

## RESOLUTION OF POST–COLD WAR ERA DISPUTES THROUGH NEGOTIATION – A CRITIQUE

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### ABSTRACT

The Cold War was a period of geopolitical tension that developed between the USA and the Soviet Union. It is referred to as such because it was not a war fought with weapons, rather ideological differences and propaganda were used as tools. In the post–Cold War era, various dispute resolution strategies have been used by the governments of these countries to de-escalate situations which might otherwise have had massive repercussions. This article also discusses some key disputes in other countries where different methods of Alternative Dispute Resolution like negotiation were employed. The aim is to resolve disputes in a non-adversarial manner. It has been proven time and again that methods like negotiation are effective in preventing large-scale conflicts between the countries involved, and thus avoid war or war-like situations. Lastly, this article shows the significance of employing ADR techniques to prevent another Cold War-like situation in the future.

### 1. ADR AND CONFLICT RESOLUTION

Alternative Dispute Resolution (ADR) defines a set of approaches and techniques that aim to resolve disputes in a non-confrontational manner, as opposed to resorting to litigation or the use of force depending upon the scale of the dispute.<sup>1</sup>

Conflict resolution is multidisciplinary, involving law, psychology, sociology, social studies, gender studies, political studies, international relations, etc.

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<sup>1</sup> ALTERNATIVE DISPUTE RESOLUTION IN INDIA, [https://legallaffairs.gov.in/sites/default/files/Arbitration\\_Mediation.pdf](https://legallaffairs.gov.in/sites/default/files/Arbitration_Mediation.pdf) (last visited Apr. 27, 2024).

As noted by Howard Raiffa, the resolution of conflicts involves a combination of theory and practice, and of art and science; science being the systematic analysis of problem solving, and art being the skills, personal abilities and wisdom.<sup>2</sup>

Conflict resolution can be carried out at various stages. It is only at the heightened stage does a conflict become a dispute, after which one must resort to formal ADR methods in order to achieve definite results towards the betterment of relations.<sup>3</sup>

Some well-known ADR processes include negotiation, mediation, conciliation, good offices, arbitration, etc.

In negotiation, parties engage with each other directly to reach a mutually acceptable solution. On the other hand is the process of arbitration, wherein a solution is imposed on the disputing parties by an impartial external party.

Somewhere in the middle of both is the process of mediation, wherein an impartial third party acts as a facilitator in order to encourage the disputing parties to reach a settlement on their own terms. It has become widely accepted due to providing more flexibility and less procedural complexity, thereby becoming a preferred alternative.<sup>4</sup>

Another ADR process is that of good offices, which requires the consent of the disputing parties in order for a neutral third party to offer friendly assistance without substantive settlement suggestions. It aims to improve the communication between the disputing parties such that they may be inclined towards reaching a solution.

## 2. THE COLD WAR

The Cold War was a period of acute geopolitical tension that developed between the two erstwhile allies in the second World War, the United States of America and the Soviet Union, and their

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<sup>2</sup> HOWARD RAIFFA, *THE ART AND SCIENCE OF NEGOTIATION* (Harvard University Press 1982).

<sup>3</sup> *MEDIATION TRAINING MANUAL OF INDIA*, <https://main.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf> (last visited Apr. 27, 2024).

<sup>4</sup> *Ibid.*

respective allies. The bloc led by the USA was known as the Western Bloc, while that led by the USSR was the Eastern Bloc.

The Cold War is said to have begun in 1947 at the time of the Truman Doctrine, whereunder the USA offered support to nations threatened by Soviet communism. The dissolution of the Soviet Union in 1991 has been considered to mark the end of the war.<sup>5</sup>

The Cold War has been termed as "peace time unarmed warfare", being based on ideological hatred and political distrust.<sup>6</sup>

There was no large-scale fighting, due to the doctrine of mutual assured destruction ("MAD"), but major regional conflicts were supported by both superpowers, which formed blocs with their allies.

It was characterised by constant propaganda campaigns, espionage, military intervention, alliances and deployment, regional organisations, etc. to generate defections within the other side's Bloc and strengthen their own position.

It was majorly a war played out using the conflicting ideologies of the USA and USSR as weapons, with support from other States who subscribed to either of the ideologies and tilted the balance of power internationally during such high tension. Both the USA and USSR struggled for global influence. The Cold War has thus been observed to be even worse than a regular conflict.

With the end of the Cold War, various changes were witnessed: the end of an era of bipolarity as a unipolar system emerged, with the United States at its focus, a new wave of democratization, increasing globalisation and increased efforts at international coordination of security policy, redefinition of sovereignty so as to impose new responsibilities on States as regards their citizens as well as the world community, etc.

Certain negative aspects have also made themselves known, such as increased claims to rights based on cultural identity, and the emergence or reemergence of serious conflicts in several areas

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<sup>5</sup> THE COLD WAR, <https://www.jfklibrary.org/learn/about-jfk/jfk-in-history/the-cold-war> (last visited Apr. 27, 2024).

<sup>6</sup> THE COLD WAR ERA AND ITS POLITICS, [https://nios.ac.in/media/documents/SrSec315NEW/315\\_History\\_Eng/315\\_History\\_Eng\\_Lesson25.pdf](https://nios.ac.in/media/documents/SrSec315NEW/315_History_Eng/315_History_Eng_Lesson25.pdf) (last visited Apr. 27, 2024).

that were relatively quiescent during the Cold War. There have been other threats to international order such as religious militancy, terrorism, severe competition over scarce resources, etc.

### **3. POST–COLD WAR ERA**

In the post–Cold War era, the most important forces shaping most of the world's armed conflicts are ethnic and religious antagonisms. Whatever the underlying motives for such conflicts, most of these armed conflicts involve control of territory and of national governments.

Due to the psychology surrounding ethnic and religious conflicts, which is determined by the identity principle, in extreme cases, dehumanisation and even genocide are likely to result. Thus, conflicts born from the identity principle are harder to solve.

At times, however, assets such as the government or territories themselves are the point of contention, instead of posing as the less tangible causes of conflict. In such cases, conflicts over these material interests allow for compromise more readily, owing to the reciprocity principle.

Various conflict management and dispute resolution strategies are employed, the chief methods being diplomatic, military and economic means of influence; such as the use of threats of force, economic sanctions, formation of defensive alliances, withdrawal of foreign aid, and even negotiations between international actors. It is the latter that we must focus upon, since ADR aims to resolve disputes by peaceful, mutually acceptable methods rather than punitive methods which could further aggravate a delicate situation.

With international relations becoming truly globalised in the post–Cold War era, a new set of issues has emerged which can be dealt with only on a worldwide basis, such as environmental issues, economic interdependence, etc., all of which require careful resolution in case of disputes arising.

What needs to be questioned is how much importance such developments in the world history hold when it comes to shaping the ADR mechanisms, and in particular, whether they make a notable difference in how international disputes are dealt with. Whether the old system is still functional

after such developments, and whether it must be tweaked or entirely replaced, or used in a different, more conducive manner, is also something that remains to be seen.

Some of the notable examples wherein international disputes were resolved through ADR mechanisms are discussed below.

#### **4. KEY NEGOTIATIONS IN POST-COLD WAR ERA**

##### **USA-NATO Negotiation (2018)**

When the then president of USA, Donald Trump, claimed in his tweets that the NATO was taking advantage of the USA, and demanded that the allies should spend at least 4% of their GDP on defense by 2024<sup>7</sup>, negotiations were sought between the USA and NATO.

Withdrawing from NATO would not be so easy for the USA as it would be to withdraw from any other alliance, majorly because of the history surrounding the said alliance, and the procedural difficulties that would be experienced in order to bring about the said withdrawal. Moreover, the USA was traditionally one of NATO's strongest proponents.

Eventually, the other members of NATO agreed to commit an extra amount of USD 33 billion to their defense budgets, and the USA's commitment to NATO was affirmed by Trump, who was able to achieve his objectives through negotiation.

Although there are doubts as to whether the USA would actually be able to withdraw from NATO, thereby leading to a new era of uncertainty, a heightened conflict was certainly avoided between member nations, with their relations kept intact.

##### **Syrian Negotiation (2018)**

In July 2018, the Syrian Democratic Forces (SDF), supported by the USA, entered into negotiations with Bashar al-Assad's government regarding the Syrian civil war. About 25% of

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<sup>7</sup> TRUMP TELLS NATO LEADERS TO INCREASE DEFENSE SPEND TO 4 PERCENT, <https://www.reuters.com/article/idUSKBN1K12BW/> (last visited Apr. 27, 2024).

Syria was controlled by the SDF, but their position was weakened substantially after the USA decided to withdraw 2000 troops.<sup>8</sup>

When the Kurdish city of Afrin was occupied by Turkey, the USA was unable to provide support to the SDF. The USA is unlikely to risk straining its diplomatic ties with Turkey over this matter. This left the Syrian Kurds having to compromise, changing their demand from that of independence to that of “autonomy”.

Other than the USA and Turkey, Russia and Iran also have interests in the conflict. One of the main issues concerns the city of Idlib, near the Turkish border. Different parties have different priorities—militarisation, preventing refugee movement, effecting a ceasefire, etc. The situation thus requires more sensitivity and better employment of negotiation tactics to work out a long-lasting, viable solution.

### **Black Sea Grain Initiative (2022)**

When Russia invaded Ukraine in February 2022, it resulted in a total stoppage of maritime grain exports in the Black Sea region, bordered by countries which include Russia, Ukraine and Turkey. Russia also stopped exporting its own grains, thus adding on to the food shortage problem. This led to increasing prices of food across the world and a looming threat of a famine, especially in lower-income countries. In these conditions, discussions were held between the two parties, facilitated by Turkey and backed by the United Nations.

On 22 July 2022, the Initiative on the Safe Transportation of Grain and Foodstuffs from Ukrainian Ports, or the Black Sea Grain Initiative, was signed in Istanbul, and procedures were established for the safe transport of foodgrains to combat the hunger issue, along with fertilizers. In 2023, Russia stated that it would withdraw from the agreement.<sup>9</sup> The agreement finally expired by July 2023, owing to a lack of renewal.

### **Azerbaijan-Armenia (2023)**

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<sup>8</sup> Steve Denning, *Ignoring History, Trump Hands Russia Yet Another Win in Syria*, Forbes (Dec 24, 2018 05:13 AM), <https://www.forbes.com/sites/stevedenning/2018/12/24/ignoring-history-trump-hands-russia-yet-another-win-in-syria/?sh=309f8235115d#3622ed48115d>,

<sup>9</sup> BLACK SEA GRAIN INITIATIVE, <https://www.un.org/en/black-sea-grain-initiative> (last visited Apr. 27, 2024).

The countries Azerbaijan and Armenia have been in conflict for a long period of time involving the area of Nagorno-Karabakh, starting from the late 1980s. This is a mountainous region internationally recognised as part of southwestern Azerbaijan, but one that was mostly inhabited by ethnic Armenians until 2023, controlled by the Armenian Republic of Artsakh. Seven surrounding districts were inhabited mostly by Azerbaijanis until the 1990s, when they were expelled therefrom.

In May 1994, Russia mediated a ceasefire between the two, putting an end to the First Nagorno-Karabakh War. However, in 2008, the heaviest fighting since the ceasefire was witnessed, as clashes began in the town of Mardakert. Clashes erupted again in 2010 as another violation of the ceasefire. Border clashes erupted again and again over the years, earning international disapproval as the UN demanded the withdrawal of Armenian forces from the occupied territories of Azerbaijan.

The year 2020 saw the Second Nagorno-Karabakh War breaking out, followed by yet another ceasefire agreement facilitated by Russia. The situation escalated when Azerbaijan invaded Armenian territory, most severely in September 2022. The EU and the US tried to mediate, but their attempts were ignored and they were accused by Azerbaijan of favouring Armenia.

The border disputes have been complicated, but slowly both countries are trying to establish peace in the area. In 2023, Armenian forces agreed to disarm ethnic Armenian authorities in Nagorno-Karabakh, and Azerbaijan claimed full control over the region.<sup>10</sup> On 20 September 2023, a new ceasefire agreement was reached, brokered by the Russian peacekeeping contingent stationed there since 2020.<sup>11</sup> As of 2024, it is reported that Russian peacekeepers have begun withdrawing from Nagorno-Karabakh following the ceasefire agreement.<sup>12</sup>

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<sup>10</sup> AZERBAIJAN CLAIMS FULL CONTROL OVER THE NAGORNO-KARABAKH REGION AS ARMENIAN FORCES AGREE TO DISARM, <https://www.thehindu.com/news/international/azerbaijan-and-armenian-forces-reach-cease-fire-deal-for-breakaway-nagorno-karabakh-officials-say/article67326152.ece> (last visited Apr. 27, 2024).

<sup>11</sup> WHAT TO KNOW ABOUT THE NAGORNO-KARABAKH CEASEFIRE, <https://www.aljazeera.com/news/2023/9/20/whats-happening-in-nagorno-karabakh-between-azerbaijan-and-armenia> (last visited Apr. 27, 2024).

<sup>12</sup> RUSSIAN PEACEKEEPERS STARTED WITHDRAWAL FROM NAGORNO-KARABAKH: KREMLIN, <https://www.thehindu.com/news/international/russian-peacekeepers-started-withdrawal-from-nagorno-karabakh-kremlin/article68076355.ece> (last visited Apr. 27, 2024).

**South China Sea Negotiations (2002–)**

Great efforts have been made by the Association of Southeast Asian Nations (ASEAN) for integration, but the escalation of tensions regarding the South China Sea since 2014 has made it difficult.

The sea with its estimated 11 billion barrels of oil and 190 trillion cubic feet of natural gas has been the object of heavy disputes between the ASEAN members.

The most prominent threat, however, is the militarisation in the sea. Deployment by China of 32 advanced surface-to-air missiles in February 2016 led to tensions with the US and with China's neighbours in ASEAN.

Moreover, China refused to accept the ruling of the Permanent Court of Arbitration in favour of the Philippines in 2016. China was willing to act unilaterally despite non-recognition from other states, and it made efforts to construct ports and military bases on its islands, and conduct several naval exercises.

Eventually, the US publicly supported the other ASEAN partners and built six freedom of navigation operations (FONOPs) to ensure free access to the South China Sea.

On August 3, 2018, negotiations between China and ASEAN led to a 19-page Single Draft South China Sea Code of Conduct Negotiating Text (SDNT), which aims to peacefully resolve a regional conflict rather than settling territorial issues.

The SDNT aims to weaken US intervention. However, a potential military conflict is feared to occur due to the increasing tensions between China and the US.

To respond to China's increasingly assertive actions, the US has been deploying its own military power in the region. This has put the ASEAN countries in a difficult position. China, though being strong and aggressive, is a neighbour. On the other hand, the US, though supportive, is occasionally fickle.

In September 2020, in the ASEAN Regional Forum, foreign ministers from the 10 members of ASEAN once again called for an expedited negotiation of the Code of Conduct.



In 2023, the dispute saw resurgence, following multiple clashes between the two countries, with the Philippines taking a more assertive stance against China. A statement was released by the ASEAN Foreign Ministers in December 2023 on “Maintaining and Promoting Stability in the Maritime Sphere in Southeast Asia”. The statement cautioned that the developments in the South China Sea may undermine peace, security and stability in the region—a situation which requires the self-restraint in the conduct of actions that may complicate the situation, and for countries to pursue peaceful resolution of disputes in accordance with principles of international law. This is largely seen as a positive step, since the member states of ASEAN have differences in opinion with regards to the issue, and do not usually issue such statements.

## **5. ANALYSIS OF NEGOTIATION IN THE POST–COLD WAR ERA**

It has been observed that the bilateral arena is simpler than the multilateral one, with there being only two adversaries with conflicting interests. The multilateral arena is a very evolved one, with a number of parties having different issues and interests at stake. Certain issues must be prioritised in order to manage the complex situations and move in the direction of a mutually agreeable outcome.

Thus, bilateral dispute resolution has been considered more favourable, in order to reach a solution that works towards the maximum benefit of the parties involved.

Even so, the process of negotiation between countries, or international entities, involves the creation of coalitions with other States by use of power, economic or military dependencies, etc.

Coalitions are entered into in order for the party states to achieve similar goals, even if they may not have the same interests, priorities or values. It is again a matter of gathering and balancing of power so as to gain a favourable position in the international context.

With countries aiming for greater power internationally, it is not uncommon for a State with lesser negotiating power to coalesce with a State having more power so as to achieve better ends for its bargain.

All the same, it becomes easier for the stronger State to influence the objectives and aspirations of the weaker State it has formed a coalition with, thereby still exerting its weight in a coalition that is ideally bilateral.

This has also to do with the new links that have formed due to globalisation, diplomacy, easier trade opportunities, etc.

Thus, even ADR mechanisms have been somewhat affected, with the reach of the disputes in question no longer being confined to only the primarily affected party. It would not be wrong to say that even other States are largely affected by the outcome of such disputes, despite not being parties thereto or influencers therein.

Yet, ADR mechanisms have done much in the field of resolving large-scale conflicts and averting situations that would be harmful to most international actors in the long run. The old system of dispute resolution has undergone subtle but meaningful changes due to the changing sociological perspective internationally.

Still, the world suffers from conflict in many regions. The renewed Israel-Hamas conflict, which has been ongoing since October 2023, has devastated the Middle East, with widespread consequences as many countries take different sides. Leaders of various countries are pushing for negotiations between Israel and Palestine. However, this is a multifaceted issue with no direct solution in sight, requiring much sensitivity from all parties involved, even in the wake of uncertainty regarding the Abraham Accords.

## **6. CONCLUSION**

The significance of ADR in resolving conflicts at the international level, in today's world, lies in the very fact that no State or international organisation wants ties to deteriorate to the point that an armed war is the inevitable consequence. Nor does any State wish for there to be a situation as witnessed during the Cold War, which is considered to be even worse than any armed conflict.

Moreover, in the globalised world today, it is imperative that relations between States and their citizens remain civil. With various checks on the behaviour of a State internationally, such as

international morality, international public opinion, etc. it is crucial for a State to maintain cordial relations in order to be able to keep a stable position in the international scenario.

Hence, in a transforming world system, it is of utmost importance that the States and other bodies resolve their disputes judiciously, and that too with care and caution so as to not strain relations further and give way to large-scale disagreements.