CONFLICT RESOLUTION, DISPUTE RESOLUTION, ALTERNATIVE DISPUTE RESOLUTION.

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CONFLICT RESOLUTION, DISPUTE RESOLUTION, ALTERNATIVE DISPUTE RESOLUTION.

The term *"conflict resolution"* refers to a range of processes aimed at alleviating or eliminating sources of conflict. The term "*conflict resolution*" is sometimes used interchangeably with the term "*dispute resolution*" or "*alternative dispute resolution*". Processes of conflict resolution generally include negotiation, conciliation, mediation and other diplomatic mechanisms. The processes of arbitration and judicial settlement are often described with the term dispute resolution, although some refer to them as "*conflict resolution*". Thus conflict resolution and dispute resolution processes are often referred to as alternative dispute resolution. For us to have a better understanding of this write-up, it will be of prime importance to first of all make a distinction between disputes and conflicts.

To begin with, a dispute may be defined as a specific disagreement concerning a matter of fact, law or policy in which a claim or assertion of one party is met with refusal, counter-claim or denial by another. In the broadest sense, a dispute can be said to exist whenever such a disagreement involves private individuals, institutions, juristic persons and even governments and individuals in different parts of the world.

A conflict on its part signifies a general state of hostility between parties. Conflicts are often unfocused, and particular disputes arising from them are often perceived to be as much the results as the cause of the conflict.

Conflicts and disputes are inevitable in domestic and international relations. Human beings often want the same thing in a situation where there is not enough of it to go round. Admittedly, one side may change its position, extra resources may be found, or on looking further into the issue it may turn out that everyone can be satisfied after all. It is obvious that it is difficult for society to evolve without disputes. It is therefore assumed that disputes or more strictly, the conflicts from which disputes emerge are not wholly undesirable but have certain valuable characteristics, and that the proper function of law and other techniques is to manage, rather than to suppress conflicts. Recourse to law offers certain short or long-term benefits to one or more of the parties to the disputes. Thus conflicts or better still disputes, whether between States, neighbours, siblings or entrepreneurs must therefore be accepted as a regular part of human relations and the problem is what to do about them.

Consequently, a basic requirement is a commitment from those who are likely to become involved, that is to say, from everyone, that conflicts or better still disputes to be more specific will only be pursued by peaceful means. Within States, the

principle of peaceful settlement was established at an early stage and laws and institutions were set up to prohibit self help and to enable their differences to be settled without disruption of the social order. In 1945, however, with the consequences of the unbridled pursuit of national objectives still fresh in the memory, the founding members of the United Nations agreed in article 1(I) of the charter that one of the purposes of the United Nations, *"is to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace".* Among the principles in accordance with which the Organization and its members are to act in pursuit of such purpose are that, all members are to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or on any other manner inconsistent with the purpose of the United Nations, and that they shall settle their international disputes by peaceful means in such a manner that international peace, security and justice are not endangered.

The above should therefore act as a source of inspiration to municipal systems which are not as complex as the international community. While there may be an element of truth in the view that law is part of the social superstructure built on the bed rock of economic relations, the converse is also true, and in this context more significant. This is because it provides the conceptual framework in which the human relation is seen and understood. Thus it is of prime importance to have well defined mechanisms through which our differences can be regulated. This takes us to what is today known as Alternative Dispute Resolution (A.D.R.).

At this point we shall be looking at some mechanisms through which our differences can be regulated. Conflicts or better still disputes can be managed through negotiation, mediation and conciliation which are described as diplomatic means of settlement. On the other hand, we have arbitration and judicial means of settlement which are often referred to as adjudication.

Reverting to our topic, there are many ways to resolve conflicts; surrendering, running away, overpowering your opponent with violence, filing a lawsuit, etc. The movement towards Alternative Dispute Resolution (A.D.R.), sometimes referred to simply as conflict resolution, grew out of the belief that there are better options than using violence or going to court. Today, the term A.D.R. and conflict resolution are used somewhat interchangeably and refer to a wide range of processes that encourage non-violent dispute resolution outside of the traditional court system. The field of conflict resolution also includes efforts in schools and communities to reduce violence and bullying and help young people develop communication and problem-solving skills.

Common forms of conflict resolution include:

1) NEGOTIATION.

This is a mechanism wherein only the parties who are directly involved meet to resolve their differences. It always has as its goal, the struggle of reaching an agreement.

2) MEDIATION.

With this mechanism, an independent third party comes in to break the deadlock or impasse. This process entails gathering information, framing the issues, developing options, negotiating and formalizing agreements.

3) CONCILIATION.

This mechanism on its part is loaded. This is because it has the characteristic of both enquiry and fact finding. It is a technique for the settlement of a dispute of any nature according to which a commission set up by the parties, either on a permanent or ad-hoc basis to deal with a dispute, proceeds to the impartial examination of the dispute and attempts to define the terms of settlement susceptible to being accepted by them or of affording the parties, with a view to its settlement, such aid as they may have requested.

4) COMMUNITY CONFERENCING.

It is a structured conversation involving all members of the community (offenders, victims, family, friends, etc.), who have been affected by a dispute or a crime. Using a script, the facilitator invites people to express how they were affected and how they wish to address and repair the harm that resulted.

5) COLLABORATIVE LAW.

It refers to a process for solving disputes in which the attorneys commit to reaching a settlement without using litigation.

There is a common characteristic that cuts across all the aforementioned mechanisms; this is the fact that the decision arrived at is not binding. Thus there is an alternative to these mechanisms which is adjudication. With this medium of settlement, the decision, award or judgment is binding. Looking at diplomatic means of settlement alongside adjudication we can refer to them as Alternative Dispute Resolution (A.D.R.).

Although the success of the mechanisms in part one cannot be denied, it is only with arbitration and judicial settlement that adjudication is done. With diplomatic means, the parties retain control of the dispute and may reject a proposal as they

see fit. Adjudication on its part is based on legal principles. Here an award or a judgment is made which is accepted as binding on the parties.

1) <u>ARBITRATION.</u>

Arbitration is a process for obtaining a ruling of judicial character without going before a court that has a permanent constitution and set rules of procedure.

For arbitration to be successful, certain issues must be defined before the proceeding begins. These key issues will be the content of the *compromis d'arbitrage* (terms of reference). Thus arbitration can only be successful if an exhaustive *compromis d'arbitrage* has been put in place. Nonetheless, issues like admissibility and jurisdiction can act as hurdles to arbitration proceedings.

2) <u>JUDICIAL SETTLEMENT.</u>

Judicial settlement involves the reference of disputes to permanent tribunals for a legally binding decision. This can be done through a number of courts of general and specialized jurisdiction. Judgments in proceedings of this nature are binding on the parties. However, there is a possibility for an appeal. At the end of it all the final judgment has the status of *res judicata* between the parties. A party to the litigation might raise an objection based on the doctrine of admissibility or for want of jurisdiction.

Judgments in judicial settlements are based on points of law. This is evidenced in the words of Judge Fitzmaurice in the Northern Cameroon's case where he said "*courts of law are not there to make legal pronouncements in abstracto… They are there to protect existing and current legal obligation, to afford concrete reparation if a wrong has been committed, or to give rulings in relation to an existing and concrete legal situation.*

The aforementioned mechanisms have their strengths and weaknesses. For more information contact the Nico Halle & Co. Law Firm.