Conflict Resolution and Mitigation

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With the advent of international law and international politics, the scope of the application of international law has also expanded. The effect of international law is no longer felt only between states but also other entities including individuals and other non-state actors. Therefore, the dispute resolution mechanism should be in relation to all the subjects of international law and not only with respect to states.

Conflict resolution and mitigation both are important aspects while maintaining peace in conflict zones. Violence prevention includes a comprehensive approach which includes a structural prevention and includes long-term initiatives targeting the root causes of conflict.1

The effectiveness of mitigation of violence depends upon ascertaining the exact cause of the conflict and then working on violence prevention initiatives. Knowledge of the originating factors of a conflict is essential for the choice of the tools for prevention and the targets of intervention.2 Causes can be largely bifurcated into underlying causes and trigger or proximate causes. Underlying or permissive causes are conditions that are necessary for a conflict to develop.3 It includes political differences, cultural diversity, socioeconomic and other factors. Whereas trigger or proximate causes are those factors which causes rapid and unexpected changes in any of the underlying causes these factors should be closely monitored.4

Dispute settlement and mitigation can bifurcated into two approaches.5 One through Judicial means, such as courts and tribunals in the international forum (eg. International Court of Justice, International Criminal Court, International Court of Arbitration, Tribunal of Law of Seas etc.), and through political and diplomatic relations between nations (eg. through institutions like the United Nations Security Council, United Nations General Assembly etc.). There are also other

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1 http://www.beyondintractability.org/essay/violence-prevention
3 Ibid
4 Ibid
5 Article 33 of the UN Charter, 1945.
mechanisms also which include the traditional method of dispute resolution i.e through treaties (eg. UN Charter and other dispute resolution treaties).  

**Role of Judicial Mechanism:**

Under international law, settlement of disputes by peaceful means is the only available options. The UN Charter under Article 2(3) states that the member states have to settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered. There are no definitive methods of dispute mechanism set by the UN but under Article 33, it provides certain methods of resolving disputes which includes negotiation, enquiry, mediation, conciliation, arbitration, and judicial settlement.

Under this, both the formal (through Courts and tribunals) and informal manner (through Arbitration, Conciliation, negotiation etc.) of settlement will be discussed.

**Permanent Court of Arbitration:**

The Permanent Court of Arbitration was set up under the Hague Conventions for the Pacific Settlement of International Disputes of 1899 and consists not of a court but of machinery for the calling into being of tribunals. When the parties agree to submit a dispute to the Permanent Court of Arbitration, each appoints two arbitrators from the panel and the four arbitrators select an umpire. Thus a tribunal constitutes only to hear a particular case. However, the functioning of this court has ceased.

**International Court of Justice:**

The International Court of Justice (ICJ) is the successor of the Permanent Court of International Justice. The ICJ has a much closer relation with the United Nations (UN) and it also a principal judicial organ of the United Nations. All the members of the UN are ipso facto parties to the ICJ. The Court has jurisdiction in contentious cases between states on the basis of the consent of the

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6 Principles of Public International Law- Ian Brownlie, 7th edition.
7 Article 2(3), 2(4) and 33 of the UN Charter, 1945
8 Principles of Public International Law- Ian Brownlie, 7th edition
9 Article 34 para 1 of the Statute of International Court of Justice.
parties. Under Article 36(1) of the statute, the Court has jurisdiction on all matters specially provided for in the Charter of the United Nations. Consideration must be given to the effects of becoming a party to the Statute of the Court.\footnote{Article 35(1) of the Statute of International Court of Justice} States do not submit to the jurisdiction of the Court as a result of signing the statute, and some further expression of consent is required. The Court also has jurisdiction to provide for ‘interim measures of protection’ to preserve the respective rights of the parties.\footnote{Article 41 of of the Statute of International Court of Justice}

The ICJ also has the advisory jurisdiction\footnote{Article 65(1) of the Statute of International Court of Justice} and therefore can give an opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

International Criminal Court:

The International Criminal Court (ICC) was set up more recently by virtue of the Rome Statute in 2002.\footnote{http://www.iccnow.org/?mod=icchistory} This Court has the jurisdiction to try cases of genocide, war crimes and crimes against humanity.\footnote{Article 5 of the Rome Statute, 2002} One significant feature of this Court is that it allows for individual criminal responsibility.\footnote{Article 25 of the Rome Statute, 2002} This therefore bridges the gap between the subjects of international law. This Court works on the principle of complementary, i.e. it will be complementary to the national criminal jurisdiction. The ICC can only obtain jurisdiction if the state party is either unwilling or unable to try perpetrators nationally.\footnote{https://www.jus.uio.no/smr/english/research/projects/icc-conflict-resolution/} This may create incentives for combatants to reach national peace settlements which include prosecutions in order to prevent international prosecutions and the possibility of much harsher sentences.\footnote{Ibid}

The settlement of disputes between states by judicial methods is only one facet of maintaining international peace and security.

**Role of Political Mechanisms:**

Role of Security Council

\footnote{Article 35(1) of the Statute of International Court of Justice}
The Security Council’s role in deciding disputes extends to various areas including military, economic and humanitarian factors. The power to decide disputes by the Security Council stems from Article 34 of the UN Charter which provides that the Security Council may investigate any dispute or any situation in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.\footnote{Article 34 of the UN Charter, 1945} The Security Council has the power to recommend to the parties appropriate procedures or methods of settlement of their dispute, which may include mediation.

The United Nations Charter which provided that the disputes must be settled in a peaceful manner contradicts itself when it authorizes the Security Council to direct the use of force to maintain and restore international peace and security.

The UN charter gives the United Nations a primary responsibility to maintain peace and security, by virtue of this obligation, the UN peacekeeping forces are employed in conflict areas to aid in conflict resolution and mitigation. In recent years, the Council has adopted the practice of invoking Chapter VII\footnote{Chapter VII of the UN Charter contains provisions related to “Action with Respect to the Peace, Breaches of the Peace and Acts of Aggression”} of the Charter when authorizing the deployment of UN peacekeeping operations into volatile post-conflict settings where the State is unable to maintain security and public order.\footnote{http://www.un.org/en/peacekeeping/operations/pkmandates.shtml}

The UN Security Council also has the mandate to recommend to the parties appropriate procedures or methods of settlement of their dispute, which may include mediation. It also has the power to recommend terms of settlement to the parties.\footnote{Article 33, 36 , 37 and 38 of the UN Charter, 1945}

The General Assembly:

The General Assembly will also be discussing the issues through various committees like the United Nations Human Rights Council, Economic and Social Council, etc. Through these, it is clear that these organizations provide a platform to discuss the issues which may affect peace and security. However, criticisms such as political dominance are still prevalent. However, this
does not take away the fact that they still act as an institution for dispute resolution through peaceful means.

Political organs, like the General Assembly and Security Council of the United Nations may and often do concern themselves with evidence and legal argument, although the basis for action remains primarily political. The General Assembly, in particular has provided a useful forum for settling disputes.

**Role of Treaties:**

States have relied on various treaties and other international agreements to maintain peace and security. Use of such mechanism dates back to the Kellogg-Briand Pact signed in 1928 which condemned recourse to war for the solution of international controversies. Various ceasefire agreements between the states and other states or other combatants have aided in conflict mitigation and resolution. The United Nations itself serves as an agent in conflict resolution and mitigation.

**Other mechanisms:**

Various other mechanisms like the policy of disarmament have also facilitated in curbing the violent conflicts. Various states or coalitions of states tried to prevent or mitigate violence by using threats of armed force (deterrence, coercive diplomacy, defensive alliances such as NATO); economic sanctions and other tangible nonmilitary threats and punishments, such as the withdrawal of foreign aid; and direct military force to establish demilitarized zones.

**Conclusion:**

Approach towards resolving international conflicts should be comprehensive and focus on all the subjects of international law. Diplomatic and political mechanisms keep evolving with the advent of recognizing new sources of conflict and the innovation of technology. Coalitions and international organizations have also played a huge role in resolving conflicts. One of the things that should be considered is the true distinction between an International armed conflict and a

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22 Principles of Public International Law- Ian Brownlie, 7th edition
23 [http://www.beyondintractability.org/essay/international-law](http://www.beyondintractability.org/essay/international-law)
24 [https://www.nap.edu/read/9897/chapter/2#3](https://www.nap.edu/read/9897/chapter/2#3)
non-international armed conflict. Identifying this will aid in implementing conflict resolution tools in a more effective way.

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