical: arbitrators with an appropriate degree of expertise (for example, quantity surveying expertise, in the case of a construction dispute, or expertise in commercial property law, in the case of a real estate dispute) can be chosen.
- Arbitration is often faster than litigation in court.
- Arbitral proceedings and an arbitral award are generally non-public, and can be made confidential.
- In arbitral proceedings the language of arbitration may be chosen, whereas in judicial proceedings the official language of the country of the competent court will be automatically applied.
- Because of the provisions of the New York Convention 1958, arbitration awards are generally easier to enforce in other nations than court verdicts.

- In most legal systems there are very limited avenues for appeal of an arbitral award, which is sometimes an advantage because it limits the duration of the dispute and any associated liability.

Some of the disadvantages include:

- Arbitration agreements are sometimes contained in ancillary agreements, or in small print in other agreements, and consumers and employees often do not know in advance that they have agreed to mandatory binding pre-dispute arbitration by purchasing a product or taking a job.
- If the arbitration is mandatory and binding, the parties waive their rights to access the courts and to have a judge or jury decide the case.
- If the arbitrator or the arbitration forum depends on the corporation for repeat business, there may be an inherent incentive to rule against the consumer or employee
- There are very limited avenues for appeal, which means that an erroneous decision cannot be easily overturned.
- Although usually thought to be speedier, when there are multiple arbitrators on the panel, juggling their schedules for hearing dates in long cases can lead to delays.
- In some legal systems, arbitration awards have fewer enforcement options than judgments; although in the United States arbitration awards are enforced in the same manner as court judgments and have the same effect.
- Arbitrators are generally unable to enforce interlocutory measures against a party, making it easier for a party to take steps to avoid enforcement of member or a small group of members in arbitration due to increasing legal fees, without explaining to the members the adverse consequences of an unfavorable ruling.
- Discovery may be more limited in arbitration or entirely nonexistent.
- The potential to generate billings by attorneys may be less than pursuing the dispute through trial.
- Unlike court judgments, arbitration awards themselves are not directly enforceable. A party seeking to enforce an arbitration award

must resort to judicial remedies, called an action to "confirm" an award.

Arbitrability

By their nature, the subject matter of some disputes is not capable of arbitration. In general, two groups of legal procedures cannot be subjected to arbitration:

- Procedures which necessarily lead to a determination which the parties to the dispute may not enter into an agreement upon:[8][9] Some court procedures lead to judgments which bind all members of the general public, or public authorities in their capacity as such, or third parties, or which are being conducted in the public interest. For example, until the 1980s, antitrust matters were not arbitrable in the United States.[10] Matters relating to crimes, status and family law are generally not considered to be arbitrable, as the power of the parties to enter into an agreement upon these matters is at least restricted. However, most other disputes that involve private rights between two parties can be resolved using arbitration. In some disputes, parts of claims may be arbitrable and other parts not. For example, in a dispute over patent infringement, a determination of whether a patent has been infringed could be adjudicated upon by an arbitration tribunal, but the validity of a patent could not: As patents are subject to a system of public registration, an arbitral panel would have no power to order the relevant body to rectify any patent registration based upon its determination.
- Some legal orders exclude or restrict the possibility of arbitration for reasons of the protection of weaker members of the public, e.g. consumers. *Examples*: German law excludes disputes over the rental of living space from any form of arbitration, while arbitration agreements with consumers are only considered valid if they are signed by either party, and if the signed document does not bear any other content than the arbitration agreement.

Arbitration agreement

Arbitration agreements are generally divided into two types:

- Agreements which provide that, if a dispute should arise, it will be resolved by arbitration. These will generally be normal contracts, but they contain an arbitration clause
- Agreements which are signed after a dispute has arisen, agreeing that the dispute should be resolved by arbitration (sometimes called a "submission agreement")

The former is the far more prevalent type of arbitration agreement. Sometimes, legal significance attaches to the type of arbitration agreement. For example, in certain Commonwealth countries (not including England and Wales), it is possible to provide that each party should bear their own costs in a conventional arbitration clause, but not in a submission agreement.

In keeping with the informality of the arbitration process, the law is generally keen to uphold the validity of arbitration clauses even when they lack the normal formal language associated with legal contracts. Clauses which have been upheld include:

- "arbitration in London – English law to apply"
- "suitable arbitration clause"
- "arbitration, if any, by ICC Rules in London"

The courts have also upheld clauses which specify resolution of disputes other than in accordance with a specific legal system. These include provision indicating:

- That the arbitrators "must not necessarily judge according to the strict law but as a general rule ought chiefly to consider the principles of practical business"
- "internationally accepted principles of law governing contractual relations"

Agreements to refer disputes to arbitration generally have a special status in the eyes of the law. For example, in disputes on a contract, a common defence is to plead the contract is void and thus any claim based upon it fails. It follows that if a party successfully claims that a contract is void, then each clause contained within the contract, including the arbitration clause, would be void. However, in most countries, the courts have accepted that:

1. A contract can only be declared void by a court or other tribunal; and
2. If the contract (valid or otherwise) contains an arbitration clause, then the proper forum to determine whether the contract is void or not, is the arbitration tribunal.

Arguably, either position is potentially unfair; if a person is made to sign a contract under duress, and the contract contains an arbitration clause highly favourable to the other party, the dispute may still referred to that arbitration tribunal.[citation needed] Conversely a court may be persuaded that the arbitration agreement itself is void having been signed under duress. However, most courts will be reluctant to interfere with the general rule which does allow for commercial expediency; any other solution (where one first had to go to court to decide whether one had to go to arbitration) would be self-defeating.

Comparative law

Nations regulate arbitration through a variety of laws. The main body of law applicable to arbitration is normally contained either in the national Private International Law Act (as is the case in Switzerland) or in a separate law on arbitration (as is the case in England and Jordan[20]). In addition to this, a number of national procedural laws may also contain provisions relating to arbitration.

Arbitration procedures inside the United States

The Federal Arbitration Act (FAA) of 1925 established a public policy in favor of arbitration. For the first six decades of its existence, courts did not allow arbitration for "federal statutory claims" through a bright-line "nonarbitrability" doctrine, but in the 1980s the Supreme Court of the United States reversed and began to use the act to require arbitration if included in the contract for federal statutory claims. Although some legal scholars believe that it was originally intended to apply to federal courts only, courts now routinely require arbitration due to the FAA regardless of state statutes or public policy unconscionability determinations by state courts. In consumer law, standard form contracts often include mandatory predispute arbitration clauses which require consumer arbitration. Under

these agreements the consumer may waive their right to a lawsuit and a class action. In 2011, one of these clauses was upheld in AT&T Mobility v. Concepcion.

Several arbitration organizations exist, including the American Arbitration Association and JAMS. The National Arbitration Forum also conducts arbitrations, but it no longer conducts consumer arbitrations pursuant to a consent decree entered into in 2009 because of evidence that it had been biased toward, and had incentives that favored, credit card companies over cardholders. The AAA was also asked to exit the business., but has not done so.

Check Your Progress 2

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

4. Describe the Idea of Shanti Sena.

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5. Describe the concept of Arbitration.

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11.7 LET US SUM UP

Conflict is seen, witnessed or experienced in every society but it must be contained at a level that enables a society to survive peacefully. All conflicts are not bad. In fact, some conflicts allow the differences in society to come to the fore and seek their resolution. It is an inevitable part of the process of social development and change. If conflict is a pervasive phenomenon, methods and means will have to be devised for its peaceful resolution. In India, Gandhi stressed on peaceful means of resolving conflicts through satyagraha, ahimsa, Shanti Sena, spiritual and social reconciliation through forgiveness and penance. Mediation is one such means of peaceful resolution where intervention by a third party

attempts to find a solution to a dispute while circumscribing the adversarial behaviour of the disputants. Gandhi believed in values like truth, non-violence, noncooperation, satyagraha, forgiveness, inner purification as the mediating forces to bring about a change of heart in the opponent for effective and lasting resolution of a conflict. Amicable resolution of conflict creates a positive atmosphere for reconciliation and the resolve among all parties to the conflict to make a fresh beginning. It holds a better promise for peace than military victory since it is perceived as a victory of all rather than a party to the conflict. For Gandhi, moral and spiritual aspect of the resolution of a conflict as reflected in genuine reconciliation was more important than external structures of peace. Therefore, Shanti Sena was his attempt to build a structure of conflict resolution to put his idea of non-violence and peace into practice. The test of a good resolution of conflict lies in retaining cooperation of all parties, after having addressed the historical realities, a sense of justice for all and a genuine effort at reconciliation.

11.8 KEY WORDS

Arbitration Agreement. Another term for an arbitration clause in any contract. Alternatively, a separate Arbitration Agreement may be signed as an addendum to a contract or agreement.

Alternative Dispute Resolution. The resolving of disputes by means other than litigation. Most often refers to the use of mediation or arbitration to resolve problems.

11.9 QUESTIONS FOR REVIEW

1. Examine the features of mediation citing examples of its application by Gandhi.
2. What do you understand by the concept of reconciliation?
3. What are the factors that contribute to the success of mediation and reconciliation?
4. Discuss the idea of Shanti Sena and its role in conflict resolution.

11.10 SUGGESTED READINGS AND REFERENCES

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11.11 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. See Section 11.2
2. See Section 11.3
3. See Section 11.4

Check Your Progress 2

1. See Section 11.5
2. See Section 11.6

UNIT 12: NEGOTIATIONS

STRUCTURE

12.0 OBJECTIVES

After this unit, we can able to know:

- To know about the Dialogue
- To discuss the Negotiation
- To know the Gandhi's Methods
- To highlight the Relevance of Dialogue and Negotiation
- To discuss the Negotiating Process
- To discuss the Negotiating Models
- How and Why to Negotiate
- To know the Negotiation Guidelines
- To know the Principled Negotiations
- Preparation for Long-term Settlement

- Skills and Traits of Negotiating Team
- Tactics or Strategies in Negotiation

12.1 INTRODUCTION

In the realm of conflict resolution, Satyagraha stands tall for its espousal of non-violence. It stresses on those methods that are non-violent in nature and insists on following methods that allow the conflicting parties to amicably discuss the issue at hand rather than opting for violence to resolve it. In this context, two methods play a significant role- one, dialogue and two, negotiation. These two methods of communication intend to reduce or even mitigate the conflict to considerable extent and bring the negotiating parties together to resolve the contentious issues. We have already studied about other methods of resolution like mediation, reconciliation, adjudication and arbitration and how effective they can be in unraveling the conflict situation. Gandhi, during the years of freedom struggle, used all these methods extensively for he abhorred violence in thought, word and deed to deal with the opponents. As Weber has said, 'Gandhi was a lifelong practitioner of conducting major public conflicts and a profound conflict theorist. In short, it could be argued that Gandhi should be viewed from within conflict resolution theory, rather than being distinct from it' (Weber, 2001, p.493).

Negotiations are a part of everyday life. The process of negotiating has been described by Walton and McKersie as 'the deliberate interaction of two or more complex social units which are attempting to define or redefine the terms of their interdependence.' Gottschalk defines negotiation process as "an occasion where one or more representatives of two or more parties interact in an explicit attempt to reach a jointly acceptable position on one or more divisive issues." It is an explicit and deliberate event conducted by the representatives on behalf of their respective parties – employers and employees. The process is intended to reconcile differences between the parties involved. Negotiation is not simply 'ritual' but a process, which allows the representatives of different interest groups to reach a mutually acceptable settlement of an issue while, at the same time, seeking to maximise the advantage to be

gained for their interest group. Negotiating is a skill that can be learned and improved upon by anyone.

12.2 DIALOGUE

Dialogue, essentially, is a conversation between two or more people. According to the Encyclopaedia of Evaluation, it is an interaction between people with different perspectives and interests who are intent on learning from one another. It can be engaged in numerous ways like conversation, debate, discussion, critique, lesson and the like. It also presumes a certain respect for others (especially among those who may be different from each other), mutuality, honesty, and the ability to engage in critical thinking. Engaging in dialogue creates the opportunity for new understandings—the focus is on exploring others' and ones' own perspective or viewpoint. There is less agreement about whether dialogue should result in consensus or mutual deep understanding, whether of similarities or differences (see Encyclopedia of Evaluation). Dialogue can take place between two or more people, and is primarily a face-to-face interaction of the individuals. Modern technology has enabled it to take many other forms like online conferencing, collaborating and expressing views through various forums. The encyclopedia also describes dialogue as 'a key element in a number of approaches to evaluation, including the democratic deliberative, empowerment, participatory, and critical approaches to evaluation. Dialogue in evaluation is intended to promote inclusion and understanding of stakeholders' interests. It is also understood to be an essential step in identifying issues and opportunities within a program, organization, or community that can ultimately lead to a better quality of life'. It helps in resolving long-standing contentious issues and helps dispel misgivings apart from building trust. Dialogue enables one to inquire, explore and discover others' perspective in a most constructive and nonviolent manner. Dialogue enables the stakeholders to identify, involve, be sensitive and plan to represent one's interest as well as understand the interests and intentions of the opponent groups. It should also have a degree of openness and receptiveness that is essential for both the parties. It is, as pointed out by Gergen and his associates, is critical to the success

and failure of the organisations. David Bohm views it as ‘a constructive endeavour in which new meaning and insight are creatively coproduced’. Dialogue is found both in literary and philosophical genres. The dialogue introduces us to the thought process of the author who records the words between the people -living or imaginary- thus giving us an insight into the issue concerned. Dialogue also exists in the philosophical genre. It gives us an idea of particular time, period, age, people, thought, art, literature and the existing conditions of the time. This explains the philosophy of that age and people. Dialogue is said to have originated in Greece, and the historians usually attribute it as a method, which Plato introduced for a systematic use and elevated this art to its highest perfection. In essence, he can be called as the master of the art of ‘dialogue’. It is to be noted that most of Plato’s writings are in the form of dialogue. He used it for depicting Socrates and others as engaged in conversation, which is prominently known as Socratic method of teaching. This gained prominence as philosophical dialogue. Socrates remained the protagonist of Plato’s dialogues. This form is said to have inspired others including Xenophon, Aristotle, Cicero and scholars from Hellenistic Schools who carved their own methods of dialogue. Thomas Aquinas and Augustine adopted it as philosophical format. Eminent scholars have viewed dialogue in different ways. Martin Buber sees dialogue as an effective means of on-going communication; the second Vatican Council preferred to use it for dialogue with other religions, modern society and political authorities; Paulo Freire, the eminent educationist used it as a type of classroom pedagogy; and Mikhail Bakhtin, the Russian Philosopher, views dialogue as something that enables to create a new understanding of the situation that demands change. Bakhtin, in 1981, used the term ‘dialogism’ to interpret the approaches of the organisation (apart from the literary connotations); these include appreciative inquiry (as to what should be and what will be), dialogic communication (trying to understand better one’s own position and of others), transformative dialogue (constructive and generative forms of interaction and reconfiguring existing realities) and dialogical scripting (to form plurivocal accounts and richer insights).

In the process of dialogue, it is necessary that enough space be created for the parties to engage in conversation freely. Dialogue facilitates the process of not just talking but allows the parties to discover or empathise with the other party, which leads to the realisation that the other party too is an affected one and is seeking a meaningful solution. The purpose of a dialogue is to learn from each other. It is necessary to use appropriate language, communication methods and skills. Dialogue is not to judge in a prejudiced way but to listen with attention and respect other's opinion. If a dialogue has to be successful, it should be cautious regarding conscious or unconscious beliefs, insight, and assumptions etc. Dialogue need not always end up in a successful conclusion. It is crucial that the parties do not give way to anger, frustration or impatience during the process. It can often be marred by poor communication, rigid stance, and mutual distrust, unwarranted exercise of power, external pressure and other distracting instances. Sometimes, dialogue is taken up by the parties, which are in asymmetrical power equations. This creates the apprehension of the powerful one gaining an upper hand and subordination of the weaker party. Therefore, it is imperative to create an atmosphere of mutual trust and democratic engagement. Another problem might be the reluctance of the parties involved in dialogue to shed their rigid stance and unwillingness to accommodate other's viewpoint. This creates an ambience that is biased rather than the one with deeper understanding and trust. Much of the success depends on the participants' ability to accommodate and respect others' views, facilitation and sharing of information, democratic and participatory approach. Dialogue is necessary for conflict resolution without whose positive involvement, a solution can never be in sight. Gergen points to its continuous relevance and momentum. The first crisis in the process of dialogue comes when the parties involved in it come together with their own preconceived (or biased) and pent-up differences. The parties need to observe and be open to being observed, apart from reaching an understanding and come to a settlement. Peter Senge analyses it as a very crucial stage. Gradually, the members realise that they do have an option of suspending their view and adopt a flexible method. The whole process comes under intense introspection wherein members delve into the roots

of the conflict. This thought usually carries the process of dialogue forward. Senge also observes that the situation may be vice versa wherein members can choose to become further rigid and diverge, and hold on to their pre-set notions and bias. This is also likely to lead to dialogue because of the 'reasoning they use to support their positions, moving to skillful discussion'. Senge analyses other stages of dialogue as instability, inquiry and finally, creativity that can generate a breakthrough in the conflict resolution.

12.3 NEGOTIATION

The Wikipedia defines negotiation as 'a dialogue intended to resolve disputes, to produce an agreement upon courses of action, to bargain for individual or collective advantage, or to craft outcomes to satisfy various interests'. According to the Dictionary of International Relations, 'negotiation is the process whereby macropolitical actors interact in order to effect a number of goals that can only, or most effectively, be realized by joint agreement'. The Encyclopedia of Law and Society defines it as 'the process of joint decision making in social interactions dealing with conflict resolution, or handling collaborative uture interaction'. Of all the methods of dispute/conflict resolution, negotiation is the most opted method for it 'allows the parties involved to resolve their differences without any third-party intervention, to manage the decision-making process and to control the outcome'. As Thomas Weber puts it, 'negotiation is a search for an outcome that is adequately suitable to both parties, but unlike mediation, the dispute is settled bilaterally, that is, the two parties are themselves the decision makers' (Conflict Resolution ad Gandhian Ethics, 1991, p.22). The parties to negotiation can identify a common interest and can attain it by joining together and a complimentary interest in an exchange of different objects, which they can grant to each other.

Negotiations allow the parties to engage in constructive interaction and to improve their conditions. Since there is no appropriate, or procedural system, the parties usually work outside the system to work out better ways to settle as to what each party can give and take, and is willing to execute and obtain. It is necessary for the parties to recognise the need to

secure mutual interdependence. Negotiation is supposed to be the most informal, and flexible of the methods available for conflict resolution. Negotiations have the advantage over the other methods of dispute settlement in that they are most likely to effect lasting resolution to conflict as well as reduce dependence on "experts" thereby making the parties self-reliant, giving them control over important decisions that need to be made concerning their own lives (Weber, p.22). Negotiations take place at interpersonal, interstate and intergovernmental level apart from managing labour-management disputes. Some of the social theorists consider negotiation as 'any interpersonal communication that seeks to present the self' in the context of numerous social relationships and interdependencies. Negotiations may take place at an informal level i.e., among individuals and within groups such as families, firms, tribes, religious groups, or nations. Negotiations offer the opportunity for personal growth by exposing each party to the views of the other, providing a situation for learning- the decision being "the culmination of an interactive process of information exchange". This prevents personal, and in the long term and on a larger scale, social and national stagnation- when an agreement between the parties is reached "the position of each has been subtly changed not only by terms offered, but by its experience of the other and exposure to the other's persuasion" (cit in Weber, p.23). There are different approaches to negotiation that also include Distributive (Adversarial) and Cooperative (Integrative) approaches. The earliest theories of negotiation focused on the distributive approach in which each party is trying to win as in a contest (Schelling, 1960). These emphasised looking into the strategies used by the parties to maximise their share of the resources in dispute, to minimise losses, and to achieve dominance. The cooperative approach emphasises on creating a cooperative atmosphere as against a competitive and individualistic one. It was developed during the Cold War years, in 1980s, and insisted on cooperative activity. The parties see themselves as 'collaborative problem solvers and principled negotiators'. The term 'integrative bargaining' emerged to symbolise the 'cooperative, collaborative, win-win, or problem solving', and takes the parties' goals are not mutually exclusive but those which both the sides can amicably achieve. The

advocacy approach involves the services of a skilled negotiator to advocate for a particular party and bring out the most favourable outcomes. The negotiator moves with caution wherein the favourable outcome does not make the other party break off from negotiations regarding the outcomes. The creative approach involves constructive talks between the parties, exchange of information and interests that further lead to innovative ways of solving the problem. The pre-negotiation preparations, flow of information, understanding and seeking solutions, evolving new methods in negotiation- all contribute to creative approach. Shell R.G. in 'Bargaining for Advantage' (2006) identified five styles or responses to negotiation (prone to change as and when necessary) that are crucialaccommodating, avoiding, collaborating, competing and compromising. Negotiation involves three basic elements: (1) process: refers to how the parties negotiate, context, parties, tactics, sequences and stages; (2) behaviour: communication methods involved, skills and styles; (3) substance: agenda, issues and interests, options and agreements. Other elements are added to this that comprise of strategy, tools and tactics. The first comprises goals, and final outcome; the second comprises the steps to be followed, role of the parties and preparation; and the third comprises statements, actions and responses. The recent additions have been the factors like 'persuasion and influence' that play a prominent role in swinging the fortunes of the parties involved. Two norms operate in the process of negotiations (1) the parties want to induce the opponent to reciprocate (though not mandatory) and (2) they want to facilitate agreement. Roger Fisher and William Ury, in their work 'Getting to YES', suggested that the negotiations be based on the following four principles:

1. Separate the people from the problem. They advised negotiators to be soft on the people and hard on the problem, to depersonalize, save face, and maintain the relationship.

2. Focus on interests, not positions. The antifoundational assumption of the principled negotiation approach is that positions in negotiation veil its true movers or interests— that is, needs, desires, concerns, and fears.

Later approaches differentiated between types of interests, some focusing on needs and values as the key for understanding interests.

3. Invent options for mutual gains. Keeping a collaborative, respectful atmosphere enables parties to brainstorm and generate creative options. Other scholars noted that the parties should work on their differences, avoid making premature judgments or fixating on one solution to expand the pie, create alternatives, and construct a "bridge solution" to the problems they encounter.

4. Insist on using objective criteria. This latter principle involves choosing between the options and regulating the negotiation by the parties' own agreement. They can choose a standard of fairness, efficiency, science, and even law, and avoid the dominance battle.

(Source: Encyclopedia of Law and Society).

The effects of negotiations can be both positive and negative. Before we discuss this, it is important to note that emotions play an important role in the negotiation process. The positive aspects include developing confidence, using cooperative strategy, less contentious and aggressive behaviour, enhancing the integrative gains, tendency to honour the agreements, flexible attitude, respect and tolerance towards others, reposing faith and confidence in the other party, and commitment to carry the negotiations forward with positive approach. The negative effects comprise of anger, less cooperation, distrust, narrowed focus on issues, rigid attitude, and use of negative communication skills, clouding the other party's judgement and commitment and developing unwarranted hostility. These can mar the negotiations and lead the parties to reject each other's propositions and finally end in the failure of negotiations. In this context, it is important to note that compromise is an essential characteristic of negotiations. Reaching an agreement is essential for the parties involved. For this, sometimes, the goal evaluation is necessary wherein the goals are much more modest; settlement of such goals often proves to be satisfactory to the parties in negotiation.

The following strategies should be kept in view by the parties before initiating negotiations:

- identify the common problems,
- find a mutually accepted definition to the problems and for framing it,
- determine the goals and objectives of the process and create a mutually accepted plan of the negotiation's agenda, procedures, and setting,
- evaluate and prioritize one's goals and possible payoffs, including identifying ones' best alternative to a negotiated agreement (BATNA),
- agree on the order in which the issues should be discussed,
- keep awareness of the concerns, fears, and positions that lie beneath the interests of self and the other since their interrelation is a pathway to the solution,
- determine the zone of possible agreement (ZOPA) between the least and mostfavorable solutions,
- identify the other's emphasized issues,
- identify points where issues could be packaged,
- develop and locate supporting facts and arguments to one's views and anticipate counterarguments the other side might present, and
- try to find out about the other's interests, alternatives, personal negotiation style, and approach to negotiation.

(Source: Encyclopedia of Law and Society)

The most important factor is the understanding of cultural differences involved. The factors are language, values, non-verbal behaviour and thinking and decision-making processes. Unfamiliarity with these is likely to create misunderstanding and trust deficit. Sometimes, even the managerial values lead to misconceptions. For example, objectivity, competitiveness, equality and punctuality- the factors that are most valued by Americans is likely to be unappreciated by others. The success or failure of negotiations depends mostly on the perceptions of the negotiators. One most important factor is the background of the traditional relationship between the countries. In case of traditional positive and friendly relations, the negotiating parties are likely to be more accommodating, and offer concessions while in parties with traditionally hostile relations, they are likely to be more rigid and adamant to give concessions or even dishonour commitments. While bilateral negotiations can be manageable, the multilateral negotiations may turn out to be otherwise, except that all parties are equally represented. It is said that there is thin line between enmity and amity in the process of negotiations. During negotiations, the use of force should be controlled or prohibited altogether, for they send positive signals to the parties. As pointed by Kenneth Boulding, all parties must appreciate that the price of continued conflict is higher than the costs of reducing demands. The onus lies on the parties involved to bring about amicable solutions.

12.4 GANDHI'S METHODS

Gandhi's non-violent methods had a telling effect on the masses during the freedom struggle. The effect was equally impressive on the British government that ruled the country. Gandhi was ready to investigate into the roots of the problem wherever it existed, petition, negotiate, arbitrate, mediate and engage in dialogue where necessary. He left no stone unturned before launching his mass Satyagraha movements or individual initiatives like fasting. Except for the non-cooperation movement where the masses turned violent, most of the cases taken up by Gandhi for dispute settlement with the government turned out to be successful

though there are criticisms regarding the elements of coercion. Dialogue and negotiations were taken up in most of the cases like Ahmedabad Labour Strike, the Champaran Movement, Bardoli Satyagraha, Gandhi-Irwin Pact and Poona Pact concluded between Gandhi and Ambedkar. Since the details regarding the above cases have already been discussed in previous Courses and Units, the details are not being discussed here to avoid repetition. As Weber said, 'Gandhi's well-publicized examples of nonviolent resistance and the voluminous writings on his techniques at least set the tone for the later development and phenomenal growth of conflict resolution literature in the guise of modern problem-solving and win-win (as opposed to powerbased and zero-sum) approaches leading to integrative conflict resolution (as opposed to mere compromise and distributive outcomes)' (in Journal of Peace Research, 2001, p.493). Gandhi was conscious of the difference between evil and evil-doer. Thus, he did warn his satyagrahis not to commit the mistake of hating those involved as the other party in conflict but abhor the sin that is committed by the persons involved. Gandhi's Satyagraha, thus, is a crucial method of conducting conflict apart from its goal of resolving it. Gandhi set the goals and the code of conduct in conflicts (what to achieve in the process of resolving a conflict and how to conduct oneself, i.e., not to hurt the opponent); defined the conflict (what the problem is about, views of both the parties and their goals); had a positive approach towards conflict (by taking it as opportunity to resolve long-standing issues, know the opponent's viewpoint, change the situation to better one's and other's condition); act non-violently in conflicts (adhere to non-violent methods, not to hurt or humiliate opponent); willingness to sacrifice and inflict self-suffering(as in fasting); to act in goal-consistent manner (for example, take up constructive work for positive transformation) and not to escalate the conflict (by indulging in violence and other deviating methods that are inconsistent with non-violence). Gandhi insisted on converting the opponent through Satyagraha, law of love and ahimsa instead of imposing coercion. Gandhi insisted on the right means and ends concept; therefore if the conflict is to be resolved (the end), it should be done so non-violently (the means). This, to him, was the goal to reach and realise the ultimate truth.

12.5 RELEVANCE OF DIALOGUE AND NEGOTIATION

The contemporary world has been witnessing wars of all sorts as it did in the 19th and 20th centuries. The war-torn and Cold War years have given way to a multipolar (or unipolar as some would call it) world where there are pertinent dangers of poverty, displacement, ethnic conflicts, environmental problems and terrorism. Often, the conflicts are being handled through military violence (as in armed intervention) and through other forms (like imposing embargoes, economic sanctions) that hurt the people directly and indirectly. With migration of people to different parts of the world, multiculturalism is on rise. This, sometimes, is leading to the clashes in cultural values and perceptions and distrust. Under these circumstances, the solutions are being sought but not via non-violent methods. For peaceful existence of different cultures and people, dialogue is an essential feature. Thus there have come up forums promoting inter-faith or inter-religious dialogues. These are promising in nature though the visible evidence regarding its effectiveness is yet to emerge. Similarly, territorial/boundary disputes or economic disputes are on the rise. Though dialogue or negotiations are going on, these are marred by traditional/historical record of distrust and disharmony. The capacity to understand the opponent and engage in constructive one-to-one talk is waning. The rising violent incidents are adding to the existing conflicts thereby leaving no scope for dialogue and negotiation. Unless there is a massive change in the mindsets and strategies of the parties, the solutions seem to be unresolved. In the interest of mankind and in the interest of promoting world peace and order, it is imperative that non-violent methods are taken up. To repeat what Kenneth Boulding said, it is much costlier to handle an escalated conflict. The best possible solutions can be brought about through non-violent methods that impose no costs at all.

Check Your Progress 1

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

1. How do you know about the Dialogue?

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2. Discuss the Negotiation.

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3. How do you know the Gandhi's Methods?

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4. Highlight the Relevance of Dialogue and Negotiation.

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12.6 NEGOTIATING PROCESS

"Negotiation is essentially a process of advancing proposals, discussing and criticizing them, explaining and exploring their meaning and effects; seeking to secure their acceptance, and making counter-proposals or modifications for similar evaluation" (Dale Yoder).

There are two primary purposes to negotiating in the industrial relations context: first, to reconcile differences between managements and unions; and second, to devise ways of advancing the common interest of the parties. Among managements and trade unions that deal with each other on an on-going basis, negotiating may at the outset take the character of mutual problem solving. The process involves the recognition of the common interests of the parties, the areas of agreement and disagreement and possible solutions, to the mutual advantage of both sides. Dunlop and Healy1 have pointed out that the labour contract negotiations process can be depicted as (a) a pocker game, with the largest pots going to come up with a strong hand on the occasions on which they are challenged or seen by the other side; (b) an exercise in power politics, with the relative

strengths of the parties being decisive; (c) a debating society, marked by both rhetoric and name calling; and (d) a "rational process", with both sides remaining completely flexible and willing to be persuaded only when all the facts have been dispassionately presented. Careful preparation of proposals can reduce uncertainty, improve communication, and thus contribute to effective negotiation. Better preparation provides the parties with broader perspectives, which in turn, increase flexibility and can accelerate the negotiation process.

12.7 NEGOTIATING MODELS

Walton and McKersie 3 proposed one of the most influential models in analysing negotiation. They distinguished the following four systems of activity or sub-processes in labour negotiations, each having its own functions for the interacting parties.

Distributive bargaining : The function of which is to resolve conflicts between the parties.

Integrative bargaining : The function of which is to find common or complementary interests.

Attitudinal structuring : The function of which is to influence the attitudes of the participants toward each other.

Intra-organisational bargaining : The function of which is to achieve consensus within each of the interacting groups. While the sub-processes are related and can occur simultaneously, particularly the integrative and distributive sub-processes, conceptually they are quite different.

12.8 HOW AND WHY TO NEGOTIATE

Problems faced in a negotiation commonly revolve around details relating to procedure, personality, perspective, and approach in dealing with another party. A major part of minimising problems is simply arriving at an understanding of what is involved in negotiation. Needs are

at the root of all negotiations. Needs are not necessarily the same for the two sides, nor is it important that they should be. What is essential, if the negotiation is to have any chance of success, is that the needs be or become compatible. Incompatible needs makes reaching agreement virtually impossible. Negotiation is a mutual act of coordinating areas of interest. One party dictating to the other is not negotiation. One party manipulating the other with no concern for the other's needs is a cynical travesty of negotiation. At the heart of negotiation is the recognition that each side is entitled to its own priorities. The whole art of negotiation lies in persuading a second party to make a commitment. Negotiation is more a learning process than a form of instruction. Both parties are engaged in discovering each other's views and needs. Both are exploring possibilities for combining energies in a new way. Gathering information and fact-finding constitute a part of negotiating process. Negotiation is concerned with resolving conflict between two or more parties, usually by the exchange of concessions. It can be competitive, known as win-lose negotiations, or it can be co-operative, known as win-win. Negotiation should be regarded as a potentially beneficial activity for both parties. It does not always have to imply confrontation, although it may sometimes require an element of brinkmanship

12.9 NEGOTIATION GUIDELINES

The following are the guidelines for negotiation:

● Don't be afraid to negotiate. "Let us never negotiate out of fear. But let us never fear to negotiate." (John F. Kennedy)

● Don't negotiate when you have nothing to bargain with, or when broader objectives might be prejudiced.

● Mutual respect and trust are fundamental requirements, especially with a win-win strategy.

● The style of negotiation will depend in part on the qualities and skills of the parties involved. Skilled negotiators will conclude better deals.

● Identify the decision-maker on the other side.

● Identify the concessions you might offer and extend maximum benefit to the other side with the least cost to you.

● Remember, concessions should always be traded, not donated. Encourage the other side to give you concessions by setting deadlines.

● Recognise that a win-win outcome can never be assumed until the other side also signals its compliance.

● Be firm but fair. Do not make 'unreasonable' demands.

● Select your team carefully, allocate the key tasks, and specify authority levels.

● Leave the other side thinking that they have won a good deal.

● In order to win the best result from a negotiation, a blend of three important attributes is necessary: skill, aspiration, and power.

● You have nothing to lose by asking for a better deal.

● Most things are negotiable.

● Make specific proposals, solutions or remedies. Don't just complain.

● Prepare fully, and with care. Preparation and planning lie at the heart of a successful negotiation. Don't negotiate if you are not prepared.

● Don't negotiate unless you have something to gain. Make initial concessions small and tentative.

● Listen carefully to the words and analyse.

● Keep the meeting on the track.

● Don't react too unfavourably to your own mistakes.

● Make promises with caution.

● Don't worry about the end result.

● Be prepared for a deadlock. If necessary, change the timing, the tempo, the topic, and even the team.

Check Your Progress 2

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

1. Discuss the Negotiating Process.

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2. Discuss the Negotiating Models.

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3. How and Why to Negotiate?

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4. How do you know the Negotiation Guidelines?

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12.10 PRINCIPLED NEGOTIATIONS

A process called principled negotiations was developed by the Harvard Negotiations Project and published in a book titled Getting to Yes. The essential element of the process is to be "hard on the merits, soft on the people." The goal is to decide the issues presented at the negotiating table on their merits. Under the principled negotiations model, the first objective is to separate the people from the problem. Attacking the problem is the second objective of principled bargaining. The parties are to focus on interests, not positions. Once interests are identified, the third objective is for both parties to seek as many options as possible in solving their conflicting interests. The fourth objective in principled negotiating is to have the validity of each party's proposals judged by objective criteria. The "principled negotiations" approach is highly desirable in on-going labour relations. Unfortunately, however, it is difficult to apply principled negotiations where a party maintains a "hard bargaining posture." Principled negotiation is a characteristic of more mature bargaining relationship unlike the hard bargaining approach which is frequently found in the less matured relationship. For success of negotiation:

- Always do your homework.
- Always feel free to ask questions.
- Listen to what other person has to say.
- Maintain an attitude of respect for your opposite at all times.
- Honour whatever commitments made.
- Adopt a friendly tone.
- Recognise your opposite's ego needs.
- Display an open mind and willingness to compromise.

● Avoid coercive or pressure tactics.

12.11 PREPARATION FOR LONG-TERM SETTLEMENT

The preparation for the long-term settlement should start from the same date when the last agreement was signed. Continuous collection of data on work practices, norms of productivity, grievances, and their analysis to identify the causes, are necessary for preparing for the next settlement. The following may serve as a checklist: Internal Data

● Analysis of previous charter of demands and previous agreements.

● Analysis of the charter of demands raised for the current agreement.

● Collection and analysis of the record of the grievances and classifying them.

● Number of accidents stagnating at various levels, pay scales and slabs, categorywise, age-wise and shift-wise.

● Details of existing allowances and the employees covered under each.

● Details of existing facilities and employees covered.

● Details of the labour cost and break-up of the expenditure on each item like basic pay, dearness allowance, incentive, overtime, fringe benefits, and so on.

● Incentive plan and incentive earnings.

● Man-days data indicating the break-up in

- Man-days worked

- Man-days lost due to absenteeism

- Man-days lost due to strikes

- Man-days lost due to sickness

- Man-days lost due to political bandhs

- Man-days lost due to slow-down

- Man-days lost due to lockouts

● Details of overtime incurred department-wise.

● Production and productivity data

- Labour cost per tonne of product

- Labour cost as percentage of wages

- Labour cost as percentage of production per man/year

- Labour cost as percentage of sales

- Capacity utilisation of plants/departments

- Value added per rupee of wages

● Financial Data

- Wages to salary ratio

- Profitability

- Expansion/diversification programme

- Cost implications of demands

External Data

● Details of wages, allowances and benefits of comparable public and private sectors.

● Trend of cost of living index.

● Production and productivity data for similar organisations in India and abroad. A collective bargaining manual may be prepared incorporating all the above information and kept updated from time to time.

12.12 SKILLS AND TRAITS OF NEGOTIATING TEAM

Many influential writers have argued that negotiating is an art. Dunlop states that, 'I am inclined to believe that the art of negotiation can only be learned by experience – often hard experience. Successful negotiations depend upon the knowledge and skill of the negotiators. They must, through careful preparations, become knowledgeable about their own and the other side's positions on the bargaining issues. They prepare and propose workable, attainable, and realistic issues within the framework of the negotiations. A negotiator must cultivate the technique of listening skills and the ability to communicate clearly. A thick skin may be helpful as the other side may engage in personal attacks at some point in the negotiations. A negotiator realises that such attacks are often necessary in satisfying a constituency.

Attributes of a Successful Negotiator

1) Sets clear objectives

2) Does not hurry

3) When in doubt, calls for a caucus

4) Is prepared Negotiation Skills

5) Remains flexible

6) Continually examines why the other party acts as it does

7) Respects face-saving tactics employed by the opposition

8) Attempts to ascertain the real interest of the other party by the priority proposed

9) Actively listens

10) Builds a reputation for having fairness and firmness

11) Controls emotions

12) Remembers to evaluate each bargaining move in relation to all others

13) Measures bargaining moves against ultimate objectives

14) Pays close attention to the wording of proposals

15) Remembers that compromise is the key to successful negotiations; understands that no party can afford to win or lose all

16) Tries to understand people

17) Considers the impact of present negotiations on the future relationship of the parties

Attributes of Negotiating Team

● Negotiating team should consist of three to four persons.

● Leader of the team must have a good command on the language because an extra word here and there can do irreparable damage.

● The team must have complete knowledge of the operations, material flow and processes of the company.

● The team must know the details and implications of all the demands.

● The team must know the total historical perspective of the company, what happened in the previous last agreement, union dynamics, and so on.

● The team must have the confidence of facing any eventuality, which may come up during negotiations.

● The team must have the power of taking decisions.

● The team must consist of people who have confidence of the workforce and unions.

Credibility is the most important asset it must possess in abundance. The effectiveness of a negotiating team is not determined by its size but by its ability, knowledge, and experience. A team well versed in tactics, strategy, and timing would be in a better position to negotiate and would end up with a better agreement than a team composed of inexperienced people. The most important member of the bargaining team is its spokesperson.

Activity

Your company is negotiating a settlement at the present time. What economic, legal and social factors might likely to exert some influence upon your negotiations?

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12.13 TACTICS OR STRATEGIES IN NEGOTIATION

The tactics or strategies to be adopted in negotiation vary depending upon the culture of the organisation and different environmental factors, particularly the type of union operating in an industrial establishment. But the following are some of the common strategies to make negotiation exercise more meaningful:

i) The management has to anticipate the demands and also understand the main directions in which the demands are going to be placed. Grant or rejection of demands cannot be decided upon in a vacuum; it is very much relative to the time and place of negotiation. An adequate area survey of what comparable organisations in the region have already conceded/or in the process of conceding is most essential. An adequate questionnaire must be drawn up, and care must be taken to identify the organisations that are truly comparable. Generally speaking, negotiations are best done if both the parties do their homework well. The representatives must come to the bargaining table equipped with the necessary information and supportive data regarding the company's economic status and prospects, the prevailing rates of pay and conditions of employment in comparable industries in the local areas. The management team should take into consideration the financial liability involved, the past agreements, and the impact of present negotiations in future years.

ii) It is essential that a real team spirit be maintained throughout the negotiations. For this purpose, it is necessary that the roles to be played by each member of the team are properly pre-assigned, and each member knows when to take over the discussions. The team must have the confidence of facing any eventuality, which may come up during negotiations. It is good to have a rehearsal among the team members on

such points which can be anticipated to be made forcefully by the opposite team.

iii) Any negotiation strategy should firstly separate the personalities from the problems for arriving at a workable and desirable agreement and secondly, explore the possibilities for harmony and compatibility. Although labour and management are adversarial in some respects, it is also important to avoid concluding that they are adversaries in all respects.

iv) Negotiation is a two-way traffic. The management as well as the union must gain out of it. Hence, the management team should also present their counterproposals. For instance, the union pressure for wage-hike may be matched by a counter-demand for an increase in production, reduction in absenteeism, avoidance of wasteful/restrictive practices, and industrial peace.

v) There is a greater necessity on the part of the management representatives to give a patient hearing to the demands of the union and not to react even if there is a threat of strike or work stoppage. A rational well-reasoned approach can achieve better results than an emotionally charged loud-mouthed approach.

vi) It is also a bad strategy to depute persons of low rank without authority to commit the management on the negotiating table. Such a step may give an impression to the union that the management does not take the negotiating process with all the seriousness that it deserves.

vii) It is a good practice always to classify the various demands raised by labour representatives distinguishing the real from the unreal. A thorough analysis and understanding of different items in the charter of demands will enable negotiators to arrive at a proper judgement.

viii) It is a good tactic to total the cost of all the union proposals and to take up the non-cost items first or items on which it is easy to come to an

agreement so that a suitable atmosphere is created for negotiating on more serious items which have financial implications.

ix) Any negotiating strategy must result in a good agreement or settlement, the Negotiation Skills characteristics of which are:

a) it must strike a proper balance between the various factors that go into its making in order to ensure its workability;

b) it must be viewed as a whole and the inter-relation of its parts must be balanced one against the other;

c) it must be based upon experience, logic and principles rather than on coercive tactics, propaganda and force;

d) it must be fair and reasonable to the employees as regards their emoluments and service conditions; to the management in terms of improved production and productivity; and to the consumers in respect of better quality goods and services; and

e) it must be complete and coherent in all respects without any ambiguity.

x) As a measure of follow-up:

(a) evaluate prevailing environmental changes and cultivate a healthy pragmatic approach;

(b) train and develop rank and file working group to inculcate in them individual effectiveness and professionalism in negotiation; and

(c) develop specific action-plans for negotiation based on prevailing situation.

Check Your Progress 3

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

1. How do you know the Principled Negotiations?

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2. Discuss about the Preparation for Long-term Settlement.

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3. Discuss the Skills and Traits of Negotiating Team.

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4. Describe the Tactics or Strategies in Negotiation.

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12.14 LET US SUM UP

Dialogue and negotiation constitute the non-violent methods of conflict resolution. They help in resolving the conflicts in an amicable manner and in understanding one's and other's position in a constructive manner. Both the methods help in forwarding one's interests; at the same time they give us an insight into others' problems. The resolutions are aimed through integrative approach, increased awareness about other's culture and values apart from constructive approach towards achieving cordial gains. It would also help in forging harmonious relations between parties or nations in order to work for a better and peaceful order in the world.

Negotiation is a goal-oriented process. In negotiation, preparation and planning are essential for moving in the desired direction. Negotiation is a process between people, and so personal needs and feelings have to be taken into account constantly. Always remember that the objective of

negotiation is to come to an agreement. In the event of no agreement, various pressures are brought to bear upon management by the union such as strikes, go-slow, and boycotts. Contract negotiation is an art and a science, but its practice is dependent upon the issues and the personalities involved and the circumstances under which the negotiations are conducted. Trust and honesty in action is central to the negotiating process. There are two ways to negotiate: soft or hard. The soft negotiator wants to avoid personal conflict and so make concessions readily in order to reach an agreement. The hard negotiator views any situation as a contest and wants to win. The principled negotiation approach looks for areas of mutual gain and objective standard decisions.

12.15 KEY WORDS

Negotiation: Negotiation is a dialogue between two or more people or parties intended to reach a beneficial outcome over one or more issues where a conflict exists with respect to at least one of these issues.

12.16 QUESTIONS FOR REVIEW

1. How do you know about the Dialogue?
2. Discuss the Negotiation.
3. How do you know the Gandhi's Methods?
4. Highlight the Relevance of Dialogue and Negotiation.
5. Describe the Tactics or Strategies in Negotiation.

12.17 SUGGESTED READINGS AND REFERENCES

- Weber, Thomas., Conflict Resolution and Gandhian Ethics, The Gandhi Peace Foundation, New Delhi, 1991.
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- Sharma, Jai Narain, Satyagraha: Gandhi's Approach to Conflict Resolution, Concept Publishing Company, New Delhi, 2008.

12.18 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. See Section 12.2
2. See Section 12.2
3. See Section 12.3
4. See Section 12.4

Check Your Progress 2

1. See Section 12.5
2. See Section 12.6
3. See Section 12.7
4. See Section 12.8

Check Your Progress 3

1. See Section 12.9
2. See Section 12.10
3. See Section 12.11
4. See Section 12.12

UNIT 13: RECONCILIATION AND ALTERNATIVE DISPUTE RESOLUTION (ADR)

STRUCTURE

13.0 OBJECTIVES

After this unit, we should able to understand:

- The concept of Reconciliation
- The idea of Alternative Dispute Resolution (ADR)

13.1 INTRODUCTION

Since the 1990s, the issue of reconciliation has gained such an international salience that the last decade is even widely called "the age of reconciliation." The conventional wisdom is that reconciliation can only begin once peace agreement has ended, at least temporarily, the conflict. However, if one adopts the perspective of conflict transformation, rather than conflict resolution, then reconciliation becomes a crucial part and parcel of conflict transformation. Along that line of thinking, this essay aims to examine how reconciliation can fit into the framework of conflict transformation. For that purpose, the essay is divided into three main sections. First, it briefly discusses the concept of reconciliation and the perspective of conflict transformation. The next section examines the relationship between reconciliation and conflict transformation. Third, the essay suggests how different forms of

reconciliation efforts could contribute to transforming intractable conflicts in the world.

Conflict Transformation

The approach of conflict transformation was first proposed by John Paul Lederach as an alternative to the conventional perspective of conflict resolution. Terminological differences aside, there are some basic contrasts between the two approaches. Conflict resolution implies the goal of ending undesired conflicts in a relatively short timeframe, focusing on the content of conflict as something that is disputed and which gives rise to conflict in the first place. Conflict transformation, however, professes the goal of transforming the conflict into something desired in a longer timeframe, focusing not only on the content of the conflict but more importantly on the context and relationship between the actors involved. Compared with the conflict resolution perspective, the crucial innovations of the conflict transformation approach include, therefore, (1) adding to the goal of solving undesired disputes a more important one of building something desired, (2) shifting the focus from issue/content of the conflict onto contextual relationship that underlies the conflict, and (3) expanding the relatively short period of time to deal with the conflict into a longer timeframe.

Reconciliation

As there is currently no universally agreed-upon definition of reconciliation, it may mean different things to different people in various contexts. In common parlance, reconciliation means some kind of agreement between disputants or adversaries. The conflict resolution meaning of the term, however, goes deeper than that. It can be argued that reconciliation, at its core, is about restoring the right relationship between people who have been enemies. Reconciliation, as De Gruchy observes, 'implies a fundamental shift in personal, and power relations.'

Reconciliation may become a desired goal in its own merit in divided societies. It may also represent a pragmatic way to deal with profound changes involving past injustices in order to achieve some other desired purposes such as building peace, nurturing democracy, promoting human

rights, and delivering justice, among others. Thanks to the great currency that reconciliation has gained recently, there is already a very rich literature on different efforts for reconciliation. They mainly involve truth acknowledgment, reparations, retributive justice, apology, and forgiveness. No single form of reconciliation effort is perfect or satisfactory to all circumstances and parties involved. Sometimes hard choices have to be made in deciding whether one form is preferable to another, depending on the specific and temporal circumstance of each conflict and society.

Conflict Transformation and Reconciliation

From the brief discussion above, one could possibly explore a great overlapping area and high degree of complementarity between the two. These commonalities would serve as a basis to integrate reconciliation into the conflict transformation approach. In fact, in his later book named *The Moral Imagination: The Art and Soul of Building Peace*, Lederach himself incorporates many components of reconciliation into his framework for peacebuilding such as public truth telling, restorative justice, "re-storying," and collective healing.

First, reconciliation shares with conflict transformation perspective the same focus on human relationship, rather than on immediate contents or issues that give rise to the conflict. As Lederach observes, reconciliation "is built on and oriented toward the relational aspects of a conflict [...] and create[s] an encounter where people can focus on their relationship."

Second, because reconciliation is mainly concerned about the right relationships between victims and perpetrators, as opposed to immediate issues of injustices, it usually takes a longer time to achieve reconciliation. Reconciliation is never an easy task that awaits a quick solution.

Third, though reconciliation may require different efforts to deal with grievances and injustices in the past, it is very much forward-looking in nature. As argued above, reconciliation also aims at achieving desired purposes in the future such as promoting human rights, fostering democracy, and building the rule of law. Even the definition of reconciliation as restoring the right relationship between people should

not be (mis)interpreted as going backward to a pre-conflict situation. Instead, restoration in this reconciliation context can be understood as restoring some transcendental, Platonist concept of justice and right relationship. To reconcile in this sense means to build relationships based on certain norms. This understanding is also a particularly distinctive feature of religious conception of reconciliation. In the secular world, reconciliation as such becomes much like restorative justice. In short, this forward-looking nature of reconciliation well complements the transformation component in the conflict transformation framework.

Fourth, like the conception of change in the conflict transformation perspective, reconciliation can be present and necessarily prescriptive at all personal, relational, structural, and cultural levels. At the personal level, for example, repentance and apology from perpetrators have psychological effects and discourse impacts on the self-perception, thus shaping the identities, of both victims and perpetrators. Apology also serves to build the unity between victims and perpetrators, a change desired in the relational dimension of conflict transformation. At the structural and cultural dimensions, other efforts for reconciliation such as restitution in the forms of negotiated discourse and constructed narrative could contribute to building new cultural mechanism that can handle conflicts.

In sum, the concept of reconciliation can fit into the framework of conflict transformation and has great potential to complement practices for transformational strategies. The next section provides a brief survey of crucial reconciliation efforts and how they could contribute to conflict transformation.

Reconciliation Measures for Conflict Transformations

Truth Acknowledgement and Truth Commissions

According to the survey of Priscilla Hayner, there were 21 truth commissions in the period from 1970s to early 2001. Most of them were established in Africa and Latin America. Among them, some truth commissions were established when the conflict were still going on such as those in Nepal and Sri Lanka. In terms of size, impacts, and functions, major truth commissions were all in Latin America and Africa.

Establishing truth commissions is a very popular reconciliation effort, for it aims to meet the public demand for truth telling from the victims. In this aspect, truth commissions could contribute to conflict transformation by creating spaces where people feel safe and can honestly talk about their fears and hopes, hurts and responsibilities. A truth commission, if carefully designed and properly mandated, can have considerable psychological impact, not only on the victims and perpetrators at the personal level, but in the structural dimension as well. As archbishop Desmond Tutu argues, a truth commission was probably the most appropriate mechanism to reconcile the people in South Africa and, more importantly, to transform the country given its specific political and social circumstances.

It should be noted, however, that people very often place excessively high expectations for the outcomes that a truth commission can deliver. Time and again, victims may expect a truth commission to dispense justice and make reparations in addition to simply seeking and making public the truth. As a result, those expectations are not generally met, because the mandates and performance of truth commissions very much depend on other factors such as political will of the government, social environment, the remnant power of wrongdoers, and levels of economic development. If people grow frustrated and disappointed with truth commissions, they may lose their trust in the overall reconciliation process. It is, therefore, necessary to combine a truth commission with other reconciliation efforts including reparation and restorative justice, among others.

Reparation

Although most cases of reparation and restitution take place after a conflict ends, restitution can still function in a conflict situation by, as Barkan argues, providing a dialogue that focuses on mutual recognition of identity and perceived histories. Lederach rightly observes that a central challenge for transformation is to 'encourage people to address and articulate a positive sense of identity in relationship to others.' Reparation and restitution, therefore, can open up the possibility of using dialogues on restitution as an alternative to conflict. In Barkan's words,

restitution may become a force in resolving conflicts and promote reconciliation.

Retributive Justice: Trials or Amnesty

In the popular sentiment, retributive justice is probably the most common response to injustices and wrongdoings. The propensity for retributive justice since time immemorial is also reinforced by the liberal human rights tradition that dates back to as early as the Enlightenment. Based on several central concepts of desert, the rule of law, human rights, and democracy, advocates of the liberal human rights tradition 'place a premium on the punishment of perpetrators and the vindications of victims in response to large scale crimes against humanity, war crimes, and other human rights violations.'

Since retributive justice mostly focuses on the past wrongdoings of individual perpetrators, it is not mainly concerned with either relational context of the conflict or the forward-looking goal of conflict transformation, except perhaps for its marginal deterrence effect. As political scientists Jack Snyder and Leslie Vinjamuri argue, the motivation to achieve retributive justice through trials and tribunals may backfire in terms of building the rule of law and democracy. They maintain that historical evidence suggests well designed amnesty may prove more effective in promoting the rule of law, at least in the transitional period. Retributive justice, therefore, should be carefully pursued, in combination with restorative justice and other reconciliation efforts, to enhance its contribution to conflict transformation.

Apology and Forgiveness

Apology and forgiveness can occur at the private level only or may also affect the interpersonal relationship. As Barkan and Karn observes, apology can help 'bridge the victim's need for acknowledgment and the perpetrator's desire to reclaim humanity.' The same function can be said of forgiveness, which may be defined not only as a form of acknowledgment but also an obligation toward the repentant offender. Conceived as such, both apology and forgiveness may contribute to restoring the relationship between perpetrators and victims that were

served because of injustices and injuries inflicted by the conflict. The causal mechanism involved is that they helps define the past in a mutually agreed-upon manner between the victims and the perpetrators, thus shaping the identities of both through a process called re-negotiating history. It should be noted here that mutually redefining the past, re-negotiating the history, and shaping each side's identity by both sides are crucial to any attempts to address the 'root causes' of social conflict.

The term conflict is understood as any situation, event, or opinion in an inter-personal or other relations where there is more than one position and these are at variance with one another. When these variant positions are made to coexist within the same social matrix, conflict occurs. Thus, conflict is a process of rearrangement of variant positions to enable them to resolve differences and attempt coexistence. Conflict is seen, witnessed or experienced in every society at one point of time or the other but it is imperative that such a conflict is brought to an end if a society has to rejuvenate itself, flourish and survive peacefully thereafter. One must also understand that conflict is not inherently adverse or unhealthy; it can be a productive occurrence and it can rather help a society to reinvent itself and learn to coexist peacefully. Conflict lends dynamism to a situation that allows for a dialogue and reconsideration of existing situation and a possible rearrangement of interpersonal or international relations. Every society goes through a process of social and political churning whenever internal and external situations warrant it. It is an inevitable part of the process of social development and change. Lewis Coser and Ralf Dahrendarf propose in their conflict theory that conflict can be used to resolve social tensions and maintain interpersonal relations. For them, conflict is a natural manifestation of social change because in this process some groups benefit more than the rest. Resolution of tensions through the use of conflict is more desirable than prolonging the differences. Such resolution of conflict is particularly marked in pluralistic, open societies as it provides avenues for citizens to challenge the established norms and institutions. Conflicts can be violent and non-violent, armed resistance or peaceful opposition. Whatever is the nature of conflict, while it is desirable to bring an end to the conflicts amicably and early, some conflicts are less amenable to resolution than

others. Protracted conflicts elude solutions because of various factors such as complex and competing issues involved, divergent opinion on the possible solution, different methods adopted by the main actors, and a general lack of concert of interests in favour of a solution. Since all conflicts cannot be successfully resolved one way or the other, some conflicts and disputes have to be lived with. However, even as some conflicts are difficult to resolve, they must however be contained to a level that does not endanger human life and social existence in general. In this unit we will look at the concept of mediation and reconciliation as tools of conflict resolution, and their application by Gandhi in his efforts to resolve conflicts. While both mediation and reconciliation are important for conflict resolution, they are employed at different stages of conflict. Mediation is a method of peaceful resolution that is used to bring about a solution to an on-going conflict. Reconciliation, on the other hand, is a process of coming to terms with the reality at the end of the conflict and of preparing oneself for a renewed coexistence with other groups. Usually, mediation as a procedure comes into prominence during a conflict when parties try to seek a way out of an imbroglio; reconciliation is a process that normally comes into effect after a conflict has come to an end to heal the wounds and help a community to march on with life.

13.2 THE CONCEPT OF RECONCILIATION

Reconciliation as a concept is part of the process of rebuilding peace after the conflict has come to an end or when has been brought down to manageable levels. Every conflict passes through two stages. The first one is the process of conflict management that is effected through such methods as negotiation, mediation, dialogue, arbitration, etc. The second stage involves reconciliation when the conflict has been resolved. Reconciliation is a challenging process because the entire process of peace building is hinged on it. It has a dual role to play in the resolution of conflict: one, successful conflict resolution is, in the immediate sense, premised on reconciliation; second, it prepares the conflicting communities to eventually coexist with each other and thus acts as the

ultimate basis for lasting peace. Reconciliation requires developing a web of peaceful relationships between the communities and a change in socio-psychological and emotional outlook towards each other. This in turn is an uphill task when the communities have seen conflict for an extended period of time coupled with a general lack of confidence in the other group's intentions. It requires a tremendous leap of faith and belief to find emotional connection in each other so as to counter the trust deficit and renew efforts towards coexistence. Many a time, successful peace agreements have failed to establish lasting peace or to sustain negotiated solution in the absence of genuine reconciliation on the part of the communities. This is so because the peace agreements or blueprints for resolving the conflicts are negotiated by the leaders and political representatives of the warring factions but reconciliation depends on the active involvement of people and their perception about the other community. When there is incongruence between the popular perception of a conflict and the political calculations of the leaders involved in negotiations for its resolution, it is unlikely that the conflict will be successfully put to an end without effecting a change in that popular perception. Sometimes structural mechanisms for reconciliation are woven into peace agreements by way of creating interdependencies, linkages, affinities and other channels of interaction to create conducive atmosphere for mutual respect and understanding but there is no guarantee that such structures and mechanisms will necessarily bring about a change in popular perception and orientation towards each other (Bar-Tal, p.365). Thus, no matter how successfully peace has been negotiated, reconciliation is a necessary and inevitable process to sustain that negotiated peace. James Baker, the former US Secretary of State, once famously stated that no amount of 'international conciliation can replace national reconciliation' in bringing about lasting peace. The process of reconciliation, by definition, is a gradual, reciprocal and voluntary one. It must involve respect for, forgiveness towards, and appreciation of the rival group and its socio-political position. Although it is extremely difficult to countenance such dramatic turn around in one's perception, it is commonly held that transition and acceptance of a group from rival to a legitimate partner and stakeholder in peace is

necessary for reconciliation. Intra-social reconciliation must be based on four elements: truth, regard, justice and peace. Truth involves 'open revelation of the past, including admission, acknowledgement and transparency'; regard is a term used by Kriesberg to denote acceptance, forgiveness, and compassion; justice 'requires rectification, restitution, compensation and social restructuring'; and peace (or security in Kriesberg's view) calls for building 'common future, cooperation, coordination, well-being, harmony…and security for all the parties' (Lederach and Kriesberg quoted in Bar-Tal, pp.366-67). Influenced by this understanding of reconciliation and Gandhi's emphasis on spiritual aspect of it, the South African Commission was named as Truth and Reconciliation Commission. Social reconciliation is contingent upon many factors such as the perceptions of the incumbent leaders and the members of the community, levels of social cohesiveness, the ability of everyone to enmesh in the local cultural matrix (if it is an intra-community conflict), and traditional, emotional ties shared by a community. Social group as a repository of cohesive identity and cultural values gets disintegrated when dissimilar attitudes are made to coexist. Traditional values are sacrificed out of sheer necessity and desperation to survive in hostile conditions. Moreover, retrieving one's sense of selfesteem and emotional fabric is an arduous task for those who have seen conflict for too long. They tend to suffer from a sense of helplessness and seething anger at being forced to endure conflict. The problem gets amplified when an entire community shares such emotional attributes of anger, helplessness and retribution and continues to live with ruptured emotional balance and a deep sense of loss. These grievances must be known, acknowledged and redressed to the extent possible by those involved in conflict resolution. Since a conflict is rarely one-sided, its resolution requires forgiveness and healing on the part all those involved in it. Usually reconciliation is understood in Western-Christian religious-cultural context. However, in Da Silva's view, 'Gandhi's satyagraha (truth force) is an Eastern articulation of reconciliation. [Satyagraha] sustains and drives nonviolent behaviours, which are expressions of forgiveness and reaching out to the other. Nonviolence is implied in forgiveness, since we cannot be violent and promote

reconciliation at the same time. Reconciliation through nonviolence has much in common with the four dimensions of forgiveness, namely, moral judgment, forbearance, empathy, and repairing of broken relationships. The assumption of human interdependence that underlies ahimsa is also an important part of the reconciliation process that seeks to bring together the perpetrator, the victim, and the community through restorative justice' (Da Silva's views cited in Meiring, p.1395). Mediation and Reconciliation 125 126 Gandian Approach to Peace and Conflict Relationship During the 1940s, until his death in 1948, Gandhi devoted much of his time and energies to Hindu-Muslim reconciliation in which Shanti Sena also had a major role (see the following section 12.5). He famously stated that '[a] bullet destroys the enemy; nonviolence converts the enemy into a friend', and has the ability to change the heart of even a hardcore fanatic. The last months of his life were spent in bringing about reconciliation between Hindus and Muslims in Noakhali, Bihar and Calcutta that had seen worst riots following the partition of the country. He travelled from village to village, accepted hospitality of Muslim families and addressed gatherings in the evenings in an effort to bring peace to the troubled communities. An incident that took place on 31 August 1947 in which a mob of unruly rioters arrived at his place and attacked him but the blow narrowly missed Gandhi. It made him realise that his efforts at resolving the differences had not been entirely successful. He undertook fast unto death on the following morning that continued for the next three days. That fast brought peace to the neighbourhood and forced leaders of rioting mobs, hooligans, representatives of communities and every conceivable group to rally around Gandhi and take a written pledge that there would not be communal tension in the area. Thereafter, communal disturbances occurred in many other parts of the country but Bengal remained largely peaceful. Gandhi was ready to forgive and condone those who had killed others, even those who were not clear of blood on their hands, if they owned up to their crime and if there was a true repentance.

Reconciliation is the process of matching transactions that have been recorded internally against monthly statements from external sources such as banks to see if there are differences in the records.

For example, the internal record of cash receipts and disbursements can be compared to the bank statement to see if the records agree with each other. The process of reconciliation confirms that the amount leaving the account is spent properly and that the two are balanced at the end of the accounting period.

The Reconciliation Process

In most organizations, the reconciliation process is usually automated, using accounting software. However, since some transactions may not be captured in the system, human involvement is required to identify such unexplained differences. The basic steps involved when reconciling transactions include the following:

1. Compare internal cash register to the bank statement

The first step is to compare transactions in the internal register and the bank account to see if the payment and deposit transactions match in both records. Identify any transactions in the bank statement that are not backed up by any evidence.

2. Identify payments recorded in the internal cash register and not in the bank statement (and vice-versa)

It is possible to have certain transactions that have been recorded as paid in the internal cash register but that do not appear as paid in the bank statement. The transactions should be deducted from the bank statement balance. An example of such a transaction is checks issued but that have yet to be cleared by the bank.

A company may issue a check and record the transaction as a cash deduction in the cash register, but it may take some time before the check is presented to the bank. In such an instance, the transaction does not appear in the bank statement until the check has been presented and accepted by the bank.

Conversely, identify any charges appearing in the bank statement but that have not been captured in the internal cash register. Some of the possible charges include ATM transaction charges, check-printing fees, overdrafts, bank interest, etc. The charges have already been recorded by

the bank, but the company does not know about them until the bank statement has been received.

3. Confirm that cash receipts and deposits are recorded in the cash register and bank statement

The company should ensure that any money coming into the company is recorded in both the cash register and bank statement. If there are receipts recorded in the internal register and missing in the bank statement, add the transactions to the bank statement. Consequently, any transactions recorded in the bank statement and missing in the cash register should be added to the register.

4. Watch out for bank errors

Sometimes, errors may occur in the bank statement, thus, producing some differences between the internal cash register and bank statement. Possible errors include duplication errors, ommissions, transposition, and incorrect recording of transactions.

The errors should be added, subtracted, or modified on the bank statement balance to reflect the right amount. Once the errors have been identified, the bank should be notified to correct the error on their end and generate an adjusted bank statement.

5. Balance both records

The objective of doing reconciliations to make sure that the internal cash register agrees with the bank statement. Once any differences have been identified and rectified, both internal and external records should be equal in order to demonstrate good financial health.

Reconciliation Methods

Reconciliation must be performed on a regular and continuous basis on all balance sheet accounts as a way of ensuring the integrity of financial records. This helps uncover omissions, duplication, theft, and fraudulent transactions.

There are two ways of reconciling financial records, as follows:

1. Document review

The document review method involves reviewing existing transactions or documents to make sure that the amount recorded is the amount that was actually spent. The review is mostly carried out using accounting software.

For example, a company may review its receipts to identify any discrepancies. While scrutinizing the records, the company finds that the rental expenses for its premises were double-charged. The company lodges a complaint with the landlord and is reimbursed the overcharged amount. In the absence of such a review, the company would've lost money due to a double-charge.

2. Analytics Review

Analytics review uses previous account activity levels or historical activity to estimate the amount that should be recorded in the account. It looks at the cash account or bank statement to identify any irregularity, balance sheet errors, or fraudulent activity.

For example, Company XYZ is an investment fund that acquires at least three to five start-up companies each year. For the current year, the company estimates that annual revenue will be $100 million, based on its historical account activity. The company's current revenue is $9 million, which is way too low compared to the company's projection.

After scrutinizing the account, the accountant detects an accounting error that omitted a zero when recording entries. Rectifying the error brings the current revenue to $90 million, which is relatively close to the projection.

Final Word

Reconciliation ensures that accounting records are accurate, by detecting bookkeeping errors and fraudulent transactions. The differences may sometimes be acceptable due to the timing of payments and deposits, but any unexplained differences may point to potential theft or misuse of funds.

13.3 THE IDEA OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

Definition of Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is the procedure for settling disputes without litigation, such as arbitration, mediation, or negotiation. ADR procedures are usually less costly and more expeditious. They are increasingly being utilized in disputes that would otherwise result in litigation, including high-profile labor disputes, divorce actions, and personal injury claims.

One of the primary reasons parties may prefer ADR proceedings is that, unlike adversarial litigation, ADR procedures are often collaborative and allow the parties to understand each other's positions. ADR also allows the parties to come up with more creative solutions that a court may not be legally allowed to impose.

Terms to Know

Arbitration - A process similar to an informal trial where an impartial third party hears each side of a dispute and issues a decision; the parties may agree to have the decision be binding or non-binding

Binding and Non-Binding - A binding decision is a ruling that the parties must abide be whether or not they agree with it; a non-binding decision is a ruling that the parties may choose to ignore

Arbitrator - An impartial person given the power to resolve a dispute by hearing each side and coming to decision

Hearing - A proceeding in which evidence and arguments are presented, usually to a decision maker who will issue ruling

Mediation - A collaborative process where a mediator works with the parties to come to a mutually agreeable solution; mediation is usually non-binding

For more definitions, visit the FindLaw Legal Dictionary.

Other Considerations When Hiring an Alternative Dispute Resolution Attorney

Even though Alternative Dispute Resolution is intended to reduce the costs, stress, and formality associated with going to court, many parties still hire attorneys to represent them at ADR proceedings. They also seek

out pre-proceeding consultations about possible solutions or strategies. Just as with any legal dispute, you should hire an attorney with experience in your particular legal issue who also is familiar with the collaborative process of ADR.

Additionally, arbitrators and mediators are often lawyers. Rather than hiring a lawyer to represent each party in an ADR proceeding, some parties agree to hire a single lawyer to act as an impartial third party to guide the resolution and ensure that all solution proposals are legal.

If you are involved in a legal issue that you would like to be resolved through ADR, contact an ADR lawyer immediately to explore your legal options.

Alternative dispute resolution (ADR), or external dispute resolution (EDR), typically denotes a wide range of dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement short of litigation: a collective term for the ways that parties can settle disputes, with the help of a third party. However, ADR is also increasingly being adopted as a tool to help settle disputes alongside the court system itself.

Despite historic resistance to ADR by many popular parties and their advocates, ADR has gained widespread acceptance among both the general public and the legal profession in recent years. In fact, some courts now require some parties to resort to ADR of some type, usually mediation, before permitting the parties' cases to be tried (indeed the European Mediation Directive (2008) expressly contemplates so-called "compulsory" mediation; this means that attendance is compulsory, not that settlement must be reached through mediation). Additionally, parties to merger and acquisition transactions are increasingly turning to ADR to resolve post-acquisition disputes.

The rising popularity of ADR can be explained by the increasing caseload of traditional courts, the perception that ADR imposes fewer costs than litigation, a preference for confidentiality, and the desire of some parties to have greater control over the selection of the individual or individuals who will decide their dispute. Some of the senior judiciary in certain jurisdictions (of which England and Wales is one) are strongly in favour of this (ADR) use of mediation to settle disputes. Since the

1990s many American courts have also increasingly advocated for the use of ADR to settle disputes. However, it is not clear as to whether litigants can properly identify and then use the ADR programmes available to them, thereby potentially limiting their effectiveness.

Salient features

Alternative dispute resolution (ADR) is generally classified into at least four types: negotiation, mediation, collaborative law, and arbitration. Sometimes, conciliation is included as a fifth category, but for simplicity may be regarded as a form of mediation. ADR can be used alongside existing legal systems such as Sharia courts within common law jurisdictions, such as the UK.

ADR traditions vary somewhat by country and culture. There are significant common elements which justify a main topic, and each country or region's difference should be delegated to sub-pages.

ADR is of two historic types. First, methods for resolving disputes outside of the official judicial mechanisms. Second, informal methods attached to or pendant to official judicial mechanisms. There are in addition free-standing and or independent methods, such as mediation programs and ombuds offices within organizations. The methods are similar, whether or not they are pendant, and generally use similar tool or skill sets, which are basically sub-sets of the skills of negotiation.

ADR includes informal tribunals, informal mediative processes, formal tribunals and formal mediative processes. The classic formal tribunal forms of ADR are arbitration (both binding and advisory or non-binding) and private judges (either sitting alone, on panels or over summary jury trials). The classic formal mediative process is referral for mediation before a court-appointed mediator or mediation panel. Structured transformative mediation as used by the U.S. Postal Service is a formal process. Classic informal methods include social processes, referrals to non-formal authorities (such as a respected member of a trade or social group) and intercession. The major differences between formal and informal processes are (a) pendency to a court procedure and (b) the possession or lack of a formal structure for the application of the procedure.

For example, freeform negotiation is merely the use of the tools without any process. Negotiation within a labor arbitration setting is the use of the tools within a highly formalized and controlled setting.

Calling upon an organizational ombudsman's office is never, by itself, a formal procedure. (Calling upon an organizational ombudsman is always voluntary; by the International Ombudsman Association Standards of Practice, no one can be compelled to use an ombuds office.)

Organizational ombuds offices refer people to all conflict management options in the organization: formal and informal, rights-based and interest-based. But, in addition, in part because they have no decision-making authority, ombuds offices can, themselves, offer a wide spectrum of informal options.

This spectrum is often overlooked in contemporary discussions of "ADR". "ADR" often refers to external conflict management options that are important, but used only occasionally. An organizational ombuds office typically offers many internal options that are used in hundreds of cases a year. These options include:

- delivering respect, for example, affirming the feelings of a visitor, while staying explicitly neutral on the facts of a case,
- active listening, serving as a sounding board,
- providing and explaining information, one-on-one, for example, about policies and rules, and about the context of a concern,
- receiving vital information, one-on-one, for example, from those reporting unacceptable or illegal behavior,
- reframing issues,
- helping to develop and evaluate new options for the issues at hand,
- offering the option of referrals to other resources, to "key people" in the relevant department, and to managers and compliance offices,
- helping people help themselves to use a direct approach, for example, helping people collect and analyze their own information, helping people to draft a letter about their issues, coaching and role-playing,
- offering shuttle diplomacy, for example, helping employees and managers to think through proposals that may resolve a dispute, facilitating discussions,
- offering mediation inside the organization,

- "looking into" a problem informally,
- facilitating a generic approach to an individual problem, for example instigating or offering training on a given issue, finding ways to promulgate an existing policy,
- identifying and communicating throughout the organization about "new issues",
- identifying and communicating about patterns of issues,
- working for systems change, for example, suggesting new policies, or procedures,
- following up with a visitor, following up on a system change recommendation. (See Rowe, Mary, Informality – The Fourth Standard of Practice, in JIOA, vol 5, no 1, (2012) pp 8–17.)

Informal referral to a co-worker known to help people work out issues is an informal procedure. Co-worker interventions are usually informal.

Conceptualizing ADR in this way makes it easy to avoid confusing tools and methods (does negotiation once a lawsuit is filed cease to be ADR? If it is a tool, then the question is the wrong question) (is mediation ADR unless a court orders it? If you look at court orders and similar things as formalism, then the answer is clear: court-annexed mediation is merely a formal ADR process).

Dividing lines in ADR processes are often provider-driven rather than consumer-driven. Educated consumers will often choose to use many different options depending on the needs and circumstances that they face.

Finally, it is important to realize that conflict resolution is one major goal of all the ADR processes. If a process leads to resolution, it is a dispute resolution process.[10]

The salient features of each type are as follows:

1. In negotiation, participation is voluntary and there is no third party who facilitates the resolution process or imposes a resolution. (NB – a third party like a chaplain or organizational ombudsperson or social worker or a skilled friend may be coaching one or both of the parties behind the scene, a process called "Helping People Help

Themselves" – see Helping People Help Themselves, in Negotiation Journal July 1990, pp. 239–248, which includes a section on helping someone draft a letter to someone who is perceived to have wronged them.)

2. In mediation, there is a third party, a mediator, who facilitates the resolution process (and may even suggest a resolution, typically known as a "mediator's proposal"), but does *not* impose a resolution on the parties. In some countries (for example, the United Kingdom), ADR is synonymous with what is generally referred to as mediation in other countries.
3. In collaborative law or collaborative divorce, each party has an attorney who facilitates the resolution process within specifically contracted terms. The parties reach an agreement with the support of the attorneys (who are trained in the process) and mutually agreed experts. No one imposes a resolution on the parties.
4. In arbitration, participation is typically voluntary, and there is a third party who, as a private judge, imposes a resolution. Arbitrations often occur because parties to contracts agree that any future dispute concerning the agreement will be resolved by arbitration. This is known as a 'Scott Avery Clause'. In recent years, the enforceability of arbitration clauses, particularly in the context of consumer agreements (e.g., credit card agreements), has drawn scrutiny from courts.[12] Although parties may appeal arbitration outcomes to courts, such appeals face an exacting standard of review.

Beyond the basic types of alternative dispute resolutions there are other different forms of ADR:

- Case evaluation: a non-binding process in which parties present the facts and the issues to a neutral case evaluator who advises the parties on the strengths and weaknesses of their respective positions, and assesses how the dispute is likely to be decided by a jury or other adjudicator.
- Early neutral evaluation: a process that takes place soon after a case has been filed in court. The case is referred to an expert who is asked to provide a balanced and neutral evaluation of the dispute. The

evaluation of the expert can assist the parties in assessing their case and may influence them towards a settlement.

- Family group conference: a meeting between members of a family and members of their extended related group. At this meeting (or often a series of meetings) the family becomes involved in learning skills for interaction and in making a plan to stop the abuse or other ill-treatment between its members.
- Neutral fact-finding: a process where a neutral third party, selected either by the disputing parties or by the court, investigates an issue and reports or testifies in court. The neutral fact-finding process is particularly useful for resolving complex scientific and factual disputes.
- Ombuds: third party selected by an institution – for example a university, hospital, corporation or government agency – to deal with complaints by employees, clients or constituents.

An organizational ombudsman works within the institution to look into complaints independently and impartially.

"Alternative" dispute resolution is usually considered to be alternative to litigation. It also can be used as a colloquialism for allowing a dispute to drop or as an alternative to violence.

In recent years there has been more discussion about taking a systems approach in order to offer different kinds of options to people who are in conflict, and to foster "**appropriate**" dispute resolution.

That is, some cases and some complaints, in fact, ought to go to a formal grievance, to a court, to the police, to a compliance officer, or to a government IG. Other conflicts could be settled by the parties if they had enough support and coaching, and yet other cases need mediation or arbitration. Thus "alternative" dispute resolution usually means a method that is not the courts. "Appropriate" dispute resolution considers **all** the possible responsible options for conflict resolution that are relevant for a given issue.

ADR can increasingly be conducted online, which is known as online dispute resolution (ODR, which is mostly a buzzword and an attempt to create a distinctive product). It should be noted, however, that ODR

services can be provided by government entities, and as such may form part of the litigation process. Moreover, they can be provided on a global scale, where no effective domestic remedies are available to disputing parties, as in the case of the UDRP and domain name disputes. In this respect, ODR might not satisfy the "alternative" element of ADR.

Advantage and disadvantages of ADR

- Suitable for multi-party disputes
- Lower costs, in many cases it's free when involving consumers
- Likelihood and speed of settlements
- Flexibility of process
- Parties' control of process
- Parties' choice of forum
- Practical solutions
- Wider range of issues can be considered
- Shared future interests may be protected
- Confidentiality
- Risk management
- Generally no need for lawyers
- Can be a less confrontational alternative to the court system

However, ADR is less suitable than litigation when there is:

- A need for precedent
- A need for court orders
- A need for interim orders
- A need for evidential rules
- A need for enforcement
- Power imbalance between parties
- Quasi-criminal allegations
- Complexity in the case
- The need for live evidence or analysis of complex evidence
- The need for expert evidence

Modern era

Traditional people's mediation has always involved the parties remaining in contact for most or all of the mediation session. The innovation of

separating the parties after (or sometimes before) a joint session and conducting the rest of the process without the parties in the same area was a major innovation and one that dramatically improved mediation's success rate.

Traditional arbitration involved heads of trade guilds or other dominant authorities settling disputes. The modern innovation was to have commercial vendors of arbitrators, often ones with little or no social or political dominance over the parties. The advantage was that such persons are much more readily available. The disadvantage is that it does not involve the community of the parties. When wool contract arbitration was conducted by senior guild officials, the arbitrator combined a seasoned expert on the subject matter with a socially dominant individual whose patronage, goodwill and opinion were important.

Private judges and summary jury trials are cost- and time-saving processes that have had limited penetration due to the alternatives becoming more robust and accepted.

Country-specific examples

Canada

In the 1980s and 1990s Canada saw the beginning of a "cultural shift" in their experience with ADR practices. During this time, the need was recognized for an alternative to the more adversarial approach to dispute settlement that is typical in traditional court proceedings. This growth continued over the coming decades, with ADR now being widely recognized as a legitimate and effective approach to dispute resolution. In 2014, the Supreme Court of Canada stated in Hryniak v Mauldin that "meaningful access to justice is now the greatest challenge to the rule of law in Canada today… [The] balance between procedure and access struck by our justice system must reflect modern reality and recognize that new models of adjudication can be fair and just." However, in the decades leading up to this declaration there had already been a number of experiments in ADR practices across the provinces.

One of the first and most notable ADR initiatives in Canada began on 4 January 1999, with the creation of the Ontario Mandatory Mediation Program. This program included the implementation of Rule 24.1, which

established mandatory mediation for non-family civil case-managed actions. Beginning in a selection of courts across Ontario and Ottawa in 1999, the program would be expanded in 2002 to cover Windsor, Ontario's third-largest judicial area. Until this point, opposition to mandatory mediation in place of traditional litigation had been grounded in the idea that mediation practices are effective when disputing parties voluntarily embrace the process. However, reports analyzing the effectiveness of Ontario's experiment concluded that overall mandatory mediation as a form of ADR was able to reduce both the cost and time delay of finding a dispute resolution, compared to a control group. In addition to this, 2/3's of the parties surveyed from this study outlined the benefits to mandatory mediation, these included:

"(i) providing one or more parties with new information they considered relevant;
(ii) identifying matters important to one or more of the parties;
(iii) setting priorities among issues;
(iv) facilitating discussion of new settlement offers;
(v) achieving better awareness of the potential monetary savings from settling earlier in the litigation process;
(vi) at least one of the parties gaining a better understanding of his ADR in Administrative Litigation 157 or her own case; and
(vii) at least one of the parties gaining a better understanding of his or her opponent's case."

In other provinces, the need for ADR to at least be examined as an alternative to traditional court proceedings has also been expressed. For instance, in 2015 Quebec implemented the New Code, which mandated that parties must at least consider mediation before moving to settle a dispute in court. The New Code also codified the role of the mediator in the courtroom, outlining that mediators must remain impartial and cannot give evidence on either party's behalf should the dispute progress to a judicial proceeding. In 2009, a report showed that Manitoba's experience with their Judicially Assisted Dispute Resolution program, an ADR initiative where the court appoints a judge to act as a mediator between two disputing parties who both voluntarily wish to pursue JADR.

One of the main arguments for ADR practices in Canada cites the over clogged judicial system. This is one of the main arguments for ADR across many regions; however, Alberta, in particular, suffers from this issue. With a rising population, in 2018 Alberta had the highest ratio for the population to Superior Court Justices, 63,000:1. The national average on the other hand is nearly half that, with one Justice being counted for every 35,000 Canadians.

To become qualified as a mediator in Canada, it is possible to gain mediation training through certain private organizations or post-secondary institutions. The ADR Institute of Canada (ADRIC), is the preeminent ADR training organization in Canada. Through ADRIC you can receive either a Qualified Mediation or the more advanced Chartered Mediation certificate. To gain these, classes can be taken at one of the seven regional affiliates of ADRIC located across Canada. These include:

- ADR Institute of British Columbia (ADR BC)
- ADR Institute of Ontario (ADRIO)
- ADR Institute of Saskatchewan (ADR SK)
- ADR Atlantic Institute (ADRAI)
- ADR Institute of Manitoba (ADRIM)
- ADR Institute of Alberta (ADRIA)
- Institut de médiation et d'arbitrage du Québec (IMAQ)

Iceland

Njáls saga is an Icelandic story of a mediator who was so successful that he eventually threatened the local power structure. It ends in tragedy with the unlawful burning of Njal alive in his home, the escape of a friend of the family, a mini-war and the eventual ending of the dispute by the intermarriage of the two strongest survivors. It illustrates that mediation was a powerful process in Iceland.

India

Alternative dispute resolution in India is not new and it was in existence even under the previous Arbitration Act, 1940. The Arbitration and Conciliation Act, 1996 has been enacted to accommodate the harmonisation mandates of UNCITRAL Model. To streamline the Indian legal system the traditional civil law known as Code of Civil Procedure, (CPC) 1908 has also been amended and section 89 has been introduced. Section 89 (1) of CPC provides an option for the settlement of disputes outside the court. It provides that where it appears to the court that there exist elements, which may be acceptable to the parties, the court may formulate the terms of a possible settlement and refer the same for arbitration, conciliation, mediation or judicial settlement.

Due to the extremely slow judicial process, there has been a big thrust on Alternate Dispute Resolution mechanisms in India. While Arbitration and Conciliation Act, 1996 is a fairly standard western approach towards ADR, the Lok Adalat system constituted under the National Legal Services Authority Act, 1987 is a uniquely Indian approach.

A study on commercial dispute resolution in south India has been done by a think tank organization based in Kochi, Centre for Public Policy Research. The study reveals that the Court-annexed Mediation Centre in Bangalore has a success rate of 64%, and its counterpart in Kerala has an average success rate of 27.7%. Further, amongst the three southern states (Karnataka, Tamil Nadu, and Kerala), Tamil Nadu is said to have the highest adoption of dispute resolution, Kerala the least.

Arbitration and Conciliation Act, 1996

Part I of this act formalizes the process of Arbitration and Part III formalizes the process of Conciliation. (Part II is about Enforcement of Foreign Awards under New York and Geneva Conventions.)

Arbitration

The process of arbitration can start only if there exists a valid Arbitration Agreement between the parties prior to the emergence of the dispute. As per Section 7, such an agreement must be in writing. The contract regarding which the dispute exists, must either contain an arbitration clause or must refer to a separate document signed by the parties

containing the arbitration agreement. The existence of an arbitration agreement can also be inferred by written correspondence such as letters, telex, or telegrams which provide a record of the agreement. An exchange of statement of claim and defence in which the existence of an arbitration agreement is alleged by one party and not denied by other is also considered as a valid written arbitration agreement.

Any party to the dispute can start the process of appointing an arbitrator and if the other party does not cooperate, the party can approach the office of Chief Justice for the appointment of an arbitrator. There are only two grounds upon which a party can challenge the appointment of an arbitrator – reasonable doubt in the impartiality of the arbitrator and the lack of proper qualification of the arbitrator as required by the arbitration agreement. A sole arbitrator or a panel of arbitrators so appointed constitute the Arbitration Tribunal.

Except for some interim measures, there is very little scope for judicial intervention in the arbitration process. The arbitration tribunal has jurisdiction over its own jurisdiction. Thus, if a party wants to challenge the jurisdiction of the arbitration tribunal, it can do so only before the tribunal itself. If the tribunal rejects the request, there is little the party can do except to approach a court after the tribunal makes an award. Section 34 provides certain grounds upon which a party can appeal to the principal civil court of original jurisdiction for setting aside the award.

The period for filing an appeal for setting aside an award is over, or if such an appeal is rejected, the award is binding on the parties and is considered as a decree of the court.

Conciliation

Conciliation is a less formal form of arbitration. This process does not require the existence of any prior agreement. Any party can request the other party to appoint a conciliator. One conciliator is preferred but two or three are also allowed. In the case of multiple conciliators, all must act jointly. If a party rejects an offer to conciliate, there can be no conciliation.

Parties may submit statements to the conciliator describing the general nature of the dispute and the points at issue. Each party sends a copy of the statement to the other. The conciliator may request further details, may ask to meet the parties, or communicate with the parties orally or in writing. Parties may even submit suggestions for the settlement of the dispute to the conciliator.

When it appears to the conciliator that elements of settlement exist, he may draw up the terms of the settlement and send it to the parties for their acceptance. If both the parties sign the settlement document, it shall be final and binding on both.

Note that in the US, this process is similar to mediation. However, in India, mediation is different from conciliation and is a completely informal type of ADR mechanism.

Lok Adalat

Etymologically, Lok Adalat means "people's court". India has had a long history of resolving disputes through the mediation of village elders. The current system of Lok Adalats is an improvement on that and is based on Gandhian principles. This is a non-adversarial system, whereby mock courts (called Lok Adalats) are held by the State Authority, District Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, or Taluk Legal Services Committee, periodically for exercising such jurisdiction as they think fit. These are usually presided by a retired judge, social activists, or members of the legal profession. It does not have jurisdiction on matters related to non-compoundable offences.

While in regular suits, the plaintiff is required to pay the prescribed court fee, in Lok Adalat, there is no court fee and no rigid procedural requirement (i.e. no need to follow the process given by [Indian] Civil Procedure Code or Indian Evidence Act), which makes the process very fast. Parties can directly interact with the judge, which is not possible in regular courts.

Cases that are pending in regular courts can be transferred to a Lok Adalat if both the parties agree. A case can also be transferred to a Lok

Adalat if one party applies to the court and the court sees some chance of settlement after giving an opportunity of being heard to the other party.

The focus in Lok Adalats is on compromise. When no compromise is reached, the matter goes back to the court. However, if a compromise is reached, an award is made and is binding on the parties. It is enforced as a decree of a civil court. An important aspect is that the award is final and cannot be appealed, not even under Article 226 of the Constitution of India [which empowers the litigants to file Writ Petition before High Courts] because it is a judgement by consent.

All proceedings of a Lok Adalat are deemed to be judicial proceedings and every Lok Adalat is deemed to be a Civil Court.

Permanent Lok Adalat for public utility services

In order to get over the major drawback in the existing scheme of organisation of Lok Adalats under Chapter VI of the Legal Services Authorities Act 1987, in which if the parties do not arrive at any compromise or settlement, the unsettled case is either returned to the back to the court or the parties are advised to seek remedy in a court of law, which causes unnecessary delay in dispensation of justice, Chapter VI A was introduced in the Legal Services Authorities Act, 1987, by Act No.37/2002 with effect from 11 June 2002 providing for a Permanent Lok Adalat to deal with pre-litigation, conciliation and settlement of disputes relating to Public Utility Services, as defined u/sec.22 A of the Legal Services Authorities Act, 1987, at the pre-litigation stage itself, which would result in reducing the workload of the regular courts to a great extent. Permanent Lok Adalat for Public Utility Services, Hyderabad, India

The Lok Adalat is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker. There is no court fee. If the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat. The procedural laws and the Evidence Act are not strictly followed while assessing the merits of the claim by the Lok Adalat.

Main condition of the Lok Adalat is that both parties in dispute should agree for settlement. The decision of the Lok Adalat is binding on the

parties to the dispute and its order is capable of execution through the legal process. No appeal lies against the order of the Lok Adalat.

Lok Adalat is very effective in settlement of money claims. Disputes like partition suits, damages and matrimonial cases can also be easily settled before Lok Adalat as the scope for compromise through an approach of give and take is high in these cases.

Lok Adalat is a boon to the litigant public, where they can get their disputes settled fast and free of cost.

Pakistan

The relevant laws (or parlour provisions) dealing with the ADR are summarized as under:

1. S.89-A of the Civil Procedure Code, 1908 (Indian but amended in 2002) read with Order X Rule 1-A (deals with alternative dispute resolution methods).
2. The Small Claims and Minor Offences Courts Ordinance, 2002.
3. Sections 102–106 of the Local Government Ordinance, 2001.
4. Sections 10 and 12 of the Family Courts Act, 1964.
5. Chapter XXII of the Code of Criminal Procedure, 1898 (summary trial provisions).
6. The Arbitration Act, 1940 (Indian).
7. Articles 153–154 of the Constitution of Pakistan, 1973 (Council of Common Interest)
8. Article 156 of the Constitution of Pakistan, 1973 (National Economic Council)
9. Article 160 of the Constitution of Pakistan, 1973 (National Finance Commission)
10. Article 184 of the Constitution of Pakistan, 1973 (Original Jurisdiction when federal or provincial governments are at dispute with one another)
11. Arbitration (International Investment Disputes) Act, 2011
12. Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011
13. Alternative Dispute Resolution Act. 2017

Somalia

Somalia has a cultural and historic mediation and justice system known as ADR (Alternative Dispute Resolution), which is an informal justice system. It is a kind of justice system in which the arbiter listens to both sides of a dispute and then concludes a solution that both sides will accept

Sub-Saharan Africa

Before modern state law was introduced under colonialism, African customary legal systems mainly relied on mediation and conciliation. In many countries, these traditional mechanisms have been integrated into the official legal system. In Benin, specialised *tribunaux de conciliation* hear cases on a broad range of civil law matters. Results are then transmitted to the court of the first instance where either a successful conciliation is confirmed or jurisdiction is assumed by the higher court. Similar tribunals also operate, in varying modes, in other francophone African countries.

United Kingdom

In the United Kingdom, ADR is encouraged as a mean of resolving taxpayers' disputes with Her Majesty's Revenue and Customs.

In the regulated sectors, finance, telecoms and energy ADR providers exist. Outside of the regulated areas, there are schemes in many sectors which provide schemes for voluntary membership. Two sets of regulations, in March and June 2015, were laid in Parliament to implement the European Directive on alternative dispute resolution in the UK.

Alternative Dispute Resolution is now widely used in the UK across many sectors. In the communications, energy, Finance and Legal sectors, it is compulsory for traders to signpost to approved ADR schemes when they are unable to resolve disputes with consumers. In the aviation sector there is a quasi-compulsory ADR landscape, where airlines have an obligation to signpost to either an approved ADR scheme or PACT - which is operated by the Civil Aviation Authority

On 1 October 2015 the UK adopted The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 into law, which set out rules in relation to ADR and put measures into place to widen the use and application of ADR.

U.S. Navy

SECNAVINST 5800.13A established the DON ADR Program Office with the following missions:

- Coordinate ADR policy and initiatives;
- Assist activities in securing or creating cost-effective ADR techniques or local programs;
- Promote the use of ADR, and provide training in negotiation and ADR methods;
- Serve as legal counsel for in-house neutrals used on ADR matters; and,
- For matters that do not use in-house neutrals, the program assists DON attorneys and other representatives concerning issues in controversy that are amenable to using ADR.

The ADR Office also serves as the point of contact for questions regarding the use of ADR. The Assistant General Counsel (ADR) serves as the "Dispute Resolution Specialist" for the DON, as required by the Administrative Dispute Resolution Act of 1996. Members of the office represent the DON's interests on a variety of DoD and interagency working groups that promote the use of ADR within the Federal Government.

Additional resources

Cardozo School of Law's Kukin Program for Conflict Resolution

Cardozo School of Law's Kukin Program for Conflict Resolution is the seventh-ranked alternative dispute resolution program in the country. The program includes: courses in negotiation, mediation, arbitration and dispute resolution processes; out-of-the-classroom-applied learning and scholarship in Cardozo's Mediation Clinic and Securities Arbitration Clinic; the Cardozo Journal of Conflict Resolution, a student-run triannual publication; the Cardozo Dispute Resolution Society; and a

Certificate in Dispute Resolution, awarded to J.D. students who complete coursework, writing and service requirements. LL.M. students can also receive an LL.M. in Dispute Resolution and Advocacy.

Cornell University's Scheinman Institute on Conflict Resolution

Cornell's ILR School has joined forces with Cornell's Law School to present the country's most comprehensive conflict resolution program focusing on workplace alternative dispute resolution (ADR). The Martin and Laurie Scheinman Institute on Conflict Resolution mission is to educate the next generation of neutrals – arbitrators, mediators and facilitators – who can help resolve disputes between employers and employees, both unionized and non-unionized. The Institute provides training for undergraduate and graduate students, consultation and evaluation, and conducts research. It also offers courses in two- to five-day sessions designed for professionals who are interested in or practising in the workplace dispute resolution field. These highly intensive and participatory courses are coordinated by Cornell ILR faculty and are held in the ILR School's conference centre in Manhattan and on the Ithaca campus. Participants can earn two certificates, Workplace Alternative Dispute Resolution and Conflict Management and Labor Arbitration.

Fordham Law School's Dispute Resolution Program

Fordham Law School's Dispute Resolution program placed in the top 10 of *U.S. News & World Report*'s 2008 rankings of the best Dispute Resolution programs in the nation, according to the recently released rankings. Along with Fordham's Clinical Training program, the Dispute Resolution program is the top-ranked specialty program at Fordham Law School. The Alternative Dispute Resolution program at Fordham combines an integrated agenda of teaching, scholarship, and practice in conflict resolution within the national and international communities. In addition to the classroom and clinical experience, the law school's student-run Dispute Resolution Society competes in ABA-sponsored interschool competitions as well as international mediation and arbitration competitions. In 2008 the Society's teams won the ABA

Regional Negotiation Competition, placed third overall in the International Chamber of Commerce Commercial Mediation Competition in Paris, and reached the semifinals of the Willem C. Vis (East) International Commercial Arbitration Competition in Hong Kong. Additionally, Fordham's Dispute Resolution Society hosts an annual symposium on current Dispute Resolution topics and also teaches a class on dispute resolution skills to seniors at the Martin Luther King, Jr. High School in New York City.

Harvard Program on Negotiation

"The [Harvard] Program on Negotiation (PON) is a university consortium dedicated to developing the theory and practice of negotiation and dispute resolution. As a community of scholars and practitioners, PON serves a unique role in the world negotiation community. Founded in 1983 as a special research project at Harvard Law School, PON includes faculty, students, and staff from Harvard University, Massachusetts Institute of Technology and Tufts University." Harvard currently offers 12-week courses on negotiation and mediation for participants from all disciplines and professions as well as weekend seminars taught by their professors. The Harvard PON program is currently ranked No. 3 falling from No. 2 last year according to the U.S. World and News Report, and has also remained among the top 10 schools over the last decade.

Straus Institute for Dispute Resolution

Pepperdine University School of Law's Straus Institute for Dispute Resolution[34] provides professional training and academic programs in dispute resolution including a Certificate, Masters in Dispute Resolution (MDR) and Masters of Law in Dispute Resolution (LLM). Straus provides education to law and graduate students, as well as mid-career professionals in areas of mediation, negotiation, arbitration, international dispute resolution and peacemaking. The Straus Institute is ranked the number one dispute resolution school in the nation by U.S. News & World Report.

CUNY Dispute Resolution Consortium

The City University of New York Dispute Resolution Consortium (CUNY DRC) serves as an intellectual home to dispute-resolution faculty, staff and students at the City University of New York and to the diverse dispute-resolution community in New York City. At the United States' largest urban university system, the CUNY DRC has become a focal point for furthering academic and applied conflict resolution work in one of the world's most diverse cities. The CUNY DRC conducts research and innovative program development, has co-organized countless conferences, sponsored training programs, resolved a wide range of intractable conflicts, published research working papers and a newsletter. It also maintains an extensive database of those interested in dispute resolution in New York City, a website with resources for dispute resolvers in New York City and since 9/11, the CUNY DRC assumed a leadership role for dispute-resolvers in New York City by establishing an extensive electronic mailing list, sponsoring monthly breakfast meetings, conducting research on responses to catastrophes, and managing a public awareness initiative to further the work of dispute resolvers.

CPR Institute for Dispute Resolution

The International Institute for Conflict Prevention and Resolution, known as the CPR Institute, is a New York City membership-based nonprofit organization that "promotes excellence and innovation in public and private dispute resolution". To this end, it serves as a "primary multinational resource for avoidance, management, and resolution of business-related disputes".

The CPR Institute was founded in 1979 as the Center for Public Resources by a coalition of leading corporate general counsel dedicated to identifying and applying appropriate alternative solutions to business disputes, thereby mitigating the extraordinary costs of lengthy court trials. Today, the CPR Institute is a nonprofit educational corporation existing under the New York state laws and is tax-exempt pursuant to Section 501(c)(3) of the U.S. Internal Revenue Code. It is governed by a board of directors, and its priorities and policies are guided in large part by consultation with an executive advisory committee. Its funding is

primarily derived from the annual contributions of its member organizations, and from its mission-related programming. The various operations and activities that fulfil the Institute's mission are captured in the acronym of its name:

C: CPR convenes legal and business leaders to develop, and encourage the exchange of, best practices in avoiding, managing and resolving disputes.

P: CPR publishes its own work and that of other like-minded organizations, making resources available to a global community of problem-solvers.

R: CPR helps to resolve complex disputes among sophisticated parties, by devising rules, protocols and best practices, and by providing disputants with resources and consulting expertise in selecting appropriate methods and neutrals to assist in the dispute resolution process.

Check Your Progress 1

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

1. Discuss the concept of Reconciliation.

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2. Describe the idea of Alternative Dispute Resolution (ADR).

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13.4 LET US SUM UP

This unit argues that, despite the conventional wisdom that reconciliation can only begin after a peace agreement ends a conflict, various efforts for reconciliation can be integrated into the framework of conflict transformation. It begins by examining the concept of reconciliation and the perspective of conflict transformation. It goes on to argue that there is

a great consistent overlapping area between the two, reflected in a shared focus on contextual relationship, a similar longer timeframe, an identical forward-looking nature, and the same level-crossing presence. Therefore, reconciliation can and should be integrated into different steps of conflict transformation. In fact, implementation of some crucial efforts for reconciliation including truth acknowledgment, reparation, apology, forgiveness, and even retributive justice could make different contributions to realizing the goal of conflict transformation.

Over more than three decades has focused on the development and application of interactive problem solving: an unofficial, scholar-practitioner approach to the resolution of protracted, deep-rooted, and often violent conflicts between identity groups, which is derived from the pioneering work of John Burton and anchored in social-psychological principles. My primary focus over the years has been on the Israeli-Palestinian conflict, but my students and associates have also applied the approach in a number of other arenas of ethnonational conflict, including Cyprus, Northern Ireland, Sri Lanka, Colombia, and South Africa. A starting point of this work has been the assumption that the nonviolent termination of such conflicts must go beyond conflict settlement centered on interest-based bargaining, and aim for conflict resolution centered on joint development of solutions that address the needs and allay the fears of both parties. We have viewed interactive problem solving as a form of conflict resolution that is conducive to ultimate reconciliation. Increasingly, however, we have come to see reconciliation as a distinct process of peacemaking, which must accompany conflict resolution in deep-rooted conflicts between identity groups. Whereas conflict resolution refers to the process of shaping a mutually satisfactory and hence durable agreement between the two societies, reconciliation refers to the process whereby they learn to live together in the post-conflict environment. Following this logic, the paper conceptualizes conflict settlement, conflict resolution, and reconciliation as three qualitatively distinct processes, operating at the level of interests, relationships, and identity respectively. These three processes may be related sequentially, but they may also operate independently and simultaneously. The paper addresses the special challenge of reconciliation, which requires some

changes in each party's identity, without threatening the core of its identity; and concludes with a brief discussion of the conditions conducive to reconciliation.

13.5 KEY WORDS

Reconciliation: In accounting, reconciliation is the process of ensuring that two sets of records are in agreement. Reconciliation is used to ensure that the money leaving an account matches the actual money spent. This is done by making sure the balances match at the end of a particular accounting period

Alternative Dispute Resolution (ADR): Alternative dispute resolution, or external dispute resolution, typically denotes a wide range of dispute resolution processes and techniques that act as a means for disagreeing parties.

13.6 QUESTIONS FOR REVIEW

1. Discuss the concept of Reconciliation in today's contemporary World.
2. Describe the idea of Alternative Dispute Resolution (ADR) in the crisis time.

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13.8 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. See Section 13.2
2. See Section 13.3

UNIT 14: POST CONFLICT CHALLENGES; PEACE AGREEMENTS

STRUCTURE

14.0 OBJECTIVES

After this unit, we can able to know:

- To discuss the Post Conflict Challenges
- To know about the Peace Agreements
- To discuss the Peace Research

14.1 INTRODUCTION

Two concepts of peace should be distinguished: negative peace, defined as the absence of organised violence between such major human groups as nations, as also between racial and ethnic groups because of the magnitude that can be reached by such conflicts; and positive peace, defined as a pattern of cooperation and integration between major human groups. Absence of violence should not be confused with absence of conflict; violence may occur without conflict, and conflict may be solved by means of non-violent mechanisms. The distinction between these two types of peace gives rise to a fourfold classification of relations between two nations: war, which is organised group violence; negative peace, where there is no violence but no other form of interaction either and where the best characterisation is "peaceful passive coexistence";

positive peace, where there is some cooperation interspersed with occasional outbreaks of violence; and unqualified peace, where absence of violence is combined with a pattern of cooperation. The conception of peace as "non-war" is neither theoretically nor practically interesting: as used, for instance, in describing the relationship that obtains between Norway and Nepal, it can often be explained in terms of a low level of interaction resulting from geographical distance and thus will hardly be identified by many as an ideal relation worth striving for. For peace, like health, has both cognitive and evaluative components: it designates a state of a system of nations, but this state is so highly valued that institutions are built around it to protect and promote it. It is the concept of positive peace that is worth exploring, especially since negative peace is a conditio sine qua non and the two concepts of peace may be empirically related even though they are logically independent.

Social science has uncovered more knowledge about war than about peace, just as psychology probably has yielded more insights into negative deviance (such as mental illness) than into positive deviance (such as creativity). It has been noticed that studies tend to be focused on wars as units of analysis rather than on periods of peace, and there is a tendency to define peace simply as "non-war". The conditions believed to foster peace and the very conception of peace, however, have varied in different periods and cultures. Peace thinking, that has influenced both the peace movements as well as peace research worldwide, thus has had a tendency to become speculative and value loaded rather than analytical and empirical. It is our effort here to understand contemporary scholarly understandings of peace and how to achieve and maintain peace along with to mark trends in peace movements and peace research. But before we proceed lets have an understanding of the concept of peace.

A large body of writing about building peace examines the education and socialisation of members of a society or group in ways that promote peace. This includes research and theorizing about the ways this has been done and about the ways that it might be done. Since conflicts are inherent in social life, the role of social structure and culture in shaping how conflicts are waged is highly sigrdicant for building peace. Analysts are giving increased attention to variations in the repertoire of methods

used to conduct conflicts, including constructive ones that are available for different people in different historical periods. Efforts to study and to train people in the methods of non-violent action and problemsolving conflict resolution methods therefore contribute to building peace internationally and domestically. One long-standing area of peace studies has been the effect of integration between societies and of sectors within societies. Integration is indicated by the high rate of exchange of goods, peoples, and ideas across societal and group lines, relative to exchanges within. Research findings support the generalisation that integration improves communication and exchanges between the integrating parties and more important enhances mutual security and reduces the probability of countries' waging wars or threatening each other's identity, particularly, when such an integration is perceived to be equitable. Considerable evidence has been reported indicating that democratic countries do not make war against each other. Although the finding and particularly its interpretation are contested, such finding seems robust, given particular definitions of democracy and war. The concepts of positive peace and structural violence help in understanding the relationship between social context and peace. Unlike personal violence, structural violence is indirect. It refers to the "avoidable denial of what is needed to satisfy fundamental needs." Such inequities are built into the global order and constitute negative peace. This influential idea has stimulated various studies, particularly regarding conditions in peripheral or underdeveloped regions.

The recent transformation and settlement of protracted international and societal conflicts and the radical transformation of previously authoritarian and repressive societies have heightened attention to the challenges of building post-conflict relations that are enduring and just. 1 A fundamental change in ways of thinking among members of one or more antagonistic sides can be a powerful factor in producing an enduring peace between them. This does sometimes happen. For example, most Germans after the defeat of Nazism repudiated what they themselves had believed and done; instead, they welcomed beliefs, values, and institutions shared with the victors. To some extent, a similar transformation occurred among Russians as the Cold War ended.

Tradltionally, efforts to restore peace after a conflict ends include policies to redress the grievances that were viewed as the conflict's source. For communal differences within a country, this pay en'dl more autonomy for citizens with different languages or religions and provisions for popular participation in determining the form and degree of autonomy. In recent years, peace workers have been giving considerable attention to fostering mutual understanding and tolerance among peoples with different cultural backgrounds living in the same society. This attention extends to reconciliation between peoples who perpetrated gross human rights violations and peoples who suffered profound losses during periods of repression or of violent struggle. A variety of recent developments contribute to reconciliation among the different peoples making up the United States. The truth about discrimination, violent repression, and other injustices regarding Native Americans, African Americans, and other groups has been more frequently acknowledged. Furthermore, international organisations are increasingly expected to play critical. roles in keeping and restoring peace. The United Nation's peacekeeping forces have undertaken many more such tasks since the Cold War ended. ,Regional organisations and individual countries, particularly the US, have intervened to restore and sustain peace (Saudi Arabia, Afghanistan, and Iraq to mention a few).

14.2 POST CONFLICT CHALLENGES

Most peace thinking has centred on the problem of how power shall best be distributed among the nations of the world. The fust model is that of minimum equality of power which is based on the theory that the international system is best served by making power the monopoly of one nation or system, just as it is monopolised by some states in the international system. Examples are the Pax Romana, Pax Ecclesiae, and Pax Britannica. These are instances of Roman Empire, the Catholic Church and Britain maintaining law and order over large areas in the globe The second model focuses on maximum equality, or what is usually referred to as a 'balance of power' in the sense that no nation or alliance is strong enough to'defeat another nation or alliance. A modern version of this is the 'balance of terror', in which a nation may defeat

other nations, but only at the risk of itself being completely destroyed. A third model views military power as best stabilised at a low level; this refers to all kinds of arms control efforts, especially those that have taken place from the Hague Peace Conference of 1899 to the present day, including contemporary thinking that aims at subtracting from a Hobbesian dictum bellum omnium contra omnes both some means of violence and some objects of violence. The idea is to rule out general and complete war. Finally, there is the model that views power as stabilised at a zero level; this refers to the general and complete disarmament advocated by pacifists. Pacifism asserts that this atate may be ob& unilaterally by the effect of example, because weapons become meaningless when they do not encounter similar weapons, and by the refusal of soldiers to use arms, as well as by governmental decisions. None of these models are free from limitations. Take the model of rninimum equality. While there might perhaps be agreement among nations about the appointment of a policing nation in the world there is no unanimity about its consequences, i.e., that coercive power usually will be accompanied by other kinds of influence. The major difficulty in the model of maximum equality seems to be that the system, although in momentary equilibrium, is not in stable equilibrium. It is based on the relative evaluation of two power potentials, and since military power is many dimensional, this evaluation may be far from consensual. There will always be room for the idea that one's own power is not sufficiently develcqxd. nus, the basis is laid for arms races, and it is difficult to see any good theoretical justification for the thesis that there will be points of stability - for instance, that major technical breakthroughs will not occur. The need for sufficient retaliatory power after an enemy's first strike also makes the teFor balance unstable. One major difficulty in the model that focuses on arms control is the arbitrariness of all borderlines between permissible and illegitimate weapons. For such border lines to be . consensually accepted they must be protected by some kind of discontinuity, such as the clear line that existed between conventional and nuclear weapons before the overlap in . destructive power became too conspicuous with the introduction of the variety of tactical atomic weapons. As far as the model of general and complete disarmament is

concerned, one major objection is its failure to consider the need for countervailing power. One evader of an agreement may dominate the total system if he has an absolute weapon at his disposal. For this reason, general and complete disarmament can preserve peace only if the distribution of power in the system accords with the minimum-equality model, or if provision is made in the system for the effective use of non-military forms of power, against those who evade disarmament agreements.

All of the following models of world systems have in common a certain resemblance tit a nation-state. The idea is that since many nation-states have obtained reasonable security and equity for their inhabitants, there must be something in their structure that is worth copying at the world level. Of the many dimensions that can be used to describe such models, let us examine the two important ones. First, models of world systems can be described in terms of the type of the main constituting unit on which the system is based. When the basic unit is the individual, the world system is conceived as a world stale, with a very low level of autonomy for intermediate levels such as the nation. With nations as units the world system becomes a confederation, with the nation as a political level interposed between the individual and the world government. Congruence between the authority structures of nation and confedeqation may have a stabilising effect on the system as a whole. The difference between these two models is rarely argued in terms of their relevance for peace. Rather, the world confederation is seen as an intermediate step in a more gradualist approach toward the world state or as a system with the built-in protection of some internal autonomy. Also, there is the idea that B~rder lines should be preserved to some extent, precisely because they slow down culturd diffusion and influence and thus contribute to the preservation of socio-cultural pluralism - which many fear might disappear in a world state because of the homogenising effect of a strong nucleus of decision making. Secondly, models of the world systems can be described in terms of their scope and . domain. By "scope" we refer to the variety of needs satisfied by the world system; and by "domain", we refer to how many receive need-satisfaction from the system. Classification in terms of these two system functions

produces two basic models. The first model rates high on scope but low on domain. It is the form taken by the regional on federation, which gives much in terms of sc& to its members but is exclusive in terms of membership; a leading example of this is European Union or erstwhile European Economic Community. The second model rates high on domain but low on scope. It is the form taken by the functionally specific organisation, which sets no limits, at least in principle, to the number and type of people whose needs it may serve but is able to do this only because both the needs and the type of service provided are of a limited type. The specialised agencies of the UN are good examples of this model.

14.3 PEACE AGREEMENTS

This essay was written in collaboration with the UN Peacemaker Databank, Policy Planning Unit, Department of Political Affairs, United Nations. This databank will be available online beginning in April 2006.

What are Peace Agreements?

Peace agreements are contracts intended to end a violent conflict, or to significantly transform a conflict, so that it can be more constructively addressed. There are various types of agreements that can be reached during a peace process. Each type of agreement has a distinct purpose and serves a value in itself towards building positive momentum for a final settlement. These agreements, however, are not easily distinguished, as the content may sometimes overlap. Not all types of agreements are needed for each conflict. Some processes may have step-by-step agreements that lead towards a comprehensive settlement. Other peace processes may seek to negotiate one agreement comprehensively.

While categorizing each document that is negotiated during a peace process is often difficult, the following are common classifications used by the United Nations to differentiate the various types of peace agreements:[1]

- **Cessation of Hostilities or Ceasefire Agreements**

A ceasefire agreement refers to a temporary stoppage of war or any armed conflict for an agreed-upon timeframe or within a limited area. Each party to the agreement agrees with the other to suspend aggressive actions, without necessarily making concessions of any kind. These agreements are military in nature and are basically designed to stop warring parties from continuing military actions while political negotiations are conducted to find a more durable solution.

By themselves, ceasefire agreements are typically short-lived and fragile. They must be quickly followed up with further agreements if the

Additional insights into **peace agreements** are offered by Beyond Intractability project participants.

ceasefire is to be maintained.

- **Pre-Negotiation Agreements**

Pre-negotiation agreements are those that define how the peace will be negotiated. These agreements determine procedural issues such as schedules, agendas, participants and location, as well as the peacemaker's role and the procedure for drafting later framework or comprehensive agreements. The management of a peace process often determines if an agreement will be reached. Pre-negotiation agreements serve to structure negotiations and keep them on track. They facilitate the management of a peace process in order to reach its goal of ending the conflict. Pre-negotiation agreements usually signal the first achievement of success in a peace process, and thereby serve to build confidence and promote trust between the parties.

- **Interim or Preliminary Agreements**

Interim or Preliminary agreements are undertaken as an initial step toward conducting future negotiations. They are usually seen as "agreements to agree" or commitments to reach a negotiated settlement and build confidence between the parties. Such agreements do not normally deal with either procedural or structural issues, but may have

some characteristics of a pre-pre-negotiation agreement, delineating when and how negotiations might be held. Interim agreements serve to signal that the ceasefire will be respected. Interim agreements are also used to restart a stalled peace process. Like ceasefire agreements, interim or preliminary agreements are not stable, and need to be followed with negotiations on procedural and substantive issues quickly to keep the new positive momentum of a peace process.

- **Comprehensive and Framework Agreements:**

The terms "Comprehensive Agreements" and "Framework Agreements" are often used interchangeably. However, there is a slight difference between the two types of agreements:

- **Framework Agreements** are agreements that broadly agree upon the principles and agenda upon which the substantive issues will be negotiated. Framework agreements are usually accompanied by protracted negotiations that result in Annexes that contain the negotiated details on substantive issues, or are a series of subsequent agreements that are sometimes collectively known as the Comprehensive Agreement;
- **Comprehensive Agreements** address the substance of the underlying issues of a dispute. Their conclusion is often marked by a handshake, signifying an "historical moment" that ends a long-standing conflict. Comprehensive agreements seek to find the common ground between the interests and needs of the parties to the conflict, and resolve the substantive issues in dispute.

- **Implementation Agreements**

Implementation Agreements elaborate on the details of a Comprehensive or Framework Agreement. An implementation agreement almost always requires a new round of negotiations with the relevant parties. In these negotiations, framework or comprehensive agreements are fine-tuned and given specificity. The goal of implementation agreements is to work out the details and mechanics to facilitate implementation of the comprehensive agreement. Implementation agreements are not always formally written documents. Sometimes they are verbal commitments, exchanges of letters, and joint public statements that help move implementation forward. Due to this fact, it is usually very difficult to

keep track of implementation agreements. Often, the informal nature of these agreements makes it more difficult to hold the parties to their commitments. While formally written implementation agreements often take a longer time to achieve, there is usually a perception that the parties are committed, serious and obligated to implement these agreements.

Structure and Substance of Agreements

Peace agreements are not always structured in the same way. Sometimes they are just one document consisting of various chapters or discrete components. In other instances, each substantive component can be part of one comprehensive agreement or be a stand-alone agreement that is negotiated separately and during different periods of a peace process. The substance of an agreement also differs from conflict to conflict. The type of war, the issues in dispute and how the war is brought to an end are factors that will alter the structure and substance of a peace agreement. Intra-state or civil wars are usually caused by a failure of governance. Peace agreements that bring these conflicts to an end often focus, therefore, on rebuilding governance mechanisms. The disputed issues in inter-state wars are normally about security or territory. Peace agreements that bring inter-state conflicts to an end primarily focus on arrangements to enhance security and provide clarity on territorial issues.[2] Thus, the substance of peace agreements in each of these cases will naturally be different. The manner and method by which a war is brought to an end also affects the substance of an agreement. Violent conflicts, whether inter- or intra-state, typically end in one of three ways: an agreement on the terms of surrender, a partial agreement, or with a full peace agreement.[3]

- **Terms of Surrender** occur when one party has clearly defeated the other party and the losing party has surrendered. The terms of such agreements are usually favorable to the victors. Such agreements are generally stable.
- **Partial Agreements** only involve some of the parties and/or some of the issues. Partial Agreements are reached because it is sometimes not possible for all parties to converge on resolving the conflict at the same time or the parties cannot address all the issues at the same time. Partial Agreements are sometimes useful as an interim step to

reaching a full agreement. These agreements can sometimes be stable but they may not necessarily lead to sustainable peace. Partial agreements require subsequent political processes that include the disenfranchised parties and address the remaining issues, in order to become a final settlement leading to a stable peace.

- **Full Agreements** involve all relevant parties negotiating a lasting peace. This is the end result of a comprehensive agreement combined with the necessary implementation agreements. Generally speaking, peacemaking efforts tend to be focused on reaching comprehensive agreements. Full agreements seek to have all parties to a conflict agreeing on resolving all major issues.

Components of Peace Agreements

Most peace agreements address three main concerns: procedure, substance and organization.

- **Procedural Components**

Procedural components set out the processes that establish and maintain peace. They delineate the HOW of a peace process by establishing the processes and measures that help build the peace. These include the establishment of schedules and institutions that facilitate the implementation of substantive issues such as elections, justice, human rights and disarmament.

- **Substantive Components**

Substantive components are part of the agreement that define WHAT is going to change after the peace agreement is reached. Substantive components include political, economic, and social structural changes that are needed to remedy past grievances and provide for a more fair and equitable future. Substantive components, therefore, include the changes that are required in issues such as the distribution of power, the management of natural resources and the type of mechanisms to address past injustices.

- **Organizational/Institutional Components**

Organizational/institutional components are arrangements/mechanisms intended to promote the peace consolidation efforts after the agreement. They address the WHO element of the agreement. These mechanisms are either directly responsible or provide oversight and guidance to other

actors to carry out the activities intended to consolidate the fragile peace and lay the foundation for sustainable peace and development. There are two types of organizational components. The first, often referred to by the United Nations as "implementation mechanisms," immediately follow a peace agreement and are intended to promote agreement implementation.

Implementation Mechanisms are designed to provide:

- A neutral monitoring capacity to ensure peace agreement commitments are honored,
- A steering capacity which sets priorities and keeps the peace implementation on track,
- A political forum which allows parties to resolve implementation disagreements through political negotiations.

Implementation mechanisms could include a United Nations or regional peacekeeping operation. They can also entail monitoring committees, chaired by the United Nations or a neutral third party, which includes parties to the conflict and other relevant actors required to help build the peace.

The second type of organizational/institutional component is designed to resolve subsequent/future conflicts over substantive issues, such as the abuse of state power in relation to human rights and the promotion of transparency and accountability in governance. These mechanisms, often referred to in the United Nations as "peacebuilding mechanisms" help promote the culture of peaceful conflict resolution in a society and public confidence in the state's capacity to resolve future grievances systematically and impartially.

Peacebuilding mechanisms are designed to provide:

- A neutral structure and capacity within the state to resolve future conflicts and complaints.
- A means for the peaceful resolution of public grievances before they become a source of conflict in a society.
- A means for preventing future conflicts.

Peacebuilding mechanisms could include the setting up of a new office of ombudsperson, a commission on human tights and the strengthening of the judiciary with international advisory and/or monitoring capacity.

Plan for the Following Sections

This building block has laid out the basic ideas for understanding the nature of peace agreements. Much remains to be said. Other building blocks in this group add further information. The section immediately following this one covers the substantive provisions of peace agreements, specifically dealing with types of agreements that can ameliorate intractable conflicts.

In any protracted violent conflict, transgressions against justice are inevitable. Peace agreements must be structured to acknowledge these transgressions and in most cases to bring justice to the injured parties. The section on Addressing Injustice**,** by Michelle Maiese, lays out a framework for categorizing injustice and, subsequently, strategies for addressing injustice in the structure of peace agreements.

Sometimes, peace agreements cannot be negotiated until the involved parties can agree on some form of security guarantees. Jill Freeman addresses the value of security guarantees as an effective strategy for peacebuilding.

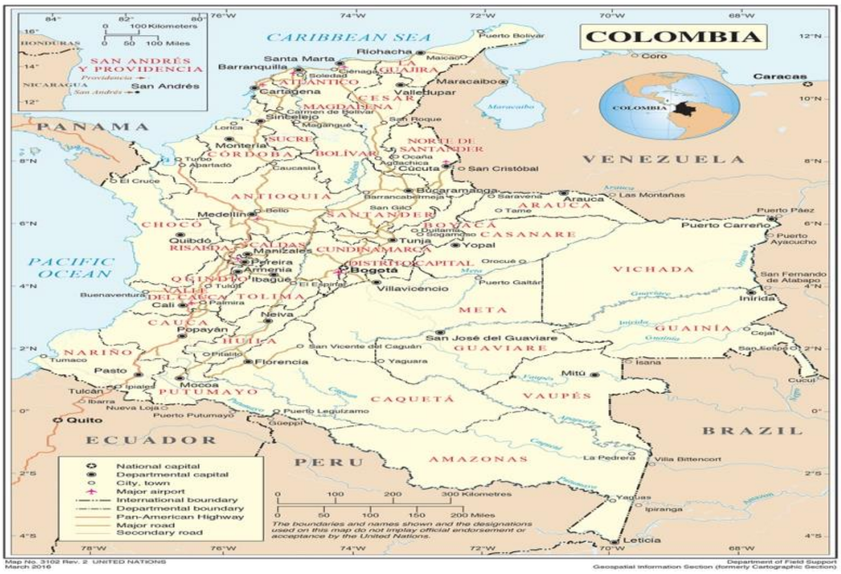
In many cases, when political or economic resources are scarce, political entrepreneurs will activate latent cultural or religious identities to build power bases capable of acquiring and controlling those resources. Unfortunately, those cultural roots are often used to perpetrate horrific crimes during the course of a war; crimes that only help entrench and perpetuate these identities. Whether or not these identities are real or perceived, there is a high value placed on them during intense and protracted conflicts. Thus, one of the most difficult tasks in structuring peace agreements is allowing for reconciliation in order to build trust and restore "normal" relationships between the warring factions.

Rebuilding the social fabric between states or within a state can be tremendously difficult. In some cases state building or nation-building can seem downright impossible. (The experience of the U.S. in Iraq in 2004-5 is certainly an example illustrating that it is, if not

impossible, much more difficult than the U.S. Government expected!) The section on social-structural aspects of peace agreements deals with how to acknowledge and resolve some of these issues.

It is important to focus on strategies for power sharing, election monitoring, and nation building for a complete understanding of structuring peace agreements after civil war. While each issue by itself may seem small, the success or failure of any given intrastate peace agreement usually turns on the success of these provisions.

In most cases, political solutions to armed conflicts are professed by a plethora of local, regional and international actors. In practice, however, durable political solutions – typically symbolised through peace agreements – are scarce. While peace agreements may be signed, political willingness, as well as the ability to implement them, is often in short supply. Hence, many peace agreements remain words on paper, not actions in the field. This is also the case in Africa, where many conflict areas see peace agreements being signed, violated and forgotten.



This article examines the 2015 peace agreement in Mali and the case of the 2016 peace agreement in Colombia. The 2015 Bamako Agreement for Mali – despite hopes to end armed violence and provide a framework for peace – has had little impact on the ground and serves to illustrate some of the limitations of peace agreements. Does the commonly considered successful case of Colombia shed light on the struggling Malian peace process? This article suggests that the Colombian peace process does provide useful insights into the challenges in Mali. This is discussed in the context of what, with whom and when to negotiate. Following this analysis, some lessons learnt are identified, along with concluding remarks on how these two cases illustrate both the potential and limits of peace agreements.

Background

Both the Mali and Colombia conflicts started in the early 1960s. In Mali, various groups in the northern region have intermittently rebelled against the central authorities in the south. Typically, stated objectives include more autonomy, recognition and development funds for the north. The latest rebellion was started by the Movement for the Liberation of Azawad (MNLA) in early 2012. With help from temporary alliances with Islamic jihadist groups, the MNLA effectively expelled the Malian Army from northern Mali and declared the Independent State of Azawad on 6 April 2012. A political crisis in Bamako, triggered by a coup in March 2012, caused regional and international wariness, particularly from its former colonial power, France. In January 2013, as Islamic jihadist groups advanced towards Bamako, France intervened – at the request of Mali's interim president, Dioncounda Traoré. French forces in cooperation with Malian troops, regional states and Western forces, halted the advancements on Bamako. Since then, the United Nations peacekeeping mission in Mali (MINUSMA), and smaller European Union training missions, have helped stabilise the country.

In 2014–2015, a peace process – conducted with neighbouring Algeria as key mediator – took place between the Government of Mali and approximately eight armed groups. These groups were united under either the banners of the Platform (considered pro-government militias)

or the Coordination of Azawad Movements, henceforth Coordination (rebel groups against the state). The Bamako Agreement was signed in May and June 2015 – first by the Platform and later by the Coordination – but implementation has remained very slow.[4] In these last few years, however, the security situation has worsened, and a variety of groups and weak Malian Armed Forces struggle for control and legitimacy in the northern and central regions.

Colombian President Juan Manuel Santos (left) and the Revolutionary Armed Forces of Colombia (FARC) leader, Timoleon Jimenez (Timochenko) shake hands during the signing of the peace agreement between the Colombian government and the FARC, in Bogotá, Colombia. (November 2016) (LUIS ROBAYO/AFP/Getty Images)

The Colombian conflict also started in the 1960s, when several communist-inspired rebel groups were formed. The largest, the Revolutionary Armed Forces of Colombia (FARC), put forth a political programme to fight against inequality in the Colombian countryside. The FARC grew stronger in the 1990s, helped by increased revenue from its involvement in cocaine production, and exerted significant military power in the late 1990s. Out of fear of a communist takeover in Colombia, the United States (US) supported the Colombian government in its counter-narcotics and counter-insurgency operations. The war on the FARC, supported by the US and orchestrated by Colombian president Álvaro Uribe, significantly weakened the rebel group.

In 2010, newly elected president Juan Manuel Santos decided to pursue peace negotiations with the FARC. The peace process was secret during the two first years, and confidential during the next four years. In 2016,

after a referendum in which Colombians narrowly rejected a first version of the peace agreement, the parties signed the agreement in November of that year. While armed conflict may be said to have ended, the peace process has faced significant obstacles with implementation and the security situation remains fragile, with several clashes between mostly criminal groups in previously FARC-controlled areas.[5] As the 2018 presidential elections showed, Colombia remains polarised, lingering between peace and war.

Some key differences in conflict trends and trajectories demand attention. First, while the rebel groups in Colombia sought regime change, the Mali conflict has traditionally been a separatist rebellion. Moreover, while Mali has seen four large-scale eruptions of violence and three peace agreements, fighting has remained constant in Colombia, where three previous peace processes ended without agreement.

Also, Colombia dealt with several armed groups, including paramilitary groups and the National Liberation Army (ELN), a smaller rebel group. Still, the number of groups in Mali is significantly greater. Importantly, the FARC has remained intact and stable throughout five decades of armed rebellion, even during the military weakening in the 2000s. In Mali, to the contrary, armed groups seldom last long without changing names, leaders or alliances.

Political Solutions and Peace Agreements

In this article, a political solution refers to the act of pursuing a negotiated way out of war and towards peace. It may start with intentions to reach a political solution; it may reach a key turning point with a peace agreement; and it may materialise through a variety of diplomatic, developmental and peacebuilding efforts over years and decades. Peace agreements, then, signed between at least two key actors, are more delimited in time. They may also provide the framework for peace that a political solution most often requires.

Engaging in a peace process and signing a peace agreement are, by definition, bilateral (or multilateral) acts. Continuing warfare to pursue military victory, on the other hand, is unilateral, as it does not require the other's consent. As peace negotiations require political compromises,

terrorist labels and the rejection of adversaries' political nature typically block such initiatives.

Colombians in support of the nation's new peace agreement with the Revolutionary Armed Forces of Colombia (FARC) stand under a banner reading "For Peace" during a march in Bogotá. (November 2016) (REUTERS/John Vizcaino)

To explain why armed actors reach political solutions, scholars note political willingness as the most important factor. A useful analytical vantage point is provided by readiness theory, in which Pruitt considers each actor's readiness to negotiate. Readiness is comprised of motivation raised by a "dysfunctional" conflict that does not move it towards its goals, and optimism about actually reaching an agreement with an opponent that can commit their party to the settlement. In ripeness theory, Zartman presents a similar argument, in which parties find themselves in a "mutually hurting stalemate", where the military route is no longer perceived as viable and where pursuing a political route (through negotiations) is. Some further requirements are typically some unity within groups, strategic political goals, and the ability to garner sufficient internal support to sign and uphold agreements.

Drug trafficking, a key conflict driver in Colombia, is addressed in the peace agreement. (REUTERS/Jaime Saldarriaga)

Analysis: Elusive Peace in Mali

Several factors help explain why a political solution to the conflict in Mali remains elusive, and why the 2015 Bamako Agreement has had limited impact on the ground. In the following section, while drawing on the Colombian peace agreement when pertinent, the discussion touches on some of these factors in the framework of three questions: What to negotiate? With whom to negotiate? When to negotiate?

What to Negotiate?

Peace agreements that seek transformation of a conflict must somehow address the underlying issues. In Mali, the northern rebel groups' key claims have been discussed in previous peace processes: the north's special status, the decentralisation of power, the decreased presence and recomposition of the Mali Armed Forces, and more economic development funds. The Bamako Agreement from 2015 touches on these issues, but remains vague on how to solve them. Some stipulations have also been suggested to be counterproductive: while the creation of regional assemblies may be desired, the dynamics within the northern regions, including the many intergroup and intragroup tensions and conflicts, may instead become further intensified with the regional assemblies. Further, key issues such as terrorism and trafficking were barely touched on, and the agreement does not address two key parallel conflicts: the ideological challenge related to Islamist groupings; and intergroup and intragroup conflicts within the northern groups.

In Colombia, the FARC's key grievances, agrarian reform and political participation were negotiated. Drug trafficking, a key conflict driver, is also addressed in the peace agreement. While some key topics were discussed in Mali, the agreement is more goal-oriented than process-oriented, making the implementation phase an arena for debate, which has served to prolong the process. That the agreement was not concrete and did not address key issues, suggests that the underlying political willingness was low – not that the negotiation process itself was

necessarily responsible. Also, in Colombia, similar solutions had been proposed earlier, but it was only at the particular time that there existed considerable political willingness to compromise. This conforms with Zartman's suggestion that in the right moment, parties "grab on to proposals that usually have been in the air for a long time and that appear attractive only now". Still, this does not render the process itself less important. Indeed, several elements from the Colombian peace process may help peace processes elsewhere: extensive learning from previous peace processes throughout the world, and hearing victims and civil society's voices during negotiations.

Key jihadist groups were not included in the Mali peace agreement process. (UN Photo/Marco Dormino)

With Whom to Negotiate?

Two elements in this context help to explain the limited impact of the 2015 Bamako Agreement. The first is the fragmentation and infighting of the groups present at the table. In the lead-up to the 2015 Bamako Agreement, the armed actors frequently changed leaders, names and alliances. Personal agendas and rivalries, along with repositioning ahead of the Algiers peace process itself, made negotiations particularly challenging, leading to vague stipulations at best. The northern populations' feeling of inclusion was limited – and, hence, their support for the agreement followed similarly.[15] Moreover, in the case of northern Mali, authorities "lack the means to impose their will on subordinate groups", hence complicating any implementation of a political solution.[16] Compared to the various groups in Mali, the FARC's

hierarchical nature facilitated negotiations. Leaders were able to negotiate and commit to political compromises, and post-agreement has been kept largely intact.

A second element is the exclusion of key actors. While several groups behind the banners of the Platform and the Coordination were included, key jihadist groups were not. These groups include the Al-Qaeda in the Islamic Maghreb, Anser Dine al-Mourabitoun and the Macina Liberation Front. Including them would have provided recognition that few actors are willing to give, and would have complicated matters in numerous ways. However, excluding them entirely from any type of negotiation may not be desirable either. In Colombia, the smaller guerrilla group ELN was excluded, but did not sabotage the peace process – partly because it had some interest in talks succeeding and because it exerted little military impact on the ground compared with the excluded actors in Mali. In Mali, engaging in even indirect talks with jihadist groups remains controversial, and formal negotiations are – per now – unthinkable. Some suggest, however, that some form of communication or dialogue may be advantageous, and that better understanding of how jihadist groups operate and what role they play in local communities may enable different types of responses at the same time. As Rupesinghe argues, by removing the terrorist label from jihadist insurgents, one may recognise their "multifaceted identities – some as legitimate social/political actors and local protectors to communities". This again "would open up more policy responses, including dialogue, and traditional, bottom-up conflict resolution".

In Colombia, as in Mali, armed groups have had various labels – including rebel, terrorist and criminal. Some groups may have multiple identities, and their labels may also change. In Colombia in the 2000s, President Álvaro Uribe was determined to defeat the FARC – a group he labelled narcoterrorists, suggesting it had no political agenda – militarily. In Colombia, the entry of Juan Manuel Santos into the presidency in 2010 mattered partly because, while rejecting its methods, he accepted the FARC's political nature. This is not to say that actors such as the Mali government and France, its former colonial power, should necessarily include previously excluded groups in talks. However, there

are reasons to reconsider a primarily militaristic approach, and to consider a greater role for dialogue and reconciliatory measures.

The Force Commander of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) meets with representatives of the Platform and the local government during his visit in Anefis, in northern Mali. (15 September 2015) (UN Photo/Marco Dormino)

In Colombia, a nationwide peace agreement was negotiated with considerable success between armed actors. In Mali, however, where conflicts are highly localised, this type of peace negotiations may not be best. While Mali may need some overarching peace agreement signed with key rebel groups able and willing to uphold it, implicit or secret agreements or arrangements with other actors, such as jihadist groups, may also be needed. Moreover, as with President Juan Manuel Santos in Colombia, a peace process in Mali may be supported by a leader who simultaneously takes a strong stance against terrorist acts and delimits issues to be discussed, and who carefully opens up a space in which some form of dialogue may take place. To do so, secret phases – key in the first two years of negotiations in Colombia – may also prove fruitful in both dealing with various rebel and jihadist groups. In any case, what is needed in Mali is stronger engagement with the locals, and to deal with both larger issues – such as the origins of the Tuareg rebellions – as well as many micro-conflicts that fuel war in both central and northern Mali.

Colombia celebrates the International Day of Peace, in Bogotá, by lighting candles for the 2 769 lives estimated to have been saved during the first 10 months of the ceasefire between the government and the Revolutionary Armed Forces of Colombia (FARC). (September 2017) (UN Photo/Jennifer Moreno)

When to Negotiate?

When to negotiate is a potentially unanswerable question. Many scholars suggest there are certain ways to analyse the military power relations between armed actors to determine when they would be incentivised to negotiate. However, reliable information is often in scarce supply, both about conflict dynamics and actors' military capabilities and intentions. Zartman suggests the parties ought to look for "ripe moments", when they are in a costly predicament and find that negotiations may be the best means to pursue goals. However, the importance of subjective perceptions complicates this. Indeed, leaders' subjective perceptions of conflict dynamics and the interpretation of adversaries make it difficult to prescribe when the right time to negotiate is. On the ground in Mali, the incentives to implement the agreement seem few, and "parties are more interested in the process than in peace itself". When a peace process is seen as a tactical measure, not a strategic one, it does not bode well for reaching durable solutions.

However, a "ripe moment" also requires parties to perceive the political route as a viable means to reach some of its goals. In Mali, the political route has historically been pursued, but parties have seldom had much confidence in it. This relates both to high mistrust between parties and towards peace agreements. Indeed, the Bamako Agreement signatories in

2015 were marginally willing to commit to political compromises. This is evident in the few concrete agreements reached, where most substantial issues were left to be decided during implementation. The key role of external actors to push through the Bamako Agreement suggests that the parties themselves did not have sufficient willingness to do so. The opposite was the case in Colombia – the key armed actors themselves initiated the process and brought it forward, with only facilitation help from external actors.

Rather than when to negotiate, more important questions may be what measures to use at what time. When the most appropriate time is, however, is difficult to specify. In Colombia, armed actors initiated talks themselves, and pragmatically included third parties to make the negotiation process sustainable. Through a combination of secret phases and confidential ones, they managed to establish sufficient belief in the other parties' intentions before making it public.

However, adapting such lessons learnt to Mali is not straightforward: the contexts, conflict dynamics and actors are very different. For example, including fewer parties at the negotiation table in Mali may neither be feasible nor constructive. Also, the long and formal peace process in Colombia may not be feasible nor desired in Mali; other processes at the national and local level are necessary. The Anefis process is one example, where leaders of the Coordination and the Platform themselves, and with minimal international presence, engaged in talks to reduce violence after the Bamako Agreement. In general, continuous adaptation to a changing conflict context is crucial, including for the external actors and mediators.[26] Indeed, Mali's search for peace requires its own measures at the right time. Moreover, the nature of each group must be taken into account – treating jihadist and various rebel groups similarly is politically infeasible and probably not constructive. Going forward, then, the expanded and pragmatic use of various types of dialogue and local consultation processes may constructively accompany military measures to end Mali's conflicts.

This unit sought to explain the limited impact of the 2015 Bamako Agreement in Mali through an analysis of what, with whom and when to negotiate peace. It has, moreover, compared it with the 2016 peace

agreement in Colombia and thus illustrated the potential and limits of peace agreements.

The 2016 agreement in Colombia has shown some of the potential of peace agreements. It was a strenuous process that attempted to deal comprehensively with root causes and provide a framework for peace. While implementation is slow, and security concerns remain high, it has been a milestone that may possibly provide the starting point for a decades-long process of peacebuilding, development and reconciliation.

The 2015 Bamako Agreement, on the other hand, has shown some of the limitations of peace agreements. Compared to the 2016 Colombian peace agreement, it has not served to substantially transform the conflict. Rather, the conflict landscape remains fluid, where even signatories' support and efforts to implement it remains limited. While the agreement provides a reference point in the work to end conflicts in Mali, actors continue to clash and operate without much regard for it. Distrust towards each other, and low confidence in the prospects of a peace agreement serving their interests and actually being implemented, provides little hope. Under such circumstances, the impact of peace agreements remains limited.

14.4 PEACE RESEARCH

Though much of the literature does not make clear distinctions between "peace research," "peace studies," and "peace education," it is useful to make clear distinctions between these related, but separate fields. Only by making clear the distinction between peace research and peace studies can we understand how and why they relate to each other in time, as well as in related concerns. Peace research is concerned with the development, accumulation and discovery of knowledge about the causes of war and condition of peace; peace education is concerned with the development of the processes of education in and about peace; while peace studies is an area of concern that relates to the substantive issues regarding the purposes and probleins of the dissemination of knowledge of peace as a . process. A final point, however, should be added before moving on to substantive issues. The distinctions outlined here are for many people artificial and unnecessary. Often the terms are used

interchangeably. Nevertheless, it is important to recognise that developments ' in peace research must necessarily precede the debate about, and development of, peace studies. Peace research began to develop in mid-1950s and early 1960s as there has been an intensification of the more academic study of peace and a drive toward professionalisation of the peace movement. The Repertory on Disarmament and Peace Research Institutions lists close to one hundred institutions in twenty countries as being active in the field; and two scientific quarterlies, the Journal of Conflict Resolution (edited at the Centre for Conflict Resolution, University of Michigan) and the Journal-of Peace Research (edited at the International Peace Research Institute in Oslo), are devoted to research in this interdisciplinary field. By the early 1970s, after almost 20 years of peace research, the prospects for peace studies found a place on the agenda of debate. Now that research had become possible, the next stage could be addressed. In truth, these early efforts were necessarily hesitant and cautious, not least because the issue of peace itself has been the subject of intense debate. To take but one example, in September 1974, the First World Conference of the World Council for Curriculum and Instruction was held at the University of ~eele inthe United Kingdom. The proceedings were published in 1975 with the title Education for Peace: Reflection and Action. The editor opens the book with the remark, "many readers will probably be curious about the contents of a book with such a title. And they have reasons to be, because the title implies education for something that could involve a number of contradictory things depending upon who defines it." The remark was both cautious and far-sighted for its time, since it highlighted the potential for debate and confusion that surrounds, then as now; the notion of peace studies. At that Keele Conference, issues addressed included the parameters of education for peace, peace education in relation to the world, and reports on action projects. One major difficulty with peace research is the problem whether the future will be a continuous extrapolation of the past or qualitatively different. For instance, it can be argued that the model for the disarmament process currently under discussion - the model that presupposes balance and control- probably has few, if any, counterparts, in the history of the past.

Another set of models for peace preservation, namely, balance-of-power models and collective security systems, have shown very severe limitations in the past. Bur can one assume that if a structure has not appeared in the past, it is because it is not viable 01- that if a structure has failed in the past, it will also fail in the future? Or if one studied how citystates and nation-states have successfully reduced their armaments in the past, could this be a guide to future action? However, acceptance of this simple inductive approach might mean that peace research would become a scientific-sounding pretext for imposing the past on the future.

Check Your Progress 1

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

1. What are the Post Conflict Challenges?

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2. What are Peace Agreements and its impact on World economy?

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3. How does Peace Research create impact?

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14.5 LET US SUM UP

The quest for peace is concerned with reduction of both types of violence; both the violence that flares up and subsides, and the violence that has the less dramatic character, but precisely for that reason may be even more destructive. Strictly speaking, this is only the negative side of peace studies, peace movements or peace research, that is, how to avoid violence. There is also the positive side which would focus more on the "peaks of joy" as mentioned above. This is an untilled field; peace talks

softly. As we have seen, although desire of the human beings to live peaceably has been an eternal one, the concerted efforts towards restoration of peace took shape only in the early nineteenth century. But it was not until the end of the World War I1 that the need was felt to give peace and peace movements a place of research in international politics. It was only then that the academic interest in peace was ordained and thus came into being the concept of peace research. What started as a movement for maintaining and restoring peace today is.a subject matter of discussion and debate in academic circles, worldwide. Peace work and the ways of thinking about peace have greatly expanded in recent decades. Peace is increasingly understood to be multidimensional and dynamic. Consequently, the ways of promoting peace are also manifold, and they vary in different settings for different actors, Theory and research about aspects of peace and their promotion draws from and contributes to social theory and social practice. Recent applied and scholarly peace work is based on past

14.6 KEY WORDS

Peace Agreement: A peace treaty is an agreement between two or more hostile parties, usually countries or governments, which formally ends a state of war between the parties. It is different from an armistice, which is an agreement to stop hostilities; a surrender, in which an army agrees to give up arms; or a ceasefire or truce, in which the parties may agree to temporarily or permanently stop fighting.

14.7 QUESTIONS FOR REVIEW

1. Critically examine the models of international peace systems based on the distribution of power among nations.
2. Examine the nature and features of peace movements in the pre-war period.
3. Write a critical note on peace movements in the post war period.
4. Trace the evolution of peace research in the post-war period bringing out the issues confronting peace research.

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14.9 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. See Section 14.2
2. See Section 14.3