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PEACEFUL SETTLEMENT OF DISPUTES

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Introduction:-

As there are crisis and conflicts in the international world which need a peaceful solution. Therefore, the main purpose of writing this paper is to make the readers aware about the various means and methods by which various disputes and conflicts can be resolved peaceful without going into war which is need of the hour and would create a batter and peaceful world. Every state in the contemporary seeks to fulfill its national interest .Consequently, the emergence of disputes and the existence of conflict is permanent phenomenon of the international relation. These conflicts are in no way congenial to the international society .If emergence of violence is to be minimized in a society, there should exist practices and procedures by which disputes and conflicts that emerge from time to time may be resolved .Otherwise the people involved in those conflicts and disputes may feel that recourse to violence is the only method available to settle them. Between the members of a community it is the judiciary, which settles the disputes as per the municipal law. But such other disputes as those between employers and the labour are considered as not amenable to settlement by the judiciary, and so they are left to be resolved by collective bargaining between the groups concerned and by procedures such as Conciliation, while some are submitted to adjudication.

When states do not agree the disputes arise between them, the brute in man plays havoc and war results. Hence before states resort to war to settle their difference, it is advisable that they should explore all peaceful means of finding a solution. As the preamble of the United Nations Says, it must be the Endeavour of all rights thinking men to save succeeding generations from the scourge of war, which twice in our life time has brought untold death and destruction. As the international organizations like League of Nations, United Nation where designed to maintain world peace and to protect the member states form the threat of war. The United Nations performs multiple functions for

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the betterment and welfare of the people of the world, yet its main function is to main peace and security at the international level. It is mentioned in the United Nations. Charters that membership is open to all "Peace Loving" countries reaffirms this Purpose as the does the charters requirement that members settle their international disputes by peaceful means in such a manner that international peace, security and justice, are not endangered. Moreover, members, are pledged to refrain in their international relations from threat are use of force against the territorial integrity or political independence of any state.

Therefore, to settle the international disputes peacefully, we have a number of methods available but the need have of the hour is to implement them properly and efficiently.

Peaceful methods are those methods which are free from disturbance like wars, which result in ease of mind, tranquility, Stillness. Some of the peaceful methods for settling disputes are negotiation mediation, conciliation, good offices, enquiry, arbitration, judicial settlement or adjudication and role of United Nations Organization.

Coming to the first one which is negotiations it is the most simplest of all methods of peaceful settlement of international disputes. The provision in Article 40 of the United Nations charter also specifically focuses on thus method before taking help from the Security Council. It is a direct communication between the parties with a view to reach an agreement concerning mutual claims between the parties. "Negotiation" is the process by which governments conduct the relations with one another and discuss, adjust and settle their differences and conflicts" (1) In it the negotiations are carried on through verbal, face to face or written communications by the heads of the state or their agents and ambassadors. It has this feature that each party feels that it is dealing with the other party on a footing of equality. But in political reality often the negotiates parties are unequal. When a big power negotiates with small powers, there is scope for the former to use its superior position to coerce the later to accept particular solution. If the small power feels the impact of such coercion, it may terminate the negotiation. It may be both bi-lateral as well as on multilateral bases when in a particular issues, a large no of states are interested, they may meet at a conference and conducts negotiations to resolve the issue. Sometimes an international conference may be called for this

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purpose where some agreements might be reached. For example, Indo- pak negotiation at Shimla – 1972 and the comprehensive Test Ban treaty (CTBT) negotiation at Geneva-1996.

Mediation is another peaceful method for settling the disputes. It implies efforts by a third state to resolve disputes between the two states amicably. "Mediation is a procedure involving the suggestion of terms of settlement by a third party. Thus the mediator actively participates in the negotiations" (2) the art of mediation may be performed by a person or and institution. Article 4 of the Hague conference specifically mentions mediation as reconciling the opposing claims and appeasing the feelings of resentment which may have risen between the states at variance. In mediation, the intermediately function more or less as a medium of communication between the disputants. He may promote communication between the parties and help them to settle their disputes. The political influence of the mediator in mediation comes into play and needs to a settlement of the question at issue. To maintain his neutrality an effective mediator may not impose his own will upon the parties. The United States acted as mediators in 1998 between Britain, Republic of Ireland and North Ireland to resolve the Irish problem.

The third method conciliation denotes settlements of disputes by referring them to a conciliators or a commission. This commission investigates the facts of disputes and on the basis of these facts suggests some solutions. But these suggestions or recommendations or not bindings on the parties concerned. It differs from mediations in a quit way. " In the conciliation the intermediary not merely functions as a medium of communication between the parties, but also plays on active role of suggestion to the parties the terms of settlements" (3) In some conciliation procedures provided under treaties the procedure of conciliation resembles judicial procedure. In it, the parties need to put forth their respective cases in writing and permitting to make oral presentations, and the conciliator, or body of conciliators recommends a set of terms of settlement. It is then open to the parties either to accept or reject the terms. The intermediary in conciliation exercises some power over the parties to the disputes. He may choose what to communicate to the parties, what to omit, in what language to communicate to the parties and how to time the communication. But the proposals given for settlement may not always be fully partial, and sometimes may be designed to serve the interest of the intermediary. That is the reason why often parties to a dispute are averse to accepting mediation

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or conciliation. A conciliator should possess some good skills in order to be successful. He should be able to conduct himself in such a manner that he appears to both the parties as quite impartial and objective. He should also be able to present to the parties different alternatives of settlement out of which the parties may make their choice. In short, conciliation is like mediation with a little bit difference. "Conciliation is like mediation except for the legal distinction that the third party is a commission or international body whose aid has been sought in finding a solution satisfactory to the disputes"(4) for example a commission of enquiry was setup in1904 with the concurrence of Britain and Russia to inquire in to the Dogger Bank incident. To attempt conciliation special commissions have also been created by United Nations. For example commission to solve Kashmir dispute between India and Pakistan. Good offices play an important role in resolving conflicts peacefully .It means recommending and encouraging the parties to reach an agreed solution in it, a third party interested in settlement of the dispute may lend its good offices to influence the disputant parties to resume their dialogue. "Where the parties did not negotiate or fruitlessly negotiated then a third state voluntarily or on the request of either party come forward and offer its good offices for the purpose of conciliation"(5) In its broader sense it means an act of a third state for its official in trying by friendly suggestions to bring about an adjustment a controversy between two states. This method has often brought good results. The president of the United States in 1905 by his good offices brought the war between Russia and Japan to an end .Also during the war of 1965 between India and Pakistan, the soviet union offered her good offices to bring the two countries on a conference table which was accepted by both the parties and ultimately led to the Tashkent declaration of 1966.

Enquiry is another method devised for resolving disputes. It means investigation by a third party into the competing claims of the states. But the judgment is binding on the states. Its birth can be traced back to Hague conference of 1899.Often the facts underlying a controversy are in dispute, and clarification by an impartial commission may facilitate settlement. In this procedure the parties agree that the intermediary will investigate the dispute question of fact between the parties and give us finding. They may also agree that the intermediary will supply clarifications on questions of law. The parties may reach an agreement to resolve the dispute in the light of such finding and clarifications. The report given by an enquiry must be obeyed. This was much encouraged by the league of Nations. The convenent of the league said not to start war for at least six months after the

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submission of an enquiry. The state which will not expect enquiry will be held guilty. In case of dispute boundaries, a commission may be appointed to enquire about the actual facts. The North Sea incident Enquiry, the Tavingano, Comouna and Gualaiz inquiry are some examples of such enquires.

Method of peaceful settlement of disputes also includes the method of arbitration. It means settlement of dispute by an empire, a commission or tribunal (Other than International court of Justice) whose decision is binding on the states. In other words the parties to a dispute refer the case to an individual or small group of individuals to whom the parties state their respective cases. A panel of Judicial arbitrators is created either by special agreement of the parties or by an existing arbitral treaty. In agreeing to submit the dispute to arbitration, the disputants also agree in advance to be bound by the decision. Usually states do abide by arbitral awards but sometimes the losing party may set up the plea that the award is invalid when such a plea is put forth, the successful party may have to negotiate for a settlement, or adopt compulsive measures to secure compliance with the award. Such measures should now be in accord with provision of the United Nation Charter. Once the parties have referred their disputes, the arbitration of the award is binding unless; the same is obtained by fraud, collusion, coercion or misrepresentation. In case of North East boundary dispute between the United state and Great Britain, The award was given by the king of Holland in 1831 but the same was considered not binding as the arbitrator had exceeded hid powers. Similarly Bolivia had refused to abide by the award given by the president of argentine in 1969 in her dispute with Peru. This method was popular in the past from the ancient Greeks to the 19th and early 20th centuries. But since 1945 it is not in use except for the specific areas of trade disputes and investments. But still " it remains now as a useful alternative to the parties when they do not desire to go to a court but want to abide by a third party decision. The relative flexibility in arbitration in the choice of the members of the tribunal. And of the law and procedure of the tribunal, may provide on attraction to the parties to prefer arbitration to Judicial Settlement" (6).

Judicial Settlement or adjudication refers to process of settlement of dispute by the International Court of Justice. It is one of the methods of settling international disputes peacefully. It adjudicates on the principle of law, equality and Justice. Its Judgment is binding on the parties. In it

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either party to a dispute may approach a judicial tribunal vested with Jurisdiction or power to decide the dispute and draw the other party to it.

The tribunal decides on the disputed questions of fact, applies the relevant law and gives its Judgment. The statute of international court of justice lays down that whenever a treaty of international agreement in force provides of reference of a matter to the court the matter is to be brought before the international court of justice. The parties to a dispute are free to refer the matter for judicial Settlement to the international court of justice. Unlike arbitration, the court is subject to no preliminary limitations upon its procedures, evidence to be considered, or legal principles to be applied except those mentioned in the statute by which it was established. However, to protect their sovereignty, states have been hesitant to accord to international courts any type of compulsory Jurisdiction or to submit appropriate cases to existing courts. As a consequence the international court of Justice has a very limited number of cases to decide in comparison to its predecessor, the permanent court of international Justice some of the important example for judicial settlement or adjudication are dispute between Britain and Palestine-1929, Germany and Poland -1927.

Coming to the last one which is very important is the settlement through the United Nations. Created in 1945, the United Nations has taken over the bulk of responsibility of adjusting International dispute. “One of the fundamental objectives of this organization (UNO) is the peaceful Settlement of differences between states and by Article 2 of the United Nations Charter, the Members of the organization have undertaken to settle those disputes by peaceful means and to refrain from the use of force” (7) Article (1) States the purpose of the organization to be the maintenance of international peace and security, and towards that end to take effective collective Measures for the prevention and removal of threats t peace, and suppression of acts of aggression of other breaches of the peace. Therefore, maintenance of international peace and security is the main task assigned to the United Nations, and peaceful settlement of disputes is stated as an objective contributing to the prime objective. In it, the settlements of disputes must be inconformity with the principles of justice and international law and not by way of appeasing and aggressive power of unjust and unlawful settlements.

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The United Nations is also assigned to the task to develop friendly relations among relations based on respect for the principle of equal rights and self- determination of peoples, to strengthen International peace and to achieve international cooperation in solving various international problems of different nature like economic, social, culture, etc, and encouraging respect for human rights. Moreover the United Nations should serve as a centre for harmonizing the actions of nations in the attainment of its objectives. Article 2(3) of the United Nations state that all members shall settle their disputes by peaceful means in such a manner that international peace and security and justice are not endangered. In the same way Article 2(4) states that all members shall refrain in their international relations from threat or use of force against the territorial integrity or political independence of any state, or in any manner in consistent with the purpose of the charter. Article 14 of the charter gives the General Assembly the authority to recommend measures for the peaceful handling of any situation which is likely to impair peace, general welfare or friendly relations among nations. The security council of the United Nations is empowered with such more power for the settlement of disputes. It may prepare a basis of settlement; it may appoint a commission of enquiry. It my authorize a reference to the international court; etc the council can take any decision that it likes. Under Article 34 the Security Council is empowered to investigate any dispute, or situation that might lead to international conflict or give rise to a dispute, in order to determine weather the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security. In the same peace Article 35 gives power not to the disputing parties but any member of the united Nations, any non- member if it is excepts the obligation of pacific settlement of disputes under the charter, to bring to the attention of the security council any dispute or situation the continuance of which is likely to endanger the maintenance of international peace and security. As per Article 36, the Security Council may, any stage of dispute or situation likely endanger the maintenance of international peace and security, recommend to the parties appropriate procedures or methods of adjustment, taking into consideration the procedure, that have already been adopted. To sum up, there are so many provisions in the United Nations charter for settling international disputes peacefully, but there should be an effective Arrangement and there should not be any personal interest of the big powers in implementing them.

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CONCULSION:

Although there are various peaceful methods of conflict in the international politics, still the international community has struggled to achieve effective mechanism to resolve conflicts. Though peaceful and forceful means help in resolving and slackening the intensity of conflict, but the later should be avoided as for as possible as it gives rise to new conflicts in the world. As we have seen that very often political stake of big powers malign the democratic norms. The arbitrary use of force by third party remains a hallmark of 20th century. The issue of gulf war (1990) and Iraq (2003) are eloquent testimony of big power hegemony. The international society must out line new mechanism which are genuinely fair and acceptable to the majority.

By and large the UN peace keeping has played a highly constructive role in maintaining international peace and security, evidenced dramatically by the Noble peace prize in 1988 to the UN peace keeping forces. The UN successfully sponsored techniques such as good office, mediation, conciliation, arbitration and adjudication. It has enjoyed many more years without experiencing a global war. The international institutions not only added conciliation by their organs and judicial settlement by the world court to the previously existing procedures but also stimulated and encouraged states to resort to pacific settlement instead of fighting. With every established method a few innovations and variations were introduced by UN organs to solve disputes. There are exception like Bosnia Herzegovina, Somalia and Rwanda, but at the same time, we should not be pessimistic about the role of UN in conflict management. To achieve its goals and objectives, the United Nations charter has envisaged a system that encourages states to settle their disputes by developing the process of conflict resolution by peaceful means of their own choice and accord to the organs responsible for the, maintenance of peace and security a wide range of choice to achieve their desired ends.

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