

The Role of Diplomacy in International Dispute Resolution

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ABSTRACT: *A technique by which states' foreign policies are put into action, Diplomacy is also an important instrument through which states deal with each other in the mutual pursuit of their respective national interest. In other words, diplomacy is seen as the method through which states conduct their businesses with each other in the international system. Through diplomacy, states seek to coordinate policies that is designed to enhance their welfare or power. This paper discusses the origin and conceptual clarification of diplomacy, and how diplomacy is conducted in the international system. The paper also examines the functions of diplomacy and its usefulness in dispute resolution. The methods of dispute resolution through diplomacy i.e. the political and judicial methods, are also examined. The paper also examines the role of the International Court of Justice as an international adjudicator.*

KEYWORDS: diplomacy, adjudication, dispute resolution, negotiation, International Court of Justice

INTRODUCTION

Diplomacy

The concept of diplomacy and its conduct in international relations has been a subject of controversy. This controversy has arisen in part as a result of the conceptual framework from which the subject is approached. In other words, there has been a myriad of definitions by different scholars. According to Harold Nicholson (1964: 4-5), diplomacy is “the management of international relations by means of negotiation; the method by which these relations are adjusted and managed by ambassadors and envoys; the business or art of the diplomat”. While the Oxford English Dictionary defines diplomacy as “the management of international relations by negotiation, Stephen Hook (2005: 160-161) defines it as “interactions among representatives of two or more sovereign states involving official matters of mutual or collective concern”. According to Alade (1997: 55), Diplomacy is “the application of intelligence and tact to the conduct of official relations between states by peaceful means”. Alade further sees diplomacy as a means by which nations negotiate agreement.

As a central technique of foreign policy, diplomacy is the process whereby communication from one government flows directly into the decision making apparatus of another. It is the method or means through which a nation state conducts its business with other actors in the international system; it is the skillful conduct of international relations and negotiations between different states or nations in the international arena.

It is through diplomacy that nations seek to coordinate economic policies designed to enhance their welfare or power, or designed to restrict the welfare or power of other states (Alade, 1997). It is also through diplomacy that the foreign policy of every state seeks to attain its purposes by agreement, rather than by war, even though both diplomacy and war are somehow inseparable; nations use either of the two. “The inability of diplomacy to resolve conflict may lead to war. By the same token, the inability of war to win total annihilation may require diplomacy to negotiate a truce”.

The application of diplomacy in international relations seeks to maintain stable and functional relations with as many foreign governments as possible and resolve interstate differences without recourse to force. The absence of tensions during interactions among states offers openings for cordial and profitable relations, particularly for commerce in which the citizens and government of all parties involved may profit (Hook, 2005).

From the foregoing definitions, we can see that the concept of diplomacy means different things to different people, but a common characteristic found in these definitions is that diplomacy involves methods, means and instruments or techniques of achieving foreign policy objectives of nation states.

Origin of Diplomacy in International Relations

According to Okoro (2002: 74), “diplomacy, as a system of personal representation in organized international relations, including permanent legations between states, can be traced to the fifteenth century Europe”. It is believed that the concept of diplomacy is applicably tied to the commercial revolution and the rise of independent states in the international system.

From Rourke’s (2006) account of the origin of diplomacy, the concept of diplomacy dates back centuries before the birth of Jesus Christ. According to him, “historical indicators of negotiations and other diplomatic exchanges date back almost four millennia, and records from what appear to be embassies can be found from as far back as the time of the great Babylonian Emperor, Hammurabi (1792 – 1750 B.C.)”. There was description of diplomacy in Homer’s Iliad (about 850 B.C.), and the Greeks, followed by the Romans, wrote treaties and used ambassadors to negotiate disputes”.

The seventh century witnessed the rise of the state as the dominant political actor which elevated diplomacy to the current practice. The role professional and international diplomats played in international politics from the treaty of Westphalia (1648) to the Congress of Vienna (1815) on behalf of their respective states also gave impetus to the origin of diplomacy. “By the eighteenth

century, the common interest in the maintenance of an international equilibrium led to a fundamental reorganization, as well as the consolidation of diplomatic procedures and practices (Okoro, 2002: 75). According to Okoro, modern diplomacy was revived by international economics as the new industrial powers competed for spheres of influence in developing parts of the world in order to source for cheap raw materials for the industries that sprang up in Europe and America as a result of the industrial revolution.

Corroborating Okoro's assertion, Rourke (2006: 251) argues that "despite many links to the past, diplomacy has also changed drastically because of the evolving context of world politics". Rourke however argues that even though the early twentieth century serves as a benchmark in the transition to modern-era diplomacy, in this evolving new context, the "old diplomacy" did not vanish, but it changed drastically. "The eclipse of colonialism, the advances in travel and communications, the spread of democracy and other factors have all played a role in changing the context of diplomacy". Modern diplomacy which promoted the pursuit of, and advancement of national interests by states, arising from the impetus of the industrial revolution, called for more systematic and business-like instruments than classical diplomacy appeared to offer.

Functions of Diplomacy in International Relations

The functions of diplomacy in international relations are carried out by diplomats. Generally, diplomats are saddled with the responsibility of maintaining stable and functional relations with as many foreign governments as possible and to resolve interstate differences without recourse to force (Hook, 2005). "Diplomats posted overseas also serve as the 'eyes and ears' of their governments, providing leaders at home with timely and firsthand information about developments in host countries" (Hook, 2005: 161).

According to Article 3 of the Vienna Convention of 1961 on diplomatic relations, the functions of diplomatic mission consist the following:

- a. Representing the sending state in the receiving state.
- b. Protecting in the receiving state, the interest of the sending state, and of its nationals within the limits permitted by international law.
- c. Negotiating with the governments of the receiving state on behalf of the sending state.
- d. To ascertain by all lawful means, conditions and developments in the receiving state and reporting thereon to the government of the sending state.
- e. Promoting friendly relations between the sending state and the receiving state and developing their economic, cultural and scientific relations (Alade, 1997: 57).

The functions of diplomacy in international relations as performed by the diplomats which are in accordance with the provisions of the Vienna Convention as outlined above are further expatiated below.

The diplomat provides some of the basic and vital information on which his government base its policy decisions. Modern means of communication allows his government to make him a full partner in the decision-making process of his government, especially as it relates to foreign policy.

The major and primary function of diplomacy in international relations through the diplomat is representation. The diplomat represents his state in the totality of international relations. The diplomat representing his home country in another country, represents both the person and the power of his Head of State. He is given almost the same privileges and immunities that are normally given to visiting Heads of State. "In the eyes of many citizens of the country in which he is stationed, he is the country he represents, and that country is judged according to the personal impression he makes" (Onuoha, 2008: 241). It is the responsibility of the diplomat to represent his country and its interest. He is the symbol and exemplification of the government of his country. The diplomat also conducts negotiations with the receiving government. In this regard, he is to act within the limits of the policy of his government, regardless of his role in shaping the policy. The subject of negotiation, which in a nutshell is the search for solutions by way of peaceful arrangements can range from treaty to other less important political, economic, technical or cultural agreements to resolution of disputes and other bilateral agreements.

Another important function of the diplomat is the provision of information to his sending and receiving countries respectively. Since information is part of the important raw materials for foreign policy formulation, diplomats are to ensure that their sending states receive frank, adequate and precise information about their receiving state. This aspect of the diplomat's function does not stop at just gathering information, they have to assess and analyse whatever information they receive (Alade, 1997). Sometimes, the diplomats spread propaganda which may be favourable to his country in every possible way. All the information gathering and propaganda activities are conducted, of course, not without the consent of the government of the receiving state, which can restrict or curtail them at will, otherwise, it becomes an espionage activity.

The diplomat has the responsibility of making the general policies of his country's government known, understood and accepted where necessary by the receiving government. Another important function of diplomacy through the diplomat is the protection of citizens of the sending country in the receiving country. He is expected to promote and protect the rights of the citizens of his country in the country of his accreditation. He is expected to guard and advance the rights and interests of his country as well as that of its citizens abroad. "The diplomat is also called upon to seek for redress where rights have been infringed, wrongs suffered, property seized or persons injured or not given full protection of the law" (Alade, 1997: 58).

Dispute Resolution Through Diplomacy

There are two basic methods employed by states through diplomacy to settle disputes. Dyke (1973) classified these methods as amicable and non-amicable. He further divided the amicable into those that are political which involves negotiations, and those that are judicial, involving arbitration and adjudication. According to him, the principal distinction between political and judicial methods is that in political method, negotiations do not imply an obligation to reach a settlement, whereas resort to judicial procedures implies an obligation to accept an award or decision as binding.

Under political method, negotiations proceed on the tacit assumption that the parties have a common interest of some sort. Each party responds to the view that by negotiating it may be able

to gain more, or to lose less, than by refusing to negotiate. At the same time, the parties are very likely to have conflicting interests, or conflicting ideas about how a common interest can best be served. The relative prominence of the common and conflicting interests varies greatly in different situations. Where the common interests are dominant, the negotiators face the problem of developing terms that maximize the gains of all parties. Where the conflicting interests are dominant, one side will be seeking to maximize its gains and the other side to minimize its losses. Negotiations are often facilitated by the use of third party. Third party involves, good offices, mediation and conciliation. The third party may be a government that is not directly involved in the dispute, or several governments acting jointly, or an international agency like the Security Council of the United Nations. The third party may provide good offices or mediation, or it may engage in an investigation of the facts or in conciliation (Dyke, 1973). The term good offices usually denotes various kinds of actions by a third party designed to bring about negotiations or a resumption of them. The term mediation usually applies to active participation in the negotiation by the third party, who proposes the terms of settlement. A “commission of inquiry” may seek to ascertain the facts relevant to the issue and reports on them, on the assumption that impartial findings of facts may facilitate negotiation and agreement. If the commission not only reports on relevant facts but also proposes terms of settlement, it is usually said to engage in conciliation (Dyke, 1973).

Under judicial method, the determination and application of existing law is the end point. The method has to do with arbitration and adjudication. Arbitration refers to the settlement of disputes between states by judges of their choice on the basis of the application of the rule of law. States whose disputes are referred to on arbitration normally draw up a written agreement that specifies the various arrangements and conditions under which such arbitration will occur. “It is usually agreed that each party to the case will name two arbitrators, no more than one of whom is to be its national and that the four arbitrators so named shall select a fifth. Each party is expected to argue its case before the tribunal, and the tribunal arrives at its ultimate award by a majority vote” (Dyke, 1973: 290).

Adjudication, which is an old method of settling international disputes, is the second of the judicial methods of dispute resolution. This judicial method developed on a significant scale only after the First World War. Under this method, a Permanent Court of International Justice was established, which was succeeded after the Second World War by the International Court of Justice which is a principal organ of the United Nations. Membership of the United Nations automatically involves adherence to the statute of the court. The International Court of Justice settles disputes between nations.

International Court of Justice as an International Adjudicator

The International Court of Justice is principal judicial organ of the United Nations, which was established to adjudicate disputes brought before it by states in the international system. The Court consists of fifteen judges who are elected for nine-year terms by the concurrent action of the Security Council and the General Assembly.

The traditional home of the International Court of Justice is at The Hague in Netherlands, even though New York is the headquarters of the United Nations. All the members of the United Nations are automatically members of the International Court of Justice. The Court is charged with two basic responsibilities. First, it must exercise jurisdiction over cases submitted to it by member states. Secondly, the court may render advisory opinions to the General Assembly, or to the Security Council upon request (Alade, 1997). “Cases come before the ICJ in two ways. One is when states submit legal disputes between them. The second is when one of the organs or agencies of the UN asks the ICJ for advisory opinion” (Rourke, 2006: 277).

The International Court of Justice does not handle disputes between private individuals nor does it resolve disputes between individuals and government. It only handles or settles disputes or contentious cases between states. The court gets jurisdiction over contentious cases only with the consent of the state involved. “The consent may be given ad hoc; that is, states in disputes may make a special agreement to refer it to the Court. Or, the consent may be given in advance, through the Optional Clause or otherwise” (Dyke, 1973: 291). The Optional Clause is an article in the Statute of the Court. It is optional in the sense that states accepting the rest of the Statute may choose whether or not to be bound by this particular provision.

“Although all UN member-countries are technically parties to the ICJ statute, they must also sign the so-called optional clause agreeing to be subject to the compulsory jurisdiction of the ICJ. About two-thirds of all countries have not done so, and others that once were adherents to the Optional Clause have withdrawn their consent” (Rourke, 2006: 278). This has given rise to some limits on the impact of the International Court of Justice. One of these limits is the lack of enforcement of its decisions. All states’ courts rely heavily on the willingness of those within their jurisdiction to comply voluntarily or, when that fails, on a powerful executive branch to enforce court decisions. States’ domestic courts are supported by the executive branch which has the power to enforce the decisions of these courts. By contrast, countries are often reluctant to enforce the decisions of the International Court of Justice, and the UN Secretariat which is the ICJ executive branch, does not have the authority to enforce ICJ rulings. This allows countries to sometimes ignore the rulings of the ICJ. In other words, member-states of the United Nations have refused to accept the compulsory jurisdiction of the International Court of Justice (ICJ).

Considering these limitations on the effectiveness of the ICJ, one may be tempted to write off the court as having little more than a symbolic value. Such a judgement, according to Rourke (2006) would be in error. He argues that the rulings of the ICJ help define and advance international law. The Court’s handling of disputes gives countries a way, short of war, to settle such disputes once diplomacy has failed.

The International Court of Justice advisory opinions also help resolve issues between International Government Organisations (IGOs) and also helps in establishing international law. In separate actions, the UN General Assembly and the World Health Organisation each asked the ICJ to rule on the legality of using nuclear weapons. The court ruled in 1996 that “the threat or use of nuclear weapons would generally be contrary to the rule of international law applicable in armed conflict”.

It however, went on to say that it was unable to “conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a state would be at stake”.

CONCLUSION

Diplomacy stands out as a peaceful means by which states conduct their foreign policy in the international system. In pursuing their national interest, states employ diplomacy as an important method of achieving such interests. By means of diplomacy, they negotiate with one another and coordinate political and socioeconomic policies that will promote their power and welfare of their citizens.

Apart from its role in the maintenance of stable and functional relations among governments of states in the international system, diplomacy has been a useful instrument of resolving disputes among states without recourse to force. The functions of diplomacy in international relations are performed by diplomats in accordance with the provisions of the Vienna Convention in its Article of the Convention of 1961. Such functions as outlined in Article 3 of the Convention are:

- i. Representation of the sending state in the receiving state
- ii. Protecting in the receiving state, the interest of the sending state, and of its nationals within the limits permitted by international law.
- iii. Negotiating with the governments of the receiving state on behalf of the sending state.
- iv. To ascertain by all lawful means conditions and developments in the receiving state and reporting thereon to the government of the sending state.
- v. Promoting friendly relations between the sending state and the receiving state and developing their economic, cultural and scientific relations (Alade, 1997: 57).

Diplomacy has always applied two methods in the resolution of disputes. These are political method and judicial method. While the political method embraces negotiation, the judicial method has to do with arbitration and adjudication in settling disputes between states. The International Court of Justice is a principal organ of the United Nations Organisation (UNO) that settles disputes between states through adjudication. The court’s jurisdiction over contentious cases between states is only with the consent of the states involved.

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