UNIT 7 UN SYSTEM: PACIFIC SETTLEMENT OF DISPUTES

Structure

7.1 INTRODUCTION

In a community if occurrence of violence is to be minimised, if not eliminated, there should exist practices or procedures by which disputes and conflicts that arise from time to time may be resolved. Otherwise the people involved in them will come to feel that recourse to violence is the only method available to settle them. Within a state, the legislature resolves major social conflicts by enacting laws. The judiciary settles the disputes between individual members of the community by applying the law. Some disputes, such 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. Some are submitted to adjudication also. In the international community, there are only two major non-violent methods available, the diplomatic methods and the adjudicative methods of settlement of disputes.

The use of diplomatic and adjudicative methods within the United Nation's system forms

the subject of this and the next unit. Before we examine the role of the UN system in facilitating the,settlement of international disputes, it will be useful to introduce you to the various modes of peaceful settlement disputes as well as the objectives, principles, and functions of the UN.

7.2 MODES OF PEACEFUL SETTLEMENT OF DISPUTES

The modes of peaceful or non-violent settlement of international disputes can be broadly divided into two; those marked by direct communications between the concerned parties and the others where the intermediary or a third party plays a vital role in resolving the issue.

7.2.1 Negotiation

Negotiation is direct communication between the parties with a view to reach an agreement concerning mutual claims between the parties. If each'party tries to accommodate, in part if not wholly, the claim of the other party, then the parties might be able to arrive at a mutually satisfactory settlement of their respective claims. If either party or both stand firm on their demands, negotiation cannot proceed. A bona fide negotiation requires that each party tries to understand the other party's doncerns and accommodate the other latter's demands to the extent possible. The outcome of negotiation may be a settlement of the dispute or no settlement.

Negotiation has this feature that each party feels that it is dealing with the other party on a footing of equality. Indeed, the political reality is that often the negotiating parties are unequal. There are in the world community now, big powers, small powers and mini-powers. When a big power negotiates with a small power, there is scope for the former to use its superior position to coerce the latter to accept a particular solution. If the small power feels the impact of such coercion, it may terminate the negotiation.

Under international law, there is no obligation for a party to negotiate to settle a dispute, unless such an obligation was undertaken under a treaty or agreement. And an obligation to negotiate does not imply a duty to reach an agreement.

Negotiations may be on a bilateral basis, and also on a multilateral basis. When a large number of States are interested in a particular issue they may meet at a conference and conduct negotiations to resolve the issue. It is frequently seen in newspapers now reports of conferences concerning various matters. For example, the Third UN Conference on the Law of the Sea (UNCLOS III) met from 1973 to 1981 and arrived at a comprehensive treaty on the law of the sea. Conferences or Congresses are convened whenever there are a number of issues to be settled by multilateral negotiation.

7.2.2 Others Modes

When negotiations break down there might be complete termination of communication between the parties concerning that dispute, unless a third party steps in to revive and

promote communication for reaching a settlement. Let us briefly examine the different procedures by which an intermediary may help the parties to reach a settlement.

Lending Good Offices

A third party interested in the settlement of the dispute may lend its good offices to influence the disputing parties to resume their dialogue. Lending good offices means recommending and encouraging the parties to reach an agreed solution.

Mediation

In mediation the intermediary functions more or less as a medium of communication between the parties. Before the First Hague Peace Conference, 1899, the stepping in of a third party to mediate was liable to be considered by the parties to a dispute as an impermissible intervention in their affairs. But the Hague Convention I, reached at that conference, provided that the signatories to that Convention had a right to offer good offices or mediation even during the progress of hostilities over a dispute, and such offer should not be regarded as an unfriendly act. The intermediary may promote communication between the parties and help them to settle their dispute.

Conciliation

In international legal terminology, conciliation differs from mediation in that in the former the intermediary not merely functions as a medium of communication between the parties, but also plays an active role of suggesting to the parties the terms of settlement. Even in mediation or extending good offices, the intermediary may play some active role of suggesting to the parties the terms of the settlement. In some conciliation procedures provided under treaties, the procedure of conciliation resembles judicial procedure. The parties are required to state their cases in writing and permitted to make oral presentations, and the conciliator, or a body of conciliators, recommends a set of terms of settlement. It is then open to the parties either to accept or reject the terms, unlike in arbitration or judicial settlement, wherein the parties are bound to accept the award or judgment.

In mediation or conciliation, the intermediary exercises , une power over the parties to the dispute. The intermediary may choose what to communicate to the parties, what to omit, in what language to communicate, and how to time the communication. But the proposals given for settlement may not always be fully impartial, and sometimes may be designed to serves the interests of the intermediary. That is the reason why often parties to a dispute are averse to accepting mediation or conciliation. Without the consent of the parties neither extending good offices, nor mediation, nor conciliation is possible.

To be successful the conciliator should possess some skills. First, he should be able to conduct himself in such a manner that he appears to both the parties as quite impartial and objective. Second, he should able to present to the parties different alternatives of settlement out of which the parties may make their choice.

There is the possibility that a mediator or conciliator may be so placed that he can offer something in return for what a party is asked to gives up. A good intentioned big power mediating between two small powers may be able to do that. The World Bank was able

to bring about a settlement between India and Pakistan regarding the sharing of the Indus waters offering a big loan for some irrigation projects. .

Enquiry

At the First Hague Peace Conference, 1899, this procedure was devised as an alternative to arbitration, so that those who may not be willing to accept arbitration may accept this procedure. In this procedure the parties agree that the intermediary will investigate the disputed questions of fact between the parties and give his finding. They may also agree that that the intermediary will supply clarifications on questions of law. In the light of such findings and clarifications, the parties may reach an agreement to settle the dispute; or they may reject the findings and clarifications. In the past this procedure did help to solve some disputes.

Arbitration

Arbitration as a method of settlement of disputes can be traced back to 600 B.C. in the practice of Greek States. It has had a troubled history in the lslamic world. In modern times, the practice developed in a significant way from the second half of the 19th century. The Alabama Claims Arbitration (1872) brought a serious dispute between Great Britain and United States to peaceful settlement. The Hague Convention I, 1899, adopted at the First Hague Peace Conference, and The Hague Convention II, adopted at the Second Hague Peace Conference, 1907, provided detailed rules concerning international arbitration.

During the time of the League of Nations, when there were serious discussions to plug the holes in the League system by adopting the triple formula of arbitration, disarmament and security, the League Assembly recommended to the members the adoption of the treaty, The General Act (Pacific Settlement of International Disputes), 1928. The General Act provided rules for arbitration. In 1949, the UN General Assembly adopted the Revised General Act for Pacific Settlement of International Disputes. This Act comes into force among such States as accede to it and become parties. However. as very few States have acceded to it, the effort of the International Law Commission of the UN has resulted only in drafting model rules on international arbitration.

The chief characteristics of arbitration are: First, the obligation to submit to arbitration arises from the consent given by the parties. Such consent may be under a special agreement (called *compromis*) concerning the particular dispute, or under a treaty provision which requires a particular category of disputes to be submitted to arbitration. Second, the constitution of the arbitration tribunal or its composition is as agreed to by the parties, unlike a judicial tribunal regarding the composition of which the parties have no choice. Third, the jurisdiction of the arbitral tribunal is limited to what is specifically conferred on it by the agreement. But the tribunal has competence to interpret the agreement and determine its jurisdiction. The judicial tribunal's jurisdiction is as conferred on it by the instrument by which it is established. Fourth, the law and procedure which govern the proceedings before the arbitral tribunal are as'agreed to by the parties. In the absence of such an agreement, the tribunal may apply international law and the procedure commonly adopted by arbitral tribunals. The arbitral tribunal is unlike a judicial tribunal: the former applies the law and procedure as prescribed by the instrument by which it is established.

The decision given by the arbitral tribunal is binding on the parties. Usually States do abide by arbitral awards, but sometimes the losing party may set up the plea that the award is a nullity. When such a plea is put forward, 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 provisions of the UN Charter. Possibly, the successful party may bring the non-compliance of the award before the UN Security Council as a matter threatening international peace and security.

The possible grounds on which the plea that an award is a nullity may be put forward are: (i) the agreement to submit to arbitration is itself invalid: (ii) the tribunal acted beyond its jurisdiction; (iii) the award is not supported by any reasoning or adequate reasoning; (iv) the award is vitiated by fraud or corruption on the part of the tribunal; (v) the tribunal committed an "essential error" or a "manifest error" of law, as when it fails to apply a clearly governing treaty. .

Arbitration 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 an attraction to the parties to prefer arbitration to judicial settlement.

Judicial Settlement

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. It is obligatory for the parties to carry out the decision. .

7.3 THE UN SYSTEM: THE GOALS, POLICY AND PRINCIPLES

The Preamble to the UN Charter, the treaty instrument by which the Organisation was established, affirms the determination of the members of the UN "to save succeeding generations from the scourge of war.. .." War is used here in the general sense of an armed conflict of large scale between States. There is also the grand affirmation in the Preamble of the faith in the dignity and worth of human person. The Preamble expresses the members' resolve to establish conditions under which justice and respect for international law can be maintained, and to promote better standards of life in larger freedom. The policy to be adopted to attain these goals is stated as: to practice tolerance and live as good neighbours, to unite the strength of the members to maintain international peace and security, to accept principles and institutions by which armed forces shall not be used except in common interest, and to employ international machinery for promotion of economic and social advancement of all peoples.

Articles 1 and 2 state more elaborately the purposes of the Organisation and the principles to be followed by it. Article 1(1) states the purpose of the Organisation to be the maintenance of international peace and security, and towards that end to take effective collective measures for the preventiou and removal of threats to peace, and suppression of acts of aggression or other breaches of the peace. The second part of the Article 1(1) mentions another

objective of the Organisation, viz., to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes, which might lead to a breach of the peace. Here two points may be noticed: First, maintenance of international peace and security is the prime objective of the Organisation, and peaceful settlement of disputes is stated as an objective contributing to the prime objective. Second, the settlement of disputes must be in conformity with the principles of justice and international law and not by way of appeasing an aggressive power by unjust and unlawful settlements.

The second objective is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to strengthen universa! peace (Article 1(2)). The third objective is to achieve international cooperation in solving international problems of economic, social and cultural character and encouraging respect for human rights. The fourth and the last objective is that the UN should serve as a centre for harmonizing the actions of nations in the attainment of the three former objectives.

The principles on which the Organisation should act in attaining the above purposes are stated in Article 2. First, Article 2(1) states that the Organisation is based upon the principle of sovereign equality of all its members. Second, the principle of good faith requires that all members, in order to ensure to all of them the rights and benefits resulting from membership, should fulfil in good faith the obligations assumed by them under the Charter (Article 2(2)). Third, Article 2(3) states that the members shall settle their disputes by peaceful means in such a manner that international peace and security and justice are not endangered. This provision prohibits recourse to non-peaceful means to settle disputes.

The fourth principle, a very important one, is stated in Article 2(4). It states that all members shall refrain in their international relations Rom threat or use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the Purposes of the Charter. "Force" here refers to physical or armed force. "Political independence" signifies freedom of the government of the State to reach decisions concerning the State, and this principle prohibits threat or use of force against a State to adopt any particular policy.

The fifth principle (Article 2(5)) requires that when the UN is taking preventive or enforcement action against any State, the members shall give every assistance to the UN and shall refrain from giving any assistance to the State against which the action is being taken The sixth principle (Article 2(6)) requires that the Organisation shall ensure that States which are not members of the UN shall act in accordance with the previously stated five principles so far as it may be necessary lor the maintenance of international peace and security Thus, non-members shall not be allowed by the Organisation or its members to plead that they being not parties to the UN Charter, are not bound to *a-t* in accordance with it, if the matter concerns the maintenance of international peace and security is concerned.

The seventh and the last principle states (Article 2(7)) that nothing in the UN Charter shall 'authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any State, or shall require the members to submit such matters to settlement under the Charter, and adds that this principle shall not prejudice the enforcement measures taken under Chapter VII by the Security Council. This principle expressly excludes enforcement

measures from the scope of the prohibition of intervention in matters of domestic jurisdiction. Furthermore, it is well known that matters of "domestic jurisdiction" and of "international concern" are at once two polar and complementary groups of concerns. With the advancement of international relations, matters of domestic jurisdiction become matters of international concern. To illustrate, if any matter comes to be governed by customary international law, by a treaty, or by a general principle of law recognized by civilized nations (the three sources of international law), it ceases to be a matter within domestic jurisdiction. How a State treats its subjects was a matter within its domestic jurisdiction in the 19th century, and with the rise human rights treaties and customary law in the 20th century, the State's treatment of its subjects violating human rights has become a matter of international concern.

7.4 THE UN SYSTEM: THE PRINCIPAL ORGANS

The structure, powers and functions of the UN organs may be studied in order to learn how they contribute to the settlement of disputes. The UN has six principal organs and for the sake of convenience we shall start with studying the Security Council.

7.4.1 The Security Council

The Security Council initially consisted of five permanent and six elected members. In 1965 the number of elected members was increased to ten, making a total of fifteen. The increase was prompted by the increase in the membership of the organisation. The five permanent members are the United States, Great Britain, France, Russia and China. Half of the non-permanent members retire every two years and their places are filled by election by the General Assembly. In electing, by convention, a pattern of geographical distribution is observed.

Under Article 24 of the Charter, the members of the Organisation conferred on the Security Council "primary responsibility" for the maintenance of international peace and security. By Article 25, the members agreed to accept and carry out the decisions of the Security Council.

Each member of the Council has one vote, and on procedural matters the Council reaches a decision by a simple majority, On all other matters a resolution can be adopted by majority of nine votes (before 1965, seven votes), including "the concurring votes" of five permanent members." "Concurring votes" is interpreted in practice to mean votes of those who are present and vote. Absence from the meeting or abstention from voting of a permanent member does not prevent the Council from adopting a resolution. Only a negative vote cast by a permanent member prevents the adoption of the resolution. Thus the permanent members are given the power to veto any resolution. The veto power was given to permanent members taking into account the reality of world politics. If, for instance, a decision is taken against a permanent member it is difficult to enforce that decision. And that member may leave the Organisation causing the Organisation immense damage.

Chapter VI of the Charter, comprising Articles 33 to 38, sets out the powers of the Security Council concerning peaceful settlement of disputes. Article **33,** Clause (1) states: "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 regional agencies or arrangements, or other peaceful means of their choice." Clause (2) adds, "The Security Council shall when it deems necessary, call upon the parties to settle their disputes by such means." Clause (1) more or less elaborates the principle set out in Article 2(3).

Article 34 empowers the Security Council to investigate any dispute, or situation that might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security. Such investigation is preliminary to deciding whether to take action under Article 33 (2).

Article 35 gives power not only to the disputing parties but any member of the UN, any non-member if it accepts the obligations 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. Under Article 36, the Security Council may, at any stage of the 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 procedures that have already been adopted. In making the recommendation, the Security Council should also take into consideration that disputes on questions of law, as a general rule, must be referred by the parties to the International Court of Justice in accordance with the provisions of the statute of the Court. According to Article 37, if the parties to a dispute fail to settle any dispute by following the procedures mentioned in Article 33, they are bound to refer it to the Security Council, and the Security Council, if it deems that the continuance of the dispute is likely to endanger the maintenance of international peace and security, may decide to recommend appropriate procedures or methods of adjustment under Article 36, or such terms of settlement as it may consider appropriate under Article 37. The recommendation under Article 36 concerns procedures or methods of adjustment and under Article 37 the terms of settlement.

If the dispute or situation is of such nature that its continuance is not likely to endanger international peace and security, the Security Council is not competent to take any action. However, under Article 38, if all the parties to the dispute so request, it may make recommendations with a view to peaceful settlement of the dispute. This is in general an unlikely contingency, the reasons for which will be noticed below. However, it always is open for the parties to request the Security Council, or any international organ, to give a binding decision, i.e., one in the nature of an arbitral decision.

It will be noticed that the power given to the Security Council under Chapter VI is only a power to recommend. It is in the nature of "soft" power, the power of persuasion. A party is not bound to carry out a recommendation. But a recommendation is not totally devoid of effect. First, there will be always an expectation that if a recommendation is totally ignored by a party, further decisions of the Council on the dispute are likely to be adverse to such the party. Second, the party to which a recommendation is made is bound to take note of the principle of good faith stated in Article 2(3). The party may have liberty to consider when. in what manner. and to what extent the recommendation may be carried out, but it cannot totally disregard the recommendation. Third, a party complying with the

recommendation is unlikely to be .considered as having acted illegally and thus the recommendation may legitimise the action taken in compliance with it.

The Security Council is not like the Cabinet of a national government. The members of the Council will be acting always taking into consideration, first their respective national interests, then the interests of their client States, and next the functions of the Organisation. The Council is not a judicial organ, it and its members are influenced by political considerations. For this reason the parties to a dispute will generally be inclined to avoid bringing the dispute before the Council, and likewise third parties. There should be sufficiently compelling reasons to bring a dispute before the Council, such as when a small power faces coercive measures from a powerful adversary. The plurality of the members of the Council having different interests might neutralise to some extent the power of the more powerful adversary.

Chapter VII, comprising Articles 39 to 51, deals with disputes or situations that present a threat to the peace, breach of the peace or an act aggression. It may be seen that the competence of the Security Council to intervene extends from disputes or situations the continuance of which is likely to endanger the maintenance of international peace and security to situations of threat to the peace, breach of the peace or act of aggression. At any stage in this wide range of situations the Council may intervene and take appropriate and feasible measures.

It is the Security Council that has the power to determine the existence of a threat to the peace, breach of the peace or act of aggression under Article 39. After making the determination, the Council may make recommendations, or decide on measures to be taken in accordance with Articles 41 and 42. Before taking any measure under Article 41 or 42, it may call upon the parties to comply with any provisional measures that it may consider necessary or desirable (Article 40). The provisional measures shall be without prejudice to the parties' rights, claims or positions, but the Council is bound duly to take into account the failure to comply with the provisional measures.

Under Article 41, the Security Council may decide what non-violent measures may be taken and may call upon the members to take such measures. The measures may include economic sanctions, termination of communications, and even severance of diplomatic relations. If the Council finds that the non-violent sanctions applied are inadequate or have proved to be inadequate, it may take such military action as may be necessary to maintain or restore international peace and security under Article 42. In order to take military action, the Security Council should have at its disposal military forces. Articles 43 to 47 provide for members placing at the disposal of the Council military forces in accordance with the agreements reached with them. However, as a matter of fact, due to disagreement among the permanent members on the proportion in which forces should be contributed and their location, these provisions have remained a dead letter. Though a Military Staff Committee was appointed, it exists only as a formality. Article 48 provides that the action to be taken for the maintenance of international peace and security may be required by the Security Council to be taken by all or some members of the Organisation. While participating in the measures decided to be taken, the members are required to extend mutual assistance (Articie 49). If while taking preventive or enforcement action, a State, whether a member or not, faces special economic problems, it may consult the Security Council regarding the solution of the problems (Article 50).

Article 51 is designed to harmonise the State's right to self-defence with the power of the Security Council to take enforcement action. The Article states four propositions: (1) Nothing in the Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations. (2) This right subsists until the Security Council has taken measures to maintain international peace and security. (3) Measures taken by members in the exercise of this right shall be immediately reported to the Security Council. (4) Such measures shall not affect the authority and responsibility of the Security Council to take such action as it deems necessary to maintain or restore international peace and security.

Article 51 introduces the expression "collective self-defencc." This is to permit the operation of regional arrangements or agencies for maintaining international peace and security. Chapter VIII, consisting of Articles 52 to 54, makes provision for the creation and operation of regional arrangements or agencies for maintaining international peace and security, such as the Organisation of American States, the Arab League etc. Article 52 permits the establishment regional arrangements or agencies to deal with matters relating to international peace and security appropriate for regional action if such regional arrangements or agencies are consistent with the Principles and Purposes of the UN Charter. Members of such arrangements or agencies are required to have recourse to them for pacific settlement of disputes before referring them to the Security Council. And the Security Council is required to encourage settlement through such arrangements or agencies. Article 53 requires the Security Council to utilise such arrangements or agencies, when considered appropriate, for enforcement action under its authority. But the regional arrangements or agencies are barred from taking enforcement action without the authorisation of the Security Council. Article 54 prescribes that the regional arrangements or agencies shall at all times keep the Security Council fully informed of the activities undertaken by them to maintain international peace and security.

The right of self-defence under Article 51 arises if an armed attack actually occurs. Under traditional international law, the right of self-defence can be exercised if an armed attack is imminent, even when it has not actually occurred. Has the Charter now restricted the traditional right of self-defence so as to preclude anticipatory action? There are two views concerning this question. First, the right is exercisable only if armed attack occurs. Support for this position is drawn from the text of Article 51 and from Article 2(4), which bar threat or use of force against the territorial integrity or political independence of a State. The argument against this position is that under the modern condition of nuclear weapons and missile carriers, the first attack on a State may as well be a fatal blow with little scope for the exercise of the right of self-defence. So an anticipatory action in self-defence cannot be ruled out. The International Court of Justice, in its advisory opinion of July 8, 1996, on the Legality of the Threat or Use of Nuclear Weapons found it difficult to give a clear answer to this question.

The right of self-defence mentioned here is the defence against an attack by a State. However, there are now non-State actors, such as Al Qaeda, which engage in terrorist activities. A day after September 11,2001, when Word Trade Centre towers in New York and the Pentagon came under terrorist attack, the Security Council in its resolution 1368 of 12th September 2001, declared that such attacks are a threat against international peace and security. The implication is that enforcement action under Chapter VII of the Charter

can be taken against them, and that self-defence against terrorist attacks is permissible under Article 51.

One of the assumptions underlying the framing of the UN Charter was that the cooperation between the Allies during World War II would continue, and the five permanent members of the Security Council would be able to keep the peace of the rest of the world. But soon after the starting of the functioning of the UN, serious differences among the Allies surfaced. The Soviet Union (USSR) on the one side and the Wesi on the other became fully opposed to each other and the era of Cold War started. They formed into two blocs. Each side became interested in safeguarding its own interests and the interests of the members of its bloc. To safeguard those interests they used their veto power. For this reason most of the time the Council remained paralysed except to provide a venue for acrimonious debate to publicize their respective positions and expose the aggressive intentions of the other side. Overall, from 1946 to 1991, the USSR used the veto on 114 occasions, the US on 69, the U.K. on 30 and France on 18. From 1946 to 1980, the Security Council acted only when the veto was not used. But in 1980s, the Soviet Union took a less strident position and the Council was able to play an active role. In 1991, the Soviet Union broke up into several parts, and the successor to the Soviet Union showed restraint in using the veto power in order to have good economic relations with the West. China too was similarly restrained for promoting better economic relations with the West. And so, from 1991, the Security Council has been playing a more active role.

7.4.2 The General Assembly

All the members of the UN are members of the General Assembly. Each member can have five representatives, but only one vote (Articles 9 and 18). In 1945, when the Organisation came into being, there were only 51 members, but their number now stands at 191. The number increased, first, as former colonies and Trust Temtories attained independence and became members. The Soviet Union got split and 12 new States emerged, and of them three were already members and nine States became new members. Several micro-States, such as Monaco, San Marino, became members. Yugoslavia got split into four new States. Admission of a new member is by the General Assembly on the recommendation of the Security Council. Admission is thus necessarily subject to the veto of the permanent members.

The Assembly reaches its decisions on important matters by a majority of the two-thirds of the members present and voting. Article 18 lists matters which are regarded as important, and the list includes recommendations with respect to international peace and security, election of members to various organs of the UN as provided by the Charter, admission to, suspension or expulsion from membership of the UN, and the budget. Other questions may be decided by a simple majority of those present and voting. Whether any question other than those mentioned should be regarded as important is to be decided by two-thirds majority.

The powers of the General Assembly are stated in Articles 10 to 14. Article 10 gives power to discuss any question or matter which is within the scope of the UN Charter or the powers and functions of any organ provided for in the Charter, and make recommendations to the members of the UN or the Security Council or both on such

questions or matters. But an exception is made as provided in Article 12. It is that when the Security Council is exercising in respect of any question or situation the functions assigned to it by the Charter, the General Assembly shall not make any recommendation with respect to such question or situation. In practice this exception is understood as limited to recommendations involving coercive action. Other recommendations are often made after discussion in the General Assembly even while the Security Council is considering the matter. The Secretary General keeps the General Assembly informed of the matters relating to international peace and security that are being dealt with by the Security Council; and informs the General Assembly or its members if the Assembly is not in session, when the Security Council ceases to deal with the matter. Article 11 gives power to the General Assembly to consider the general principles concerning international cooperation in the maintenance of international peace and security, including of disarmament or regulation of armaments and make recommendations with regard to such principles to members or tc the Security Council or to both. The General Assembly may discuss any question brought before it by any member or by the Security Council or by a non-member under the conditions prescribed in Article 35, i.e., accepting the principles of the Charter regarding peaceful settlement of disputes, and make recommendations to the States concerned or to the Security Council. The General Assembly may call the attention of the Security Council to any situation likely to endanger international peace and security. The powers under Article 11 are without prejudice to the very wide general power given under Article 10. Article 13 gives the power to promote studies and make recommendations concerning international cooperation in economic, social, educational and health fields and realisation of human rights. Article 14 gives power to recommend measures for the peaceful adjustment of any situation, regardless of origin. which the Assembly deems likely to impair the general welfare of, and peaceful relations among, nations, including any situation arising from the violation of the Purposes and Principles of the UN. Articles 10, 11 and 14 thus create competence to discuss matters concerning international disputes and make recommendations, but subject to the exception provided by Article 12, i.e., while the Security Council is discussing the matter the General Assembly shall not recommend any coercive measures.

As the composition of the General Assembly changed with the admission of new members, issues that were discussed as important ones in the Assembly also changed. When the Organisation was founded, the West was in a position to command at any time two-thirds majority. But with entry of new members this command was lost. In the first decade after the founding, when it was found that the Security Council was paralysed by the veto, the West brought the matters before the General Assembly to attain its purpose. From 1960 onwards, the new independent States and the socialist countries pressed for independence of the colonial possessions and Trust Territories. The South, i.e., the underdeveloped countries which are mostly former colonies, brought before the Assembly issues such as a new international economic order, sovereignty over natural resources of a State, human rights. Both the North, i.e., the rich industrialised countries, and the South brought environmental matters for discussion. At the beginning of each annual general session of the Assembly, each member so desiring brings to the attention of the Assembly the matters that it considers as important and urgent.

An important development took place in 1950, during the adoption of the Uniting for Peace Resolution. At that time, for a while the Soviet Union boycotted the Security Council, in protest over the occupation of the seat of China in the Council by the Nationalist

China based in Taiwan and not the Communist China based on the mainland. And in 1950, the Communist North Korea invaded South Korea, which was under the protection of the United States, with a view to unify both Koreas. The United States at once sent forces to defend South Korea. The Security Council met and decided that the North Korean attack constituted a "breach of the peace" and called for immediate cessation of hostilities. As North Korea did not comply with the demand, the Council in a resolution called upon the members of the United Nations to fumish such assistance to the Republic of Korea, ie. South Korea, as may be necessary to repel the attack and to restore international peace and security in the area. All the members providing forces were requested to place them under the unified command of the United States. There was authorisation to use the flag of the United Nations and of the members contributing forces. The Security Council was able to take these steps because the Soviet Union was absent from the Council. The Soviet Union realised its mistake and returned to the Council, and any further action by the Council was not possible.

At this juncture, the United States took the initiative to introduce the Uniting for Peace Resolution in the General Assembly. According to this Resolution, if the Security Council is unable to act due to the exercise of the veto by any permanent member, the General Assembly may meet in an emergency special session and make recommendation for use of force to preserve international peace and security. The emergency special session may be called by a resolution passed by any seven members (later nine) of the Security Council or by a simple majority in the General Assembly.

Acting under this Resolution, the Assembly called for stability throughout Korea and establishment of a unified Korea. 4s the forces led by the United Stated started pushing into North Korea, China intervened on a large scale and repelled the invading forces. An armistice took place as a result of negotiations between the delegations of United States, North Korea and China. The armistice line, which is around the 38th parallel, continues to be now the dividing line between the two Koreas. The Soviet Union challenged the legal validity of the Uniting for Peace Resolution. But in later times, under this Resolution the Assembly met several times and acted.

The argument in support of the legality of the Uniting for Peace Resolution is that the Security Council is given "primary" responsibility for maintaining international peace and security but not exclusive responsibility. The General Assembly, on the other hand, has competence to discuss any matter coming within the scope of the Charter and to make recommendations. In the Advisory Opinion on Certain Expenses of the United Nations, the International Court of Justice expressed the opinion that in the division of powers between the Security Council and the General Assembly, the General Assembly was not excluded from adopting measures designed to maintain international peace and security. The Court stated that the expenses incurred for peacekeeping in pursuance of a resolution of the General Assembly acting under the Uniting for Peace Resolution were expenses properly incurred by the United Nations and therefore members should contribute to them under the budget.

7.4.3 The Economic and Social Council

The function of the Economic and Social Council (ECOSOC) is to initiate studies and

adopt reports on economic, social, educational, health and cultural matters and make recommendations to the General Assembly and to Specialised Agencies. It has 18 members elected by the General Assembly. Each year 6 members are elected in the place of the retiring members.

Conflicting interests of nations, which have not yet resulted in clear disputes, come before the ECOSOC and may get resolved in the course of ensuing discussions in the Council, in the General Assembly and in the concerned Specialised Agencies.

7.4.4 The Trusteeship Council

The function of the Trusteeship Council is to consider the reports of the administering powers on the administration of the Trust territories and make recommendations to the General Assembly. The object of the Council is to help the peoples of these territories to attain independence. By now all Trust territories have attained independence, and also all the non-self-governing territories.

7.4.5 The International Court of Justice

The International Court of Justice was established as one of the principal organs of the UN and its statute was made an integral part of the UN Charter. All members of the UN are ipso facto parties to the statute of the Court. Under Article 94, the Members had undertaken to abide by the decisions of the Court. If any member fails to perform its obligation to abide by the decision of the Court, the Security Council, if it deems necessary, may make recommendations or decide on measures to be taken to give effect to the judgment of the Court.

7.4.6 The Secretariat

The Secretariat comprises of the Secretary General and such staff as the Organisation may require. The Secretary General is appointed by the General Assembly on the recommendation of the Security Council. This implies that the person to be appointed must be acceptable to all the permanent members of the Council. Article 98 states that by virtue of his office the Secretary General acts in that capacity at all the meetings of the General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council. He is also ,under a duty to perform such'other functions as may be entrusted to him by these organs. He is required to make annual reports to the General Assembly on the working of the Organisation. In these reports he may draw attention to any question or situation that, in his opinion, is likely threaten international peace and security. He may visit any part of the world to study the situation there or send his representative to study and report to him.

7.4.7 Sub-Organs and Commissions

The General Assembly under Article 22 and the Security Council under Article 29 are given the power to establish such sub-organs as they deem necessary. The Economic and Social Council is given the power to establish Commissions, such as the Commission on Human Rights that the Council may consider necessary for the performance of its functions (Article 68).

7.4.8 Specialised Agencies

Ever since the second half of the nineteenth century, a number of specialised international agencies have been established to promote international cooperation in various fields. Examples are the Universal Postal Union, International Tele communications Union, International Labour Organisation etc. These Organisations have been brought into relationship with the United Nation through agreements entered into by the Economic and Social Council and the particular Specialised Agency. The Economic and Social Council coordinates the activities of the Agencies through consultations with and recommendations made to the Agencies, and through recommendations to the General Assembly and to the members of the UN (Articles 57 and **63).** The Economic and Social Council receives regular reports from the Agencies on the steps taken by the members of the UN on the reports received by it, and on the recommendations made by the General Assembly on such reports to the Agencies. The Specialised Agencies are not parts of the UN; they belong to the larger family of the UN.

7.5 SETTLEMENT OF DISPUTES WITHIN THE FRAMEWORK OF THE UN FAMILY

A dispute arises between two rival contenders if they claim the same subject matter. In the course of interactions between States conflicts of interests do arise. For example, the interest of a major navigating State is that it should have extensive sea space to navigate. A coastal State with small naval power favours a wider territorial sea so that it may defend itself better. States having raw materials desire better prices from the industrialised States which prefer to import the raw materials at lower prices. A dispute arises when a State asserts its right against another. If a State prevents the ships of another State from passing within a certain distance from its coast, a dispute arises. A dispute arises also when the raw materials producing country imposes heavy export duties. A situation threatening peace arises when one or more States do something that may occasion a threat to cause loss to others. These are only some examples. Many more disputes do arise between States in the contemporary world.

When a conflict of interests arises, there are a number of forums in the UN system to which the conflict may be brought for the purpose of reconciliation. It may be brought to the General Assembly, Economic and Social Council, or to the concerned Specialised Agency. The General Assembly may, after the study of the issues by its Sixth Committee and the International Law Commission (a sub-organ), convene an international conference to discuss and harmonise the interests. In this manner a new law arises to resolve the conflicts of interests. The Third UN Conference on the Law of the Sea (UNCLOS III) solved many issues involving conflict of interests arising out of the claim of a maritime nature.

7.5.1 Parliamentary Diplomacy

If a dispute arises, the continuance of which is not likely to endanger the international peace and security, it cannot be brought before the Security Council, but may be brought to the attention of the General Assembly. The dispute is resolved by what is called parliamentary diplomacy. Even if a dispute is brought before the Security Council, even then, it is dealt with by parliamentary diplomacy.

The characteristics of parliamentary diplomacy within international bodies may be stated thus: (a) Parliamentary diplomacy is a form of multilateral negotiation. (b) The forum of negotiation is not ad hoc but a continuing international organ, with interests and responsibilities broader than the particular question that is under consideration. (c) Regular public debate, exposed to mass media of communication in the world, capable of influencing world public opinion, takes place in this process. The debate proceeds in accordance with the prescribed rules of procedure that are amenable to manipulation in order to advance or oppose a particular view on the subject. The debate is concluded by the adoption or rejection of a resolution, by a simple or qualified majority, of votes of equal or unequal weight, subject to or free from veto. The proceedings before any organ considering a dispute take place more or less on these lines: First, the complaining party make a speech strongly defending its position and attacking the opponent' position as unjust and illegal. The opponent replies in a similar manner in an equally acrimonious manner. The complainant may exercise the right of reply, and likewise the opponent. After the series of replies end, the other members of the organ, who may so desire, explain their Governments' stand in relation to the dispute. After the list of speakers is exhausted, the presiding officer adjourns the proceedings. Then the members start consultations among themselves, and with the parties to the dispute, to find out whether a widely acceptable view can be adopted on the subject. If it is the Security Council that is considering the subject, invariably the permanent members will be consulted or some of them might take the lead in finding a consensus. When a group finds that it has sufficient support for the position it has taken, it will present a draft resolution to the organ. The organ considers any amendments that might be proposed in the meeting of the organ, and finally votes on the resolution, accepting or rejecting it. More or less similar procedure takes place at an international conference considering different issues.

In the light of resolution adopted, the positions taken by different members of the organ, and the world public opinion that is generated, the parties may review their respective positions, restart negotiations or admit mediation by third parties. The end result may be settlement of the dispute, or no settlement. The dispute however remains on the agenda of the organ until it is removed by a resolution. If at any time the dispute becomes intense presenting a danger to the peace, it comes up again for discussion.

It was noted at the outset while considering the structure of the UN that the primary purpose of the UN is to preserve the peace. If a dispute does not present a danger to the peace, it is allowed to remain unresolved because any attempt to settle the dispute prematurely might occasion tension, endangering the maintenance of the peace. An enforcement action to resolve a dispute may involve high cost in terms of men and material resources. In the highly decentralised international community, it is considered expedient to leave the parties to a dispute to settle it by themselves by peaceful means or procedures. When the dispute creates a threat to the peace or breach of the peace, collective action is taken to remove the threat or restore the peace. In that process the dispute might get resolved. If it does not it is left to get settled at some future indefinite date or remain dormant. As has been noticed above, a solution is left to be found either by a procedure agreed to by the parties, with or without the help of an intermediary, or by the decision of a third party according to law, given after the parties had agreed to be bound by the decision. The Security Council or the General Assembly is more concerned with the maintenance of international peace and security than with settlement of disputes as a priority.

7.6 SUMMARY

The United Nations has three primary goals: to achieve and maintain world peace, to promote and develop good relations among all nations and to work together with other nations on solving economic, social, cultural and humanitarian problems. To achieve these goals the UN 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 accords to the organs responsible for the maintenance of international peace and security a wide range of choice to achieve their desired ends.

In this unit we have described the features of the important diplomatic and adjudicative methods for resolving conflict. The essence of diplomatic method is that parties to the dispute, after discussing the issue involved in the dispute, either themselves directly or with the help of an intermediary, agree upon how the dispute may be resolved. It is the agreement between the parties that settles the dispute. In contrast, there are the adjudicative methods where the third party is invested with the power to decide the dispute. Whereas in diplomatic methods, the solution reached is usually a sort of adjustment of the differences between the parties, each gaining in part and losing in part in the process, in adjudication the decision may be completely in favour of one party and against the other.

7.7 EXERCISES

1) How do arbitration and judicial settlements differ from other modes of peaceful settlement of disputes involving an intermediary?

2) Critically examine the powers of the Security Council with respect to maintenance of international peace and security.

3) Bring out the significance of the Uniting for Peace resolution.

4) Briefly describe the characteristics of parliamentary diplomacy within the framework of the United Nations.

5) Critically examine the position of the UN charter on the right of self-defence.