

**Abstract**

*This article explores the significance of negotiation as a central mechanism of alternative dispute resolution (ADR) within the Nigerian legal and social landscape. Negotiation, as the most basic and flexible ADR process, allows parties to resolve disputes directly through dialogue, compromise, and mutual understanding without resorting to litigation. In Nigeria, where the justice system is often burdened with congested dockets and prolonged delays, negotiation offers a practical and timely avenue for achieving settlements that are both cost-effective and less adversarial. The benefits of negotiation are far-reaching. It promotes peaceful coexistence by enabling disputing parties to preserve relationships while resolving conflicts. It also enhances access to justice by creating a space where individuals and communities can resolve disputes informally, without the financial and procedural barriers often associated with litigation. For businesses, negotiation provides a confidential and commercially sensible path to resolving disputes, minimizing reputational damage and sustaining long-term partnerships. Despite these advantages, negotiation in Nigeria is not without challenges. Cultural differences, power imbalances, lack of awareness, and sometimes inadequate legal support can limit its effectiveness. The article therefore examines the legal framework that recognizes and encourages negotiation in Nigeria, including its role within institutional ADR mechanisms and the court-connected multi-door courthouse system. Ultimately, the article emphasizes that negotiation remains an essential tool for strengthening Nigeria's justice system. By adopting best practices—such as ensuring fairness, good faith participation, and trained facilitators—stakeholders can maximize the benefits of negotiation and promote a culture of peaceful, collaborative dispute resolution.*

**Keywords:** Negotiation, Mechanism, Alternative Dispute Resolution, Conflicts and Nigeria

**1. Introduction**

Broadly defined, negotiation includes all cases in which two or more parties are engaged communication, each with a view to influencing the other's decision. This is however not only limited to formal negotiations taking place on a table.<sup>1</sup> The Black's Law Dictionary<sup>2</sup> defines negotiation as: 'A consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. Negotiation usually involves complete autonomy for the parties involved, without the intervention of third parties.' Negotiation effectively involves dealings between the disputing parties that are aimed at reaching an understanding. According to Fuller<sup>3</sup> negotiation ought to be viewed strictly as a means to an end i.e those processes which parties must pass through in order to arrive at their goal of mutually satisfactory settlement. However, like other means of dispute resolution, negotiation may become an end in itself as it easily becomes a game played for its own sake with so little reserve by the parties that they may end up sacrificing their own interests in order to win. It has been noted that, generally, negotiation is an everyday activity employed by both children and adults, through bargaining. Children usually recognize the need to give up something in order to get something in return. In the same vein, adults have a more refined way of negotiating despite the fact that they may not have attended formal negotiating training classes. Nevertheless, negotiation is a very important skill that is fundamental to the successful employment of any of the Alternative Dispute Resolution (ADR) hybrid mechanisms.<sup>4</sup> Negotiation is also commonly used by professionals such as Lawyers, Bankers, Accountants and Insurance Executives

**2. Meaning of Alternative Dispute Resolution**

What is Alternative Dispute Resolution (ADR)? Alternative Dispute Resolutions refers to the methods and procedures used to resolve disputes either as alternatives to traditional disputes resolution mechanism of the court or in some cases as supplementary to such mechanism. These mechanisms include Negotiation, Mediation, Conciliation, Mini-trial, Case Evaluation and other hybrid mechanisms.<sup>5</sup> Strictly speaking, Arbitration is not one of the ADR processes. Though arbitration shares some features of the ADR process, it also retains a method of adjudication through court process. Arbitration is therefore distinct from ADR. Nevertheless, arbitration has some mechanisms which are not available when resolving disputes through the court system.<sup>6</sup> Alternative Dispute Resolution evolved out of the apparent inability of adjudication through the courts to satisfy some of the expectations of people in the resolution of disputes. The Court system was not only unduly expensive, but also time consuming. Due to the complicated technicalities involved in the court adjudication system and the myriads of objections and counter motions open to parties, resolution of disputes took a long time.<sup>7</sup> Consequently, ADR became a tool for resolving commercial disputes through a systematic use of Mediation and Conciliation. The gradual prominence of ADR was as a result of the dissatisfaction with the court adjudication system.

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<sup>1</sup> F Roger, 'Negotiating Power: Getting and Using Influence' in Breslin J.W and Rubin J.Z (eds) *Negotiation Theory and Practice* (The Program on Negotiation at Harvard Law School, Cambridge, Massachusetts) 127 -128.

<sup>2</sup> *Black's Law Dictionary* 9<sup>th</sup> Edition (Thomas Reuters 2009).

<sup>3</sup> L Fuller, *Anatomy of the Law* (1968).

<sup>4</sup> D Peters, *Alternative Dispute Resolution (ADR) in Nigeria* (Dee-Sage Nigeria Limited 2004).

<sup>5</sup> Goldberg, and others, *Dispute Resolution* (Brown & Co. 1997).

<sup>6</sup> D Peters, *Alternative Dispute Resolution (ADR) in Nigeria* (Dee-Sage Nigeria Limited 2004) 71.

<sup>7</sup> Ibid.

Business men and women preferred the private resolution of their disputes rather than the method of exposure in the full glare of regular courts.<sup>8</sup> Today ADR is widely adopted as a preferred means of commercial dispute resolution throughout Nigeria. It is also being increasingly used in the different fields of human endeavor.

### 3. Alternative Dispute Resolution Mechanisms

**Arbitration:** Arbitration is an ADR (alternative dispute resolution) method where the disputing parties involved presents their disagreement to one arbitrator or a panel of private, independent and qualified third party ‘arbitrators.’ The arbitrator(s) determine the outcome of the case. While it may be less expensive and more accessible than trial, the arbitration process has well-defined disadvantages.<sup>9</sup> By employing arbitration, the parties lose their ability to participate directly in the process. In addition, parties in arbitration are confined by traditional legal remedies that do not encompass creative, innovative, or forward-looking solutions to business disputes. The Arbitration and Conciliation Act<sup>10</sup> provides extensively for dispute resolution through Arbitration. In *Ieka v Tyo*<sup>11</sup> the Court of Appeal held that where parties submit to arbitration and choose the arbitrator to be the Judge in the dispute between them, they cannot whether the arbitral award is good or otherwise, object to its decision, either upon law or the facts.

**Negotiation:** Negotiation is a fundamental key to all consensual ADR activities. It basically involves a quid pro quo approach, that is, giving up something in order to get something in return. Through this method, parties engage in series of discussions or dealings with regard to the subject matter with a view to reconciling differences and establishing areas of agreement, settlement or compromise.<sup>12</sup>

**Renegotiation:** Renegotiation operates on the same rules as negotiation, except that it is used when there is an already existing contract. Renegotiation comes into play when a party seeks to modify some terms of an existing contract.<sup>13</sup> Where negotiation fails then parties may resort to other ADR mechanisms.

**Mediation and Conciliation:** The Arbitration and Conciliation Act<sup>14</sup> provides for the right to settle dispute through Conciliation. Conciliation and mediation have been employed for many years by communities in the settlement of dispute. Because they are similar mechanisms, in some jurisdictions the terms are used interchangeably. However, Conciliation is fundamentally different than mediation and arbitration in several respects. It involves building a positive relationship between the parties of dispute.

Sections 37 to 42 of the Act<sup>15</sup> makes ample provision for conciliation. Section 40 allows parties to a dispute to appoint a Conciliator. The ‘conciliator’ is an impartial person that assists the parties by driving their negotiations and directing them towards a satisfactory agreement. It is unlike arbitration in that conciliation is a much less adversarial proceeding; it seeks to identify a right that has been violated and searches to find the optimal solution. Parties may appear in person or through their legal counsel. Mediation on the other hand is an ADR method where a neutral and impartial third party, the mediator, facilitates dialogue in a structured multi-stage process to help parties reach a conclusive and mutually satisfactory agreement. A mediator assists the parties in identifying and articulating their own interests, priorities, needs and wishes to each other. However, the outcome of mediation is not binding.<sup>16</sup> A major difference between Mediation and Conciliation is that a conciliator seeks concessions from the parties at dispute whereas a mediator tries to make the parties see their own interests and needs in a better light<sup>17</sup>

**Med-Arb:** This is another ADR mechanism whereby parties who have dispute first submit the dispute by agreement to mediation, and when that fails, proceed to arbitration. The advantage here is that when they are unable to reach a settlement via mediation, the initial mediator can then be appointed as an arbitrator charged with the duty of making a binding determination. This is often employed where in the course of the mediation, parties develop trust in their relationship.<sup>18</sup> However, parties who opt to go for the arbitration process must have agreed initially in advance before the process can commence.

### 4. Characteristics of Negotiation as a Mechanism of ADR

The following are the notable characteristics of negotiation as one of the mechanisms of Alternative Dispute Resolution (ADR):<sup>19</sup>

<sup>8</sup> MT Ladan., *Alternative Dispute Resolution in Nigeria: Benefits, Processes and Enforcement* in Current Themes in Nigerian Law 248.

<sup>9</sup> D Peters, *Alternative Dispute Resolution (ADR) in Nigeria* (Dee-Sage Nigeria Limited 2004).

<sup>10</sup> LFN CAP A18, 2010.

<sup>11</sup> (2007) 11 NWLR Pt. 1045 385.

<sup>12</sup> D Peters, *Alternative Dispute Resolution (ADR) in Nigeria* (Dee-Sage Nigeria Limited 2004).

<sup>13</sup> *Black's Law Dictionary* (9<sup>th</sup> Ed., Thomas Reuters 2009).

<sup>14</sup> LFN CAP A18, 2004.

<sup>15</sup> Arbitration and Conciliation Act,

<sup>16</sup> Blaney McMurtry LLP. Advantages of Alternative Dispute Resolution <[https://www.blaney.com/sites/default/files/other/adr\\_advantages.pdf](https://www.blaney.com/sites/default/files/other/adr_advantages.pdf)> accessed 12 September 2025.

<sup>17</sup> Ibid.

<sup>18</sup> D Peters, *Alternative Dispute Resolution (ADR) in Nigeria* (Dee-Sage Nigeria Limited 2004).

<sup>19</sup> Dispute Resolution Reference Guide <<http://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/03.html>> accessed 20 April 2025.

**Voluntariness:** Negotiation is a voluntary process as no party is forced to participate in a negotiation. The parties usually freely opt to accept or reject the outcome of the negotiations and can withdraw at any point during the process. Also, parties may decide to participate directly in the negotiations or they may choose to be represented by someone else, such as a family member, friend, a lawyer or other professional.

**Bilateral/Multilateral:** Negotiations can involve two, three or dozens of parties. They can range from two individuals seeking to agree on the sale of a house to negotiations involving diplomats from dozens of States (e.g., World Trade Organization (WTO)).

**Non-adjudicative:** Negotiation involves only the parties. The outcome of a negotiation is reached by the parties together without recourse to a third-party neutral.

**It is informal:** There are no prescribed rules in negotiation. The parties are free to adopt whatever rules they choose, if any. Generally, they will agree on issues such as the subject matter, timing and location of negotiations. Further matters such as confidentiality, the number of negotiating sessions the parties commit to, and which documents may be used, can also be addressed.

**Confidentiality:** In negotiation, the parties have the option of either negotiating publicly or in private. In certain circumstances, there may be need to restrict the negotiating process from public view or scrutiny. In the government context, negotiations would also be subject to confidentiality clauses.

**Flexibility:** The scope of a negotiation depends on the choice of the parties. The parties can determine not only the topic or the topics that will be the subject of the negotiations, but also whether they will adopt a positional-based bargaining approach or an interest-based approach.

## **5. Negotiation/ Bargaining Models**

Negotiation is a fundamental key to all consensual ADR activities. It basically involves a quid pro quo approach i.e giving up something in order to get something in return. Through this method, parties engage in series of discussions or dealings with regard to the subject matter with a view to reconciling differences and establishing areas of agreement, settlement or compromise.<sup>20</sup> There are various bargaining models and these are discussed below.

**Integrative Bargaining Model:** This model of bargaining focuses on problem solving. It involves a mechanism where both sides genuinely seek a solution that best suits their interests from the outset. The integrative bargaining model seeks to expand the 'fixed pie' which parties normally start out with so as to accommodate the interests of all the parties.<sup>21</sup> It has been noted that there are four major steps of integrative problem solving, as follows:<sup>22</sup>

- i) Be hard on substance and easy on people: People sometimes miscommunicate their standing or interests in stressful situations such as bargaining. This may be because they feel threatened or simply because they are operating from their own mind frame. It is therefore important for the integrative problem solver to work towards separating people from their problem and avoid inferring the opponent's intentions from the bargainer's fears
- ii) Distinguish interests from issues and focus on interests: The second step of the integrative model is to focus less on parties' position but rather find more areas of agreement. In this approach, parties tend to listen more closely to what is not said by the opponent and also pay attention to body language. This helps to identify the true interests of the parties and uncover areas of mutual interests
- iii) Brainstorm on options that have potential for mutual gain: This involves deliberating, identifying and establishing options for mutual gain. It also involves considering each party's vantage point in the bargaining process
- iv) Evaluate potential solutions: At this stage, parties place the options on the table and then consider those that are most realistic and best suit their needs

**Positional Bargaining Model:** This bargaining model centers on the parties distributing the subject matter for which they are bargaining between themselves. It is also known as the 'distributive bargaining' model and the main key to successfully employing this method is by using its predictability to secure deals between the parties.<sup>23</sup> It has been noted that certain rules must be taken into consideration when applying this model.<sup>24</sup> First, unlike the integrative model, it should be noted that the positional bargaining model operates as a fixed pie to be shared between the parties. There is therefore tendency for unequal shares of the pie by the parties. Secondly, the positional or distributive model is perceived as a zero-sum exchange i.e. one party's gain results in another party's loss. It is possible for one party to get everything while the other gets nothing. Thirdly, the positional model consists of parties moving from already predetermined positions which the already adopted before engaging in negotiations. Finally, the model is doomed to failure if the parties are unwilling to make concessions or compromises.<sup>25</sup> Some of the criticisms of the positional or distributive bargaining model are that it leads to a winner – loser scenario. This therefore occasions a hostile and confrontational approach between the parties.<sup>26</sup> Furthermore, this confrontational approach leads to delays, stress, deadlock and eventually breakdown of negotiations.<sup>27</sup>

**Yielding Model:** This model of bargaining involves parties to the bargaining process attempting to reduce their underlying goals and values rather than make overt demands. Usually, a party who adopts this model does not concern himself with the tactics of the other party but is more interested in quickly resolving the dispute.<sup>28</sup> However, the disadvantage of this model lies in the danger of one party yielding while the other refuses to yield. It may also lead to difficulty in enforcing the outcomes of the negotiation.<sup>29</sup>

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<sup>20</sup> D Peters, *Alternative Dispute Resolution (ADR) in Nigeria* (Dee-Sage Nigeria Limited 2004) 70.

<sup>21</sup> Ibid.

<sup>22</sup> R Fisher and W Ury, *Getting to Yes: Negotiating Agreement Without Giving in* (Houghton 1981).

<sup>23</sup> D Peters, *Alternative Dispute Resolution* 76.

<sup>24</sup> Ibid.

<sup>25</sup> A Robert, *The Evolution of Cooperation* (Basic books 1984).

<sup>26</sup> Rau and others, *Processes of Dispute Resolution: The role of lawyers* (Foundation Press Inc. 1989) 78.

<sup>27</sup> Ibid.

<sup>28</sup> D Peters, *Alternative Dispute Resolution (ADR) in Nigeria* (Dee-Sage Nigeria Limited 2004) 80.

<sup>29</sup> Ibid.

**Gaming Bargaining Model:** The gaming model of bargaining works by focusing on identifying the optimum settlement strategy to be adopted by the party using it and for that particular case. It is also known as the Game Theory.<sup>30</sup> The successful use of this model depends on whether the parties agree to cooperate with one another. It essentially employs a tit for tat mechanism in the bargaining process such that where one party refuses to cooperate, the other retaliates in the same vein.<sup>31</sup> The gaming bargaining model has five broad rules:

- a. A party intending to employ this model must indicate willingness to cooperate with the other in order to resolve the dispute and arrive at agreeable terms. By showing that he is willing to cooperate, the other party will be encouraged to follow suit. Showing willingness to cooperate can be done in small ways such as politely requesting for information which the other party is ordinarily mandated to provide.<sup>32</sup>
- b. Be ready to retaliate where the other party shows unwillingness to cooperate or is seemingly competitive in approach. In certain instances, a party may misinterpret willingness to cooperate as a sign of weakness of the other party. In which case, the other party must be ready to respond in like manner by being competitive as well. This protects the party from undue exploitation.
- c. Where the party that was hitherto competitive becomes cooperative, the other party must be willing to forgive and cooperate so as resolve the issues amicably
- d. Negotiators applying this model must endeavor to be clear and consistent in their approach. This allows them to be taken seriously and to avoid misinterpretation. Also, consistency allows for the parties to be predictable which results in cooperation
- e. Be flexible- One major rule for negotiators adopting this model is that they must be flexible. Flexibility motivates the other party to cooperate.

## 6. The Art of Negotiation

Negotiation is often an informal process and involves two or more people of either equal or unequal power meeting to discuss shared and/or opposed interests in relation to a particular area of mutual concern.<sup>33</sup> The success or otherwise of the negotiation process requires that the parties negotiating take into consideration certain factors, especially adequate preparation. The choice of negotiating style will also be an important consideration, as a competitive negotiator will view the bargaining exclusively in terms of advancing his or her interests and will conduct the negotiations accordingly. The cooperative negotiator, however, will view the issues in a fundamentally different light and will attempt to seek common ground with his or her counterpart.<sup>34</sup> The following should be taken into consideration for a successful negotiating process:

**Adequate Preparation:** Like most human endeavours, adequate preparation before embarking on the negotiating process is key. A lack of preparation will result in unsatisfactory outcomes.<sup>35</sup> A party embarking on negotiation must be clear and certain about what he wants to negotiate as well as expected outcomes. He must establish well defined goals and organize and prioritize both financial and non-financial objectives before entering the negotiation.<sup>36</sup>

**Understanding of How to Deal with Differences:** Underlying any successful relationship is the principle of mutual respect. This is particularly true during negotiations, where cultural and/or linguistic differences between the parties may occasionally result in misunderstandings between them. Such differences will influence the perceptions and assumptions of individuals and how they bargain. It is also important to note that differences in gender may also play a role in the negotiating process, whether the parties are of the same or different cultural background. Reliance on stereotypes, whether they be based on gender, cultural, physical or racial differences or physical disability, will cause and reinforce misunderstandings between the parties.<sup>37</sup> The ability to deal with others who are not of the same gender or cultural origin or who differ in some way from one's self varies with each individual and the degree to which she or he has been exposed to and is willing to accept diversity. Whatever one's background, clearly demonstrating respect for and an open-minded attitude towards others is always an appropriate course of action. When there are cultural or other differences among parties to a negotiation, it is important to be aware of and sensitive to these differences. In such a situation, it is essential to communicate clearly and effectively with the other party or parties in a negotiation. Doing so will enhance the relationship between the parties as well as minimize the chances of a misinterpretation of the underlying message

## Understanding of How to Deal with Deceptive Conduct

As stated earlier. Parties sometimes take willingness to cooperate as a sign of weakness; as a result, they assume a competitive or dishonest stand point.<sup>38</sup> At any point during negotiations, one party may decide to use a variety of tactics in order to obtain an advantage over another party. This behaviour can range from pressure tactics (attempting to force a party to accept specific terms), intimidation (implicit or explicit), deliberate ambiguity regarding the scope of the negotiating mandate to blatantly unethical behavior (providing misleading or false information, lies, etc.)<sup>39</sup> Advance preparation is essential in order to respond effectively

<sup>30</sup> Ibid.

<sup>31</sup> HJ Brown and A Marriot, *ADR Principle and Practice* (Sweet and Maxwell 1993) 76.

<sup>32</sup> Ibid.

<sup>33</sup> K. Muigua 'Alternative Dispute Resolution and Article 159 of the Constitution' <<https://www.ciarkkenya.org/assets/a-paper-on-adr-and-article-159-of-constitution.pdf>> accessed 13 September 2025.

<sup>34</sup> Ibid.

<sup>35</sup> D Peters, *Alternative Dispute Resolution (ADR) in Nigeria* (Dee-Sage Nigeria Limited 2004) 82.

<sup>36</sup> Ibid.

<sup>37</sup> Dispute Resolution Reference Guide <<http://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/03.html>> accessed 20 September 2025.

<sup>38</sup> D Peters, *Alternative Dispute Resolution (ADR) in Nigeria* (Dee-Sage Nigeria Limited 2004) 82.

<sup>39</sup> Dispute Resolution Reference Guide <<http://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/03.html>> accessed 13 September 2025.

to these tactics, whenever they may arise. In devising strategies to counter such behaviour, each situation must be viewed as unique. Previous experience of others can provide useful guidelines in formulating a suitable response. Awareness of basic communication techniques and strategies on how to communicate with difficult or deceptive individuals may also be extremely helpful. Ultimately, the choice of tactic to be used to rebut difficult or unethical conduct is a question of personal judgment, as what may be an appropriate response in one situation may be excessive or too conciliatory in other circumstances.

## **7. The Procedure for Negotiation in Practice**

**The Initial Assessment:** The negotiation process begins with a communication or signal from one party to the other indicating a willingness to bargain. Since negotiation is a voluntary process, the first and fundamental step to be taken is to confirm whether or not the other party or parties are interested in negotiations. In making such an assessment, it is important to take into account the following factors:<sup>40</sup>

- i. the desire to resolve the dispute;
- ii. whether a negotiated solution is in the interests of any or all of the parties in question;
- iii. the credibility of the other party;
- iv. the willingness of the parties to establish or preserve a relationship;
- v. whether or not there is a disparity between the parties to the extent that it would be impossible to bargain equally, i.e., there is a marked contrast between the parties in terms of the level of education or the resources of the parties;
- vi. the desirability of using another form of alternative dispute resolution, such as mediation or arbitration; and
- vii. proper authority to enter into negotiations and to reach an agreement or settlement.

**Contacting the Other Party:** Once it has been decided that negotiations are an appropriate course of action, arrangements that must be made with the other parties include:<sup>41</sup>

- i. outlining the agenda and the scope of the negotiations;
- ii. fixing the timetable, i.e., whether or not there will be a fixed period for the talks as well as the frequency and the duration of the negotiations;
- iii. determining the identity of the participants, ensuring that all interested parties have been consulted;
- iv. choosing the locale for the negotiations (preferably a neutral location) and arranging necessary support services;
- v. specifying the official language(s) to be used for the purposes of the negotiations, as well as the need for translation and interpretation services
- vi. deciding whether or not the negotiations and any resulting agreement will be confidential

Consistency in these matters will not only assist in ensuring the negotiations are as effective as possible, they will also reinforce one's credibility and can thus contribute to establishing mutual confidence and trust.<sup>42</sup>

**Preparation of a Strategy and Interest Assessment:** A crucial factor in achieving one's goals in negotiation is thorough preparation. Therefore, it is suggested that the following steps should be taken prior to any bargaining session:

- i. Study the dispute in question before the negotiations. This means not only obtaining the facts surrounding the dispute, but also attempting to find out as much as possible about the other party or parties, their background and their negotiating interests.
- ii. Harmonize and reconcile the varying and sometimes competing interests within one's negotiating side before negotiating with the other side. Failure to do so can undermine one's negotiating stance by making the other party aware of internal disagreements and thus raising doubts as to one's ability to implement any future agreement.
- iii. When assessing one's interests as well as those of other parties, the Best Alternative To a Negotiated Agreement (BATNA) must be taken into account.<sup>43</sup> The BATNA is the standard against which any proposed agreement should be measured. It is, in essence, the best of all the possible alternatives to negotiation should the latter fail. Assessing one's BATNA is indispensable and should be done carefully and well in advance of any bargaining session so as to avoid unpleasant surprises from the opposing party during the negotiations. Attempting to estimate the BATNA of the other party will also be worthwhile when planning one's negotiation strategy.  
On the other hand, the Worst Alternative to a Negotiated Agreement (WATNA) must also be taken into consideration. The WATNA can be useful in evaluating whether or not to walk away from an agreement. Where the WATNA is considered better than the resolution being proposed by the other party, it may be prudent to walk away.<sup>44</sup>
- iv. Creativity is necessary when attempting to devise solutions when at first glance the dispute appears to be insoluble. An impasse will often result when the negotiating parties advance specific positions and refuse to change them. Each party should then canvass the various members of the negotiating team in order to obtain their views regarding possible solutions, i.e., determining the parties' underlying interests and how they may be satisfied. This should be done in an environment which encourages the team members to express their ideas freely and without fear of criticism, e.g., a brainstorming session.
- v. Thought must be given as to how the negotiations will be handled. For example, it must be decided in advance whether there will be one spokesperson or whether each member of the negotiating team will be responsible for one or more particular areas or topics. Another consideration is fixing in advance when and how to call a private team caucus that will interrupt the negotiations. Resorting to a caucus of team members is helpful when a new issue emerges at the table or an issue on the table requires clarification or further analysis. Finally, all members of the negotiating team should be

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<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> R Howard, *The Art and Science of Negotiation* (Belknap Press 1982).

<sup>43</sup> Ibid.

<sup>44</sup> The Appalachian law Center <[www.appalachianlawcenter.com/watnabatna/](http://www.appalachianlawcenter.com/watnabatna/)> accessed 11 September 2025.

aware of the need to resolve any internal disputes away from the negotiating table and to avoid revealing any such disputes or doubts to the other parties, e.g., through the use of inappropriate body language.

### **8. Negotiation as a Mechanism of International Dispute Resolution**

Negotiation is internationally recognized as one of the mechanisms of dispute resolution. Article 2(3) of the General Assembly Resolution<sup>45</sup>: 'States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice'. This provision is derived from Article 33(1) of the United Nations Charter<sup>46</sup> and does not list the dispute resolution mechanism in any order of priority or preference. However, it has been noted that negotiation is not only one of the major means of handling international dispute, but is also employed more frequently than the others.<sup>47</sup> Even in cases where other mechanisms are employed to resolve dispute, negotiation also has a role to play as it can be directed towards technical issues such as the terms of reference for an inquiry or the arrangement for the implementation of an arbitral award.<sup>48</sup> Negotiation may also be employed not only as a mechanism for resolving dispute but also to prevent the dispute from ever occurring the first place, for example, engaging in consultation with the other party in anticipation that a decision or proposed course of action may cause harm to the other.<sup>49</sup>

### **Advantages of Negotiation**

Below are some of its advantages and disadvantages:<sup>50</sup>

- a) Negotiation as an ADR mechanism is notably speedy and it encourages informal resolution of disputes. It is generally less stressful
- b) Negotiation facilitates confidentiality. As an ADR process it avoids publicizing the issues relating to the dispute as well as the process.
- c) It may improve communication between parties thereby preserving or enhancing relationships between the parties
- d) Negotiation gives the parties a high degree of control over the process. Parties create their own process and craft their own agreement
- e) Flexibility: In negotiation, resolutions can be tailored to the needs and underlying concerns of the parties and address legal and non-legal issues as well as providing for remedies unavailable through adjudicative processes
- f) Legal and/or other standards of fairness can be used in crafting agreement
- g) It allows for increased satisfaction and compliance with settlements when parties have directly participated in crafting agreements
- h) It may assist in clarifying and narrowing issues, and fostering climate of openness, co-operation, and collaboration, even if a settlement is not reached
- i) It is risk-free. Communications are without prejudice and if no agreement reached, parties can pursue other options

### **Disadvantages of Negotiation**

- a) Negotiation may sometimes may be used as stalling tactic by either of the parties
- b) The parties are not compelled to continue negotiations. They can end the process at any time.
- c) Negotiation does not produce legal precedents that can be used for future similar disputes
- d) The exclusion of parties that may be pertinent to the negotiation process weakens the final agreement
- e) Parties may have limited bargaining authority
- f) There is little or no check on power imbalances between the parties
- g) In negotiation, the disclosure of information and truthfulness of communications depend on good faith of parties
- h) Negotiation may not adequately protect parties' legal rights

### **9. Conclusion**

In summary, as discussed above, negotiation is a very important mechanism of ADR. It is said to be a formal discussion between people who are trying to reach an agreement and also a method by which parties to a dispute opt to settle their differences themselves without reference to a third party. It consists basically of discussions between the interested parties with a view to reconciling divergent opinions or at least understands the different positions maintained by them. Disputes are an inevitable part of both international and domestic commercial relations. Often times, in international relations, these disputes arise due to competing claims by states for the use of the same thing, such as river, piece of land or money. Where these disputes ensue there is a need for the parties to take measures to forestall the complete breakdown of relations. Alternative Disputes Resolution provides veritable mechanisms through which disputes between parties can be resolved amicably and in such a way that provides the necessary environment for these parties to continue to engage themselves in commercial transactions. One of the central objectives of the parties to the agreement is usually a firm commitment that whenever they have any disagreement, they will resort to peaceful means of settlement. Therefore, in order to arrive at a peaceful resolution between the parties, there is a need to negotiate the terms of the agreement with each side stating its priority and moving towards an agreement that is mutually beneficial and one that all the parties are comfortable with.

<sup>45</sup> United Nations General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, GA Res 2625 (XXV), 24 October 1970.

<sup>46</sup> Charter of the United Nations, 1945.

<sup>47</sup> JG Merrills, *International Dispute Settlement* (Cambridge University Press 2005) 2.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Blaney McMurtry LLP, 'Advantages of Alternative Dispute Resolution' <[https://www.blaney.com/sites/default/files/other/adr\\_advantages.pdf](https://www.blaney.com/sites/default/files/other/adr_advantages.pdf)> accessed 12 September 2025.