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Conciliation as a Method of Pacific Settlement of International Disputes: An Analysis

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Abstract

When an international dispute is referred to a commission or a committee to investigate the basis of the dispute and to make a report containing proposals for settlement after finding out the facts, the process is known as conciliation. Conciliation is a method through which the other States or the impartial persons try to settle the dispute peacefully through different means. Often the matter is referred to a Commission or Committee which submits its report and recommends certain procedures for the settlement of disputes. The Hague Conventions of 1899 and 1907 provided for the pacific settlement of dispute by means of Conciliation Commissions. These Commissions were set up by agreement of the parties, which, after investigation of the dispute, made their report indicating the way to settle the dispute amicably. Conciliation, therefore, contains both elements of mediation and commission of enquiry. This paper focuses on role of conciliation commission, binding force of conciliation, conciliation procedure, status, outcomes and advantages of conciliation in order to encourage the state parties to settle their dispute through amicable procedure.

1. Introduction

The experts of international law have asserted that the nature of international dispute is closely linked with the method to be used for settling it. International dispute may be legal or political. It is understood that legal disputes should or could be settled by legal methods, i.e., methods which apply the law such as arbitration and judicial procedure. The political disputes, on the other hand, can only be settled by a procedure which takes into account the political considerations, such as

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negotiation, enquiry, good offices, mediation and conciliation.[1] The Hague Conventions on the Pacific Settlement of International Disputes of 1899 and 1907 have made provisions to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers[2] as well as for the establishment of international commissions of inquiry[3] and the creation of the Permanent Court of Arbitration.[4] So, the above mentioned Conventions on the Pacific Settlement of International Disputes dealing not only with commission of enquiry and arbitration but also with good offices and mediation.[5] The Paris Pact of 27th August, 1928 stated: "The settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be which may arise among them, shall never be sought except by pacific means." This was followed by the General Act for the Pacific Settlement of International Disputes of 26th September, 1928. This was reaffirmed with slight modification by the General Act for the Pacific Settlement of International Disputes as passed by the General Assembly of the United Nations on 26th April, 1949.[6] The Act provided separate procedures, a procedure of conciliation (before Conciliation Commissions) for all disputes,[7] a procedure of judicial settlement or arbitration for disputes of a legal character,[8] and a procedure of arbitration for other disputes.[9]

The Charter of the United Nations also obligates the parties to any dispute to seek a solution of their disputes by peaceful means[10] and lists the methods of pacific settlement of international disputes. The UN Charter provides in this regard as follows:

> "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to

[1] Gurdip Singh, *International Law*, New Delhi: Aditya Books Private Limited, (1992) p. 306.
[2] Article 2, The Hague Conventions of 1899 and 1907.
[3] Article 9, *ibid*.
[4] Article 20, The Hague Convention of 1899 and Article 41, The Hague Convention of 1907.
[5] Nagendra Singh, *The Role and Record of the International Court of Justice,* Eastern Law House Private Ltd. Calcutta/ New Delhi, (1989) p. 7.
[6] R. C. Hingorani, *Modern International Law*, New Delhi: Oxford & IBH Publishing Co. Pvt. Ltd, 3rd Edition, (1993) pp. 289-90.
[7] Chapter I, the General Act for the Pacific Settlement of International Disputes adopted by the League of Nations Assembly in 1928.
[8] Chapter II, *ibid*.
[9] Chapter III, *ibid*.
[10] Article 2(3), the Charter of the United Nations Organisation

> regional agencies or arrangements, or other peaceful means of their own choice."[11]

Although 'Good Offices' is not mentioned in the Charter, it is being used by states to resolve stand-off situations between states. The above mentioned conventional procedures for the settlement of international disputes may be divided into two categories:

i. diplomatic procedures; and
ii. compulsory settlement procedures entailing binding decisions.

The essence of the diplomatic procedures is to secure a solution by means of an agreement between the parties.[12] Negotiation, good offices, mediation, enquiry and conciliation fall within the first category. The objective of the procedures included in the first category is to bring about settlements based on the mutual agreement of the parties to the disputes.

Compulsory settlement procedures entailing binding decisions consist of settlement by a third-party determination of the questions of law and fact involved in the dispute. Arbitration and judicial settlement come within this category. The objective of the procedures in the second category is to reach, on the basis of objective principles of international law and equity, decisions binding on the parties which agreed to submit their disputes to such adjudicatory tribunals.[13]

2. Means of Settlement of International Disputes

Followings are the main settlement mechanisms of international disputes:

2.1. Negotiation

Negotiation is one of the means for the settlement of international disputes. It is much less a formal method than judicial settlement. Of all the procedures used to resolve differences, the simplest and most utilised form is understandably negotiation.[14] The term negotiation is

[11] Article 33, *ibid*.
[12] Gurdip Singh, *Supra note 1*, p. 307.
[13] Norman D. Palmer & Howard C. Perkins, *International Relations: The World Community in Transition*, Delhi: CBS Publishers & Distributors, 3rd Edition, (1985) p. 255.
[14] B. S. Murty, '*Settlement of Dispute' in Manual of Public International Law* (ed. M. Sorensen), London, (1968) pp. 678-9 and J. G. Merrills, *International Dispute Settlement*,

used to denote intercourse between States for the purpose of arriving at a settlement of the dispute, or for relaxation of international tension. It was observed by Moore, J., in the case of the *Mavrommatis Palestine Concessions* that "in the international sphere and in the sense of International Law, negotiation is the legal and orderly administrative process by which Governments, in the exercise of their unquestionable powers, conduct their relations with one another and discuss, adjust and settle their differences."[15]

2.2. Good Offices

When the disputing states or parties are not inclined to settle their disputes by negotiation, or when they have negotiated without success, a friendly third State may assist in bringing about an amicable settlement of their differences through its good offices. By good offices, the third State brings the parties together and suggests settlement of disputes. It may make an inquiry into the various aspects of the disputes and make certain suggestions for settlement. The term 'good offices' connotes the bringing about of the conflicting parties together and the counseling of advice or the suggesting of a settlement without participating in the negotiations. Such suggestions or advices may be disregarded by a party to a dispute without any compunction or breach of the law.[16]

2.3. Mediation

Mediation is the conducting of negotiations between the disputing States through the agency of the third party. Mediation involves the active, though informal participation of a third party in the negotiating process. It may include the third party independently putting forward recommendations.[17] In mediation, the mediating state plays an active role in bringing about a peaceful settlement between the disputing parties. In this case, the third party not merely tries to persuade the disputing states to find a solution, but it offers or tries to offer, a solution, or at least, takes an active part in all the discussions. The mediator is

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2nd Edition, Cambridge:Cambridge University Press, (1991) Chapter 1.

[15] Mavrommatis Palestine Concessions (Preliminary Objections) case (1924) P.C.I.J. Series. A. No.2. p. 11.

[16] Mahesh Prasad Tandon & Rajesh Tandon, *Public International Law*, Allahabad: Allahabad Law Agency, 21st Edition, (1989) p. 623.

[17] Robert M. MacLean, *Public International Law Textbook*, London: HLT Publications, 16th Edition, (1994) p. 321.

required to be neutral and impartial. He should encourage compromise than advice adherence to legal principles. If this course is adopted, mediator is likely to succeed in resolving the dispute to a great extent.[18]

2.4. Inquiry

When a commission is appointed, consisting of impartial investigators, for ascertaining the facts of the disputes, the process is called inquiry. The function of the commission is confined only to the ascertainment of the fact. So, inquiry is a method which is often resorted to for the settlement of disputes. Where differences of opinion on factual matters underlie a dispute between parties, the logical solution is often to institute a commission of inquiry to be conducted by reputable observers to ascertain precisely the facts in contention. The commission of inquiry is invaluable in the present system of international law where no compulsory fact-finding machinery exists and where, in reality, many disputes are compounded by the simple truth that neither party is prepared to accept the other's version of events. However, the technique is limited in that it can only have relevance in the case of international disputes, involving neither the honour, nor the vital interests of the parties where the conflict centres on a genuine disagreement as to particular facts which can be resolved by recourse to an impartial and conscientious investigation.[19] The inquiry is constituted by special agreement between parties to the disputes. The object of an inquiry is, without making specific recommendations, to establish the facts, which may be is dispute, and thereby prepare the way for a negotiated adjustment.

2.5. Arbitration

Arbitration is one of the important procedures of settlement of international disputes by peaceful means. Arbitration occupies key position in concluding international treaties between the States. So, arbitration is one of the most preferred modes for the settlement of international disputes. When a dispute is submitted by the parties to a body of persons or to a tribunal for their legal decision, the process for

[18] H. O. Agarwal, *International Law & Human Rights*, Allahabad: Central Law Publications, 13th Edition, (2006) p. 496.

[19] Article 9, The Hague Convention (I) of 1899.

the settlement of dispute is called arbitration.[20] According to Encyclopedia of Public International Law, arbitration is termed as:

> "the process of resolving disputes between parties by means of an arbitral tribunal appointed by the parties."[21]

Before a dispute is referred to the arbitration, the consent of parties is necessarily required to be obtained for doing so. The consent may be obtained either before or after a dispute has arisen between the parties. The method through which a dispute is referred to certain persons called arbitrators. These arbitrators are selected by the parties to the dispute. The decision of the arbitrators, commonly known as award, is binding on the parties. Once it enters into effect, the award settles the dispute finally since recourse to the tribunal implies an undertaking to submit to the award. It must be carried out in accordance with the requirements of good faith.

3. Concept of Conciliation

Conciliation is one of the methods of settlement of the dispute. The term 'conciliation' has both a broad and a narrow meaning. In its more general sense, it covers the great variety of methods whereby a dispute is amicably settled with the aid of other states or of impartial bodies of inquiry or advisory committees. In the narrow sense, 'conciliation' signifies the reference of a dispute to a commission or committee to make a report with proposals to the parties for settlement, such proposals not being of a binding character.[22]

The Resolution of the Institute de Droit International defines the process as "conciliation means a method for the settlement of international disputes of any nature according to which a Commission set up by the parties, either on a permanent basis or on *ad-hoc* basis to deal with a dispute proceeds to the impartial examination of the dispute and attempts to define the terms of a settlement susceptible of being

[20] H. O. Agarwal, *Supra note 18*, p. 502.
[21] Encyclopedia of Public International Law, Vol. I, *Settlement of Disputes*, published under the auspices of Max Planck Institute for Comparative Public Law and International Law under the direction of Rudolf Bernhardt, (1981) p. 14.
[22] J. G. Starke QC, *Introduction to International Law*, New Delhi: Aditya Books Private Limited, 10th Edition, (1994) p. 514.

accepted by them, or of affording the parties with a view to its settlement, such aid as they may have requested."[23]

According to Judge Manly O. Hudson: 'Conciliation is a process of formulating proposals of settlement after an investigation of the facts and an effort to reconcile opposing contentions, the parties to the dispute being left free to accept or reject the proposals formulated.'[24]

Conciliation, therefore, means a method for the settlement of international disputes of any nature according to which a Commission is set up by the parties. The Commission, either on a permanent basis or on *ad-hoc* basis to deal with the disputes, proceeds to inquire into the facts underlying the dispute and possibly after discussions with the parties issue a formal but not binding proposal for consideration by the parties as a solution for the dispute.

3.1. Distinction between Conciliation, Arbitration, Mediation and Enquiry

Conciliation differs from arbitration in that the conciliation process, in and of itself, has no legal standing, and the conciliator usually has no authority to seek evidence or call witnesses, usually writes no decision, and makes no award. On the other hand, in arbitration the decision or award of arbitrators is binding upon the parties. So, arbitration is a judicial process, whereas conciliation is an attempt at accommodation. Conciliation recommends, arbitration decides; conciliation is friendly counsel, arbitration is binding decree. Conciliation can take into account national honour, arbitration must keep to the letter of the law, regardless of the cost or embarrassment to the contending parties.[25]

Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions. In mediation, the mediator tries to guide the discussion in a way that optimizes party's needs, takes feelings into account and reframes representations. Mediation is commonly performed by an individual and conciliation by a committee, commission or council. In conciliation the parties seldom, if ever, actually face each other across the table in the presence of the conciliator.

[23] The Resolution of the Institute de Droit International, Article 1 on Conciliation.
[24] Manly O. Hudson, *International Tribunals*, (1944) p. 223.
[25] Norman D. Palmer & Howard C. Perkins, *Supra note 13*, p. 258-9.

Conciliation differs from enquiry in that it assumes an obligation on the part of third parties to take the initiative in the search for agreement. A conciliation commission may advance proposals, ask for compromise or concessions, and, in general actively seek to effect an understanding between the contending parties.

4. Role of Conciliation Commission

Conciliation assumes an obligation on the part of third parties to take the initiative in the search for agreement. A conciliation commission may advance proposals, ask for compromise or concessions, and, in general, actively seek to effect an understanding between the disputing parties.[26] Conciliation Commissions could be set up by special agreement between the parties, and were to investigate and report on situations of fact with the proviso that the report in no way bound the parties to the dispute. The actual provisions in the Hague conventions of 1899 and 1907 for the Pacific Settlement of International Disputes avoid any words suggesting compulsion on the parties to accept a Commission's report. The value of Conciliation Commissions as such has been doubted by several authorities, but the procedure of conciliation itself proved most useful and important when employed by the League of Nations Council to settle international disputes. The Council's use of conciliation was extremely flexible; generally, a small committee, or a person known as a *rapporteur*,[27] was appointed to make tactful investigations and suggest a method of composing the differences between the parties.[28] States do attach great value to the procedure of conciliation, as reflected in the provision made for it in the Convention of 18 March 1965, on the Settlement of Investment Disputes between States and Nationals of

[26] *Ibid*, p. 257.

[27] The United Nations General Assembly also favours the flexible procedure, and has made various recommendations in the matter of the appointment of rapporteurs and conciliators; see J.G. Starke, *op. cit.*, p. 639. Governments of a number of member states of the United Nations have designated members of a United Nations panel to serve on Commissions of conciliation and inquiry.

[28] There have been several instances of the use of conciliation, outside the United Nations, since the end of the Second World War. The Bureau of the Permanent Court of Arbitration makes its facilities available for the holding of Conciliation Commissions. Cf also Article 47 of the Hague Convention, 18 October 1907, on the Pacific Settlement of international Disputes.

other States.[29]

The task of a Conciliation Commission, therefore, is to examine the claims of the parties and make proposals to them for a friendly solution. If agreement is not reached the Commission produces a report containing observations, conclusions and recommendations. The Commission's findings or proposals are not binding upon the parties.

5. Binding Force of Conciliation

Conciliation is a combination of inquiry coupled with suggestions for settlement of dispute between States. Such suggestions are not supposed to be binding upon the disputing States.[30] So, conciliation reports are only proposals and do not constitute binding decisions.[31] They are thus different from arbitration awards.[32] Therefore, the disputing parties are perfectly free to decide whether or not to adopt the proposed terms of settlement by conciliation.

6. Rules Regarding Conciliation

The rules dealing with conciliation were elaborated in the 1928 General Act on the Pacific Settlement of International Disputes (revised in 1949). 'The function of the commissions was defined to include inquiries and mediation techniques.[33] The Manila Declaration on the Peaceful Settlement of International Disputes, which approved by consensus by the General Assembly in 1982, may be regarded partly as a code of rules on the subject, partly as a manifesto of guidelines and partly as an

[29] J. G. Starke, *Supra Note 22*, p. 514-5.
[30] R.C. Hingorani, *Supra note 6*, p. 297.
[31] See e.g. paragraph 6 of the annex to the Vienna Convention on the Law of Treaties 1969. The Vienna Convention for the Protection of the Ozone Layer, 1985 provides that conciliation awards should be considered in good faith, while Article 85(7) of the Vienna Convention on the Representation of States in their Relations with International Organisations provides that any party to the dispute may declare unilaterally that it will abide by the recommendations in the report as far as it is concerned. Note that Article 14(3) of the Treaty Establishing the Organisation of Eastern Caribbean States, 1981 stipulates that member states undertake to accept the conciliation procedure as compulsory.
[32] J. G. Merrills, *Supra note 14*, pp. 62-5.
[33] Malcolm N. Shaw, *International Law*, Cambridge University Press, 4th Edition, (1998) p. 727.

elaborate hortatory instrument. In more vigorous language, many of the principles contained in that connection in the United Nations Charter are re-affirmed, states are required to have recourse to the traditional techniques of dispute-settlement, and their attention is drawn to all the available options for peaceful resolution of their differences.[34] Some special points made in the Manila Declaration are as follows:

i. States should bear in mind that direct negotiations are a flexible and effective means of peaceful settlement of disputes, and if they choose to resort to direct negotiations, they should negotiate meaningfully.
ii. States are enjoined to consider making greater use of the fact-finding capacity of the Security Council in accordance with the United Nations Charter.[35]

7. Composition of Conciliation Commission

The Conciliation commissions were to be composed of five persons, one appointed by each opposing side and the other three to be appointed by agreement from amongst the citizens of third states.[36] By a resolution of the Third Assembly of the Council of the League of Nations on 22nd September, 1922 asked the member States to establish conciliation commissions consisting of five members. The two disputing States were to nominate two members each, one its own national and other from a third country. The fifth was to be nominated by the four members so appointed by the States. This was not, of course, to dilute the conciliatory functions of the Council of the League of Nations under Articles 15 and 17 of the Covenant. The Scandinavian countries were very enthusiastic about conciliation commissions. It almost became a fashion among States to form conciliation commissions in the post-World War I era. Several such commissions were established but without much results. The General Act (Pacific Settlement of International Disputes) 1928 recommended conciliation as one of the three peaceful procedures for settlement of international disputes.[37]

8. Conciliation Procedure

[34] J G. Starke, *Supra note 22*, pp. 516-17.
[35] The Manila Declaration on the Peaceful Settlement of International Disputes, which approved by consensus by the General Assembly in 1982.
[36] Malcolm N. Shaw, *Supra note 33*, p.727.
[37] R.C. Hingorani, *Supra note 6*, p. 297.

The Conciliation procedure has been given importance of such a high degree in the Law of the Sea Convention that resort to such procedure is compulsory for the settlement of certain categories of disputes where compulsory settlement procedures are not acceptable to the States.[38] The process of conciliation involves a third party investigation on the basis of the dispute and the submission of a report embodying suggestions for a settlement. As such it involves elements of both inquiry and mediation, and in fact the process of conciliation emerged from treaties providing for permanent inquiry commissions.[39] The proceedings were to be concluded within six months and were not to be held in public. The conciliation procedure was intended to deal with mixed legal-factual situations and to operate quickly and informally.[40]

9. Multilateral Treaties Regarding Conciliation

A number of multilateral treaties and conventions do, however, provide for conciliation as a means of pacific settlement of disputes. Some of them are as follows:

i. The 1948 American Treaty of Pacific Settlement;
ii. The 1957 European Convention for the Peaceful Settlement of Disputes;
iii. The 1964 Protocol on the Commission of Mediation, Conciliation and Arbitration to the Charter of the Organisation of African Unity;
iv. The 1969 Vienna Convention on the Law of Treaties;
v. The Treaty Establishing the Organisation of Eastern Caribbean States 1981;
vi. The 1982 Convention on the Law of the Sea; and
vii. The 1985 Vienna Convention on the Protection of the Ozone Layer, for example, all contain provisions concerning conciliation.[41]

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[38] Gurdip Singh, *UN Convention on the Law of the Sea: Dispute Settlement Mechanisms*, 1985, pp, 205-06.
[39] J. G. Merrills, *Supra note 14*, p. 61.
[40] Article 15(1) of the Geneva General Act as amended provides that 'The task of the Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the parties to an agreement. It may, after the case has been examined, inform the parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision.'
[41] Malcolm N. Shaw, *Supra note 33*, p. 727.

10. Status of Conciliation

Conciliation can be regarded either as a 'non-judicial' or a 'semi-judicial' procedure for the settlement of disputes. Once again, however, the process of conciliation may deal with a variety of questions, including matters of international law, and the better view is that such labels are irrelevant. Conciliation denotes the reference of a dispute to a third party, usually a commission or committee, whose task is to produce a report recommending proposals for settlement. Conciliation commissions are different from commissions of inquiry because the latter do not produce concrete proposals. In this regard, conciliation is similar to arbitration. However, here also there is one vital difference. Generally, the reports of conciliation commissions are not legally binding on the parties, although the awards of arbitrator(s) are binding upon the concerned parties. The report and the proposed solution of the conciliation commission may, of course, form the basis for future negotiations. Conciliation is, then, the middle ground between inquiry and arbitration. A settlement is proposed by a neutral third party, but it is not binding.[42]

11. The Essentials of a Conciliator

A conciliator must possess some qualities. The essential qualities of a conciliator are as follows:

i. Moderation: A conciliator should not prevaricate in telling one party the position of the other but should soften the demands in the search of a common ground.[43]
ii. Perseverance: Many disputes requiring conciliation call for extraordinary patience and perseverance on the part of the conciliated as well as the conciliator.[44]
iii. Preparation and Ingenuity: The conciliator must be saturated with the subject and must gradually try to know more about it than anyone else. He must try not only to know the facts but also to understand the facts—to understand what are the vital issues, those things which the parties cannot give up. One must understand those areas in which emotions are involved and to what degree there can be a certain give and

[42] Martin Dixon MA, *Text Book on International Law*, London: Blackstone Press Limited, 2nd Edition, (Reprinted in1995) pp. 226-7.
[43] John G. Laylin, 'Guidelines for Third Parties on International Disputes', 66 Proceedings, American Society of International Law, (1972) pp. 22-32 at p. 23.
[44] *Ibid*, pp. 22-32 at p. 24.

take. Finally, he must try to get each side to begin looking at the dispute in some small way from the other fellow's point of view and then indicate what each can get out of it, if they will give in.[45] In other words, a conciliator must try to find a solution in which each side wins. This calls for ingenuity and imagination.

iv. Impartiality regarding the issues in disputes.

v. Independence from all parties to the conflict.

vi. Acceptability of protagonists.

vii. Required physical resources, e.g., meeting site, transportation and communication facilities and personnel for verification and inspection services.

If the conciliator is in a position to put pressure on one or both the parties to accept a proposed settlement, the chance of success would logically be enhanced.[46] Leverage is incompatible with strict independence in the sense of non-attachment to any of the protagonists. But if independence is interpreted to mean non-dependence upon any of the disputants, the difficulty largely disappears.[47]

12. The Outcomes of Conciliation

A conciliator gifted with above qualities can bring the following results:[48]

i. A conciliator can change for the better the behaviour of disputants just by being present.[49]

ii. He can facilitate communications, particularly in situations where the emotional involvement of political leaders precludes rational face-to-face negotiations. He can screen out those communications and memories which make agreement more difficult.

iii. He can clarify the facts in a situation and thereby eliminate misunderstandings and ignorance as a source of hostility.

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[45] *Ibid*, pp. 28-29.

[46] Marvin C. Ott., 'Mediation as a Method of Conflict Resolution: Two Cases', International Organisation Vol. 26, (1972) p. 597.

[47] Gurdip Singh, *International Law*, New Delhi: Aditya Books Private Limited, (1992) pp. 310-11.

[48] Marvin C. Ott. *Supra note 46*, pp. 597-599.

[49] Arthur Mayer, 'Function of the Mediator in Collective Bargaining', Industrial and Labour Resistance Review, 13, 1960, p. 161.

iv. He can give a break in hostilities while inquiries are made and thereby provide breathing—spell in which tempers can cool.[50]

v. He can suggest specific solutions, made more palatable by the presumed objectivity of their author. These may or may not include alternatives that the disputants have failed to perceive themselves. In either case, these proposals serve as focal points. Such focal points, even though arbitrary, are necessary to overcome the vacuum of indeterminacy that might otherwise paralyse negotiations.[51]

vi. He can also provide such services so as to supervise the implementation of the conciliated solution of the dispute.[52]

13. Effectiveness of Conciliation

Recent studies in the processes of negotiation have indicated the effectiveness of a technique that deserves mention here. A conciliator assists each of the parties to independently develop a list of all of their objectives (the outcomes which they desire to obtain from the conciliation). The conciliator then has each of the parties separately prioritize their own list from most to least important. He/She then goes back and forth between the parties and encourages them to "give" on the objectives one at a time, starting with the least important and working toward the most important for each party in turn. The parties rarely place the same priorities on all objectives, and usually have some objectives that are not listed by the other party. Thus the conciliator can quickly build a string of successes and help the parties create an atmosphere of trust which the conciliator can continue to develop.

Most successful conciliators are highly skilled negotiators. Some conciliators operate under the auspices of any one of several non-governmental entities, and for governmental agencies such as the Federal Mediation and Conciliation Service in the United States.[53]

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[50] Dean Pruitt and Richar Snydcr, *Theory and Research on the Causes of War*, (1969) p. 106.

[51] Thomas Schelling, *The Strategy of Conflict,* Cambridge, Mass.: Harvard University Press, (1960), p. 71.

[52] Gurdip Singh, *Supra note 1*, p. 311.

[53] http://en.wikipedia.org/wiki/Conciliation

14. Advantages of Conciliation

Conciliation possesses some advantages. The obvious advantages of conciliation are as follows:

i. It offers the parties to the dispute information and knowledge of the opponent's case which is invaluable.
ii. It affords an opportunity to the lawyers and politicians involved in the dispute at a national level to refer the matter to a small body of independent and qualified persons for their objective appraisal of the issues and for proposals for their settlement.
iii. It takes full account of the sensitivity, susceptibilities and prestige of governments in that it is easier to accept a third party's solution than that offered by the opponent.
iv. It leaves unchallenged the liberty and sovereignty of the parties. There is complete secrecy, no obligation to accept the Commission's proposals, no loss of rights or abandonment of position. A state retains its sovereign controls to the last stage of the proceedings.[54]

15. Importance of Conciliation

UN Convention on the Law of the Sea attaches tremendous importance to conciliation by making an express provision on conciliation in addition to general obligation to settle international disputes by peaceful means and by detailing out conciliation procedure in Annex V of the Convention. The Convention provides that a State which is a party to a dispute concerning the interpretation or application of this Convention may invite the other party or parties to submit the dispute to conciliation in accordance with the procedure under Annex V, Section 1 or another Conciliation procedure.[55]

If the invitation is accepted and if the parties agree upon the conciliation procedure to be applied, any party may submit the dispute to that procedure.[56] If the invitation is not accepted or the parties do not agree upon the procedure, the conciliation proceedings shall be deemed to be terminated.[57] Unless the parties otherwise agree, when a dispute has

[54] H. G. Darwin, *International Disputes: The Legal Aspects*; Report of a Study Group of the David Davies Memorial Institute of International Studies, London, (1972) p.100.
[55] Article 284, para 1, The U.N. Convention on the Law of the Sea.
[56] Article 284, para 3, *ibid*.
[57] Article 284, para 3, *ibid*.

been submitted to conciliation, the proceedings may be terminated only in accordance with the agreed conciliation procedure.[58]

So, the value of the conciliation commissions cannot be denied. The League of Nations Council made use of this method on many occasions. The United Nations also established many Conciliation Commissions for the pacific settlement of disputes, for example, the Conciliation Commission for Palestine under General Assembly Resolution 194 (III), 1948, and the Conciliation Commission for the Congo under resolution 1474 (ES-IV) of 1960.[59]

16. The Court of Conciliation and Arbitration

The Court of Conciliation and Arbitration, which is based in Geneva, provides a mechanism for the peaceful settlement of disputes (PSD) between States.

The Court was established in 1995 by the Convention on Conciliation and Arbitration followed by meetings on PSD in Montreux (1978), Athens (1984), La Valletta (1991) and Geneva (1992). Thirty-three States are currently Parties to the Convention.

The main mechanism offered by the Convention is conciliation, which aims at proposing terms of settlement to the States Parties to a dispute. This mechanism can be activated either unilaterally or by all States Parties to the dispute. At the conclusion of the proceedings, the conciliation commission presents a report and recommendations to the Parties. The Parties then have thirty days to decide whether they accept the latter or not. If no agreement is forthcoming within that period and if the parties have agreed to submit to arbitration - and only then - an ad hoc arbitral tribunal may be set up whose ruling will be legally binding on the Parties.[60]

17. Instances of Conciliation

There are many instances of resort to conciliation for the amicable settlement of international disputes. A few instances are put forward below:

- In 1948 and 1949 the General Assembly of the United

[58] Article 284, para 4, *ibid*.
[59] Malcolm N. Shaw, *Supra note 33*, p.728.
[60] http://www.osce.org/cca/43295

Nations appointed a Conciliation Committee headed by the president of the Assembly to meet with the big powers and with representatives of the four Balkan states immediately concerned with the controversies in that area. This effort led to agreements in principle for the cessation of hostilities, but the agreement was not implemented until later efforts under other auspices were made.[61]

- The United Nations has been trying to call attention to these opportunities and to suggest procedures for appointing and utilizing commissions of conciliation;[62] for example, in dealing with the problem of Palestine. Some members of the UN think that the organization should pioneer more boldly in this field, both in handling disputes which are brought before it and in providing well-developed machinery enquiry and conciliation.[63]
- In January 1948, the Lebanese delegation submitted to the Interim Committee of the General Assembly a proposal for the establishment of a Permanent Committee of Conciliation. This committee would do all it could to assist parties to a dispute to reach a friendly settlement, and if no agreement could be reached it would submit 'a detailed report on the reasons for the disagreement' and would 'formulate proposals which it deems fair and legal for the pacific settlement of the dispute.'[64] Many private organizations, especially those which tend to regard the UN as either primarily or almost wholly an agency for peaceful settlement, have urged more general resort to conciliation.[65]
- The United Nations tried to recommend conciliation when the General Assembly passed such a resolution at its third session, despite Soviet opposition. However, the response has not been good.[66]

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[61] Norman D. Palmer & Howard C. Perkins, *Supra note 13*, p. 257.
[62] See, for example, a memorandum on "Elaboration of Procedural Suggestions as to Procedure for Peaceful Settlement," submitted to the Interim Committee of the General Assembly by China and the United States in June, 1948; U. N. Document A/ AC. 18/SC/2/2, June 16, 1948.
[63] Norman D. Palmer & Howard C. Perkins, *Supra note 13*, p. 258.
[64] The text of this proposal was published in U. N. document A/ AC.18/15, January 28, 1984.
[65] Norman D. Palmar & Howard C. Perkins, *Supra note 13*, p. 258.
[66] *Ibid*, p. 257.

- Charter of the Organisation of American States signed in Bagota on 30th April, 1948 provides for conciliation between the disputing States.[67]
- The Charter of the Organisation of African Unity, presently African Union, adopted in Addis Ababa in 1963 which contemplates the establishment of a Commission of Conciliation, Mediation and Arbitration by a separate protocol which was adopted in Cairo in the succeeding year.[68]
- Instances of appointment of conciliation commission may be found in the formation of Belgo-Danish Conciliation Commission in 1952 and Greco-Italian Conciliation Commission in 1956.[69]
- African States have also resorted to the use of conciliation commissions for settlement of disputes among themselves. Kissinger's role in the West-Asian dispute could have been considered as an amalgam of being a mediator-cum-conciliator.[70]

In the mid-1920's 52 conciliation treaties were entered into, 35 of them without reservations.[71] Substantial progress has been made in establishing conciliation procedures and machinery on a regional basis, especially in the Inter-American System. In general, 'the development of international organizations, with specific and continuing responsibilities for conciliation on either a regional or global scale, has been the most vital factor in promoting a peaceful settlement of disputes.'[72]

18. Conclusion

The foregoing discussion reveals that the term 'Conciliation' implies various methods adopted by a third party to amicably settle the dispute between two or more States. It involves the formulation of proposals of settlement after an investigation of the facts. The dispute may be

[67] *Ibid*.
[68] *Ibid*, pp. 257-258.
[69] H. O. Agarwal, *Supra note 18*, p. 498.
[70] R.C. Hingorani, *Supra note 6*, p. 298.
[71] Clyde Eagleton, *International Government*, (rev. ed.) New York: The Ronald Press Company, (1948) p. 236.
[72] Philip E. Jacob and Alexine L. Atherton, *The Dynamics of International Organisation: The making of World Order Homewood, III*; Dorsey press, (1965) p. 282.

referred to a commission for favour of proposals to the parties for settlement. Such proposals have no binding force on the parties to the dispute. So, conciliation occurs by agreement between the parties whereby a third party investigates the dispute and suggests terms for a settlement. It is, therefore, suggested that various means of settlement of international disputes especially conciliation should be used to minimize differences among States. It is expected that States should take appropriate steps to follow this method in solving their disputes.