

Contemporary Alternative Dispute Resolution (ADR) and International Diplomacy – A Nexus Approach to Sustainable Peace, Humanitarian and Development Practice

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Abstract

Alternative Dispute Resolution (ADR) mechanisms and International Diplomacy are essential non-litigation strategies for providing peaceful solutions to conflict situations. When combined, both strategies can provide a more professional and effective way to promote sustainable peace and development. Using qualitative secondary data, this Paper explores emerging trends and prospects for applying both strategies in a nexus approach for promoting peace, humanitarian and development practice. The recommended output provides a deeper understanding of the application of ADR in international peace processes to build the capacity of a generation of peace leaders and promote transitional justice and gendered development across a spectrum of peace practitioners. The authors recommend a specialized training programme for lawyers, law enforcement officers, and peace, humanitarian and development practitioners on the proposed model and integrating the same into the ongoing Africa Peace Fellowship program in partnership with the universities of Ibadan and Redeemers to spur more scholarly work, professionalization and practice.

Keywords: Contemporary ADR; International Diplomacy; Peace; Humanitarian; Development Practice

1. Introduction

Dispute settlement and prevention include eliminating the possibilities of conflicts through prior planning to reduce them before they escalate into formal arguments. Dispute settlement and prevention include eliminating the possibilities of conflicts through prior planning to reduce them before they escalate into formal arguments (UNCTAD et al., 2010). In the past, with the incessant conflicts and security challenges across the globe, litigation was the main option for redress; however, in recent times, other dispute resolution mechanisms known as alternative dispute resolution (ADR) mechanisms have arisen as substitutes for litigation. ADR process has been around for a century, and is assumed to exist all over the world (Begum et al., 2022). ADR as a concept has been defined in many ways; for instance, Mnnokin (1998) defined Alternative dispute resolution (ADR) as a set of practices and techniques aimed at permitting the resolution of legal disputes outside the courts; it encompasses mediation, arbitration, and a variety of “hybrid” processes by which a neutral facilitates the resolution of legal disputes without formal adjudication. ADR can also be viewed as a substitute for the court system, that is, a set of processes that comprise of negotiation, conciliation, mediation and arbitration (ILO, 1997; Ige-Olaobaju, 2017).

Alternative dispute resolution (ADR) also refers to the different ways of resolving disputes without a trial and includes mediation, arbitration, and neutral evaluation which are generally confidential, less formal, and less stressful than traditional court proceedings (New York Courts, 2023). Alternative Dispute Resolution comprises various approaches for resolving disputes in a non-confrontational way, ranging from negotiation between the two parties, a multiparty negotiation, through mediation, and consensus building, to arbitration and adjudication (Yona, 2013).

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Alternative Dispute Resolution (ADR) generally describes the different methods and procedures used in resolving disputes either as substitutes for the traditional dispute resolution mechanism of the court system or in some cases, complementary to such mechanisms. ADR is an alternative to an adversarial process such as litigation that often results in win-lose outcomes. ADR encompasses numerous approaches for resolving disputes in a non-confrontational way, ranging from negotiation between the two parties, a multi-party negotiation, through mediation, and consensus building, to arbitration and adjudication. It also refers to facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other before some other legal process, and the arbitration systems or mini-trials that are similar to a courtroom process (NOUN, 2011).

Diplomacy which is often equated with negotiation (Berridge, 2002; Leguey-Feilleux, 2009), is another instrument for dispute resolution at the international level; it comprises spoken or written communication by representatives of states (such as leaders and diplomats) intended to influence events in the international system (Trager, 2016; Barston, 2006). Diplomacy refers to the management of international relations by negotiation; the method by which these relations are adjusted and managed by ambassadors and envoys; and the business or art of the diplomatist (Zartman, 2016). Bjola & Kornprobst (2018) defined Diplomacy as the institutionalized communication among internationally recognized representatives of internationally recognized entities through which these representatives produce manage and distribute public goods. Diplomacy also refers to the conduct of international relations by negotiation and dialogue, or by any other means to promote peaceful relations among states (Ilyas & Ali, 2022). Harvard Law School (2023) defined diplomacy as the art of creating and managing relationships among nations and the art of negotiation is that of forging relationships through agreements.

Alternative Dispute Resolution (ADR) mechanisms and International Diplomacy are essential non-litigation strategies for providing peaceful solutions to conflict situations. Combined, both strategies can provide a more professional and effective way to promote sustainable peace and development.

2. Contemporary Alternative Dispute Resolution (CADR)

Contemporary alternative dispute resolution (CADR) can be traced to the calls for reform of the traditional justice system that occurred across the world in the early 1970s (Stempel, 1996). Most scholars including Alexander (2006) and Shaw (2016) believed that CADR emanated from dissatisfaction with the existing system, particularly as part of the civil justice reform movement that was seeking improved access to justice and geared towards the efficient resolution of disputes. Monyei (2018) identified the following essential features of contemporary ADR – Informality (the rules of procedure are flexible, without formal pleadings, extensive written documentation, or rules of evidence); Application of Equity (each case is decided by a third party or negotiated between disputants themselves based on principles and terms that seem equitable in the particular case rather than on uniformly applied legal standard); direct participation and communication between disputants in the process and in designing settlements (this enhances more direct dialogue and opportunity for reconciliation between disputants, potentially higher levels of confidentiality since public records are not typically kept, more flexibility in designing creative settlements, less power to subpoena information, and less direct power of enforcement); voluntariness (disputants employ the use of the principles of voluntariness and self-determination to define the form they desire their dispute settlement to take); and confidentiality (ADR processes are private and confidential; their practitioners are bound by their code of ethics to preserve the privacy of their clients) (Susskind, 2005).

Contemporary ADR promotes the use of diplomatic-political, traditional, national and international dispute settlement procedures such as negotiation, mediation, conciliation, and arbitration. Though it is not always successful, states use negotiation to solve even contentious issues due to its effectiveness (Gross, 1988). Direct diplomatic negotiations are the most important and most common means to settle international disputes; negotiation is the method of settling disputes among parties by compromising to the agreement and avoiding conflicts and arguments (Alhashemi, 2022). Adjovu (2022) believed that negotiation is a critical skill needed in international politics; it is the primary function of diplomacy in international relations. Mediation and conciliation are ADR methods used to settle disputes outside the court. Both methods appoint a neutral third party to help parties reach an agreement in their negotiation process; however, while the mediator assists the parties in reaching their agreement, the conciliator's duty is to persuade them to reach an agreement. Cornell Law School (2023) defined mediation as an ADR method with a neutral person that helps the parties to find a solution to their dispute; it is less rigid than litigation and arbitration and allows for creative techniques that would not be acceptable in other settings (for instance, a mediator can speak *ex parte* with each side to find mutually acceptable solutions that might not otherwise emerge). Conciliation refers to the attempted resolution of issues raised by a complaint, or by the investigation of a complaint, through informal negotiations involving the aggrieved person, the respondent, and the Assistant Secretary while negotiation is the process of parties bargaining in an attempt to reach an agreement or an out-of-court settlement. Arbitration refers to an ADR method where the parties in dispute agree to have their case heard by a qualified arbitrator out of court.

Online Dispute Resolution (ODR) is a form of contemporary ADR that is gradually gaining momentum among scholars, judicial officers and practitioners across the Globe; according to the United Nations (2016), ODR is a viable solution to the lack of access to effective justice. ODR evolved from the synergy between ADR and Information Communication Technology (ICT) as a method for resolving disputes that were arising online, and for which traditional means of dispute resolution were inefficient or unavailable (Katsh & Rifkin, 2001; Lodder, 2006). ODR also involves programs or systems offered by private enterprises, non-profit organizations, governments, or a combination of these (Salter, 2017).

ODR is a form of dispute resolution which uses technology to facilitate the resolution of disputes between parties; it primarily involves negotiation, mediation, arbitration, or a combination of all three. However, Richard Susskind (2020) while trying to differentiate between Online ADR (OADR) and ODR, argued that adding Zoom to ADR mechanisms or the current court system does not equate to sufficiently capitalizing on all that technology has to offer beyond online communication. APEC (2023) on their part, argued that advanced technologies such as Artificial Intelligence (AI) and machine learning, which are an integral component of ODR, remain largely untapped by ADR providers and the justice system. Haloush (2008) defined online alternative dispute resolution (OADR), or ADR online as the use of internet technology, wholly or partially, as a medium by which to conduct the proceedings of Alternative Dispute Resolution (ADR), to resolve commercial disputes which arise from the use of the internet. Those proceedings are operated by neutral private bodies under published rules of procedure.

ODR programmes refer to the new menu of processes for dispute resolution and litigation offered online by courts (Ebner & Greenberg, 2020). ODR programmes are getting more integrated into the menu of court offerings as a means of dealing with the justice crisis and as a system for cost-effective and efficient resolution of legal disputes (Shmitz, 2010; Katsh & Rabinovich-Einy, 2017). Unlike previous court-connected alternatives to litigation, ODR is a disruptive intervention that revolutionizes the court's delivery of justice and recalibrates the justice expectations of courts, litigants and lawyers (Condlin, 2017; CIV. JUST. COUNCIL, 2015). ODR can also be viewed as a wide field which may be applied to a range of disputes; from interpersonal disputes including consumer to consumer disputes or marital separation; to court disputes and interstate conflicts (NCTDR, 2023). Though courts are beginning to experiment and integrate ODR into their judicial procedures, and legal frameworks are created to function as basis for ODR cases, ODR as a method of dispute settlement still remains mainly applied and used in the cyberspace (Resolution Systems Institute, 2023; Leahu, 2020).

Private-ODR, Public-ODR and Court-related ODR are three main features of an ODR. Private ODR systems are created using best practices in software development that include rigorous user-experience testing to ensure that dispute resolution processes are simpler and easier to use than traditional public justice processes. Private ODR provides dispute resolution services such as mediation or arbitration, often at prices that compare favourably with court fees (Barendrecht et al, 2016). These services create accessible alternatives to public justice processes by connecting users with expertise they could not otherwise easily find or afford. Unlike public-ODR which must cautiously design technology in line with applicable legal principles and statutory provisions, private-ODR systems can devise their own internal rules, including evidentiary and procedural ones, without being bound by the weight of the common law (Salter, 2017). Public Online Dispute Resolution (Public-ODR) is seen as the online equivalent of ADR (Ahalt, 2009), and often makes use of various technologies and dispute resolution methods at a broader level.

Court-related ODR was defined by Katsh & Rabinovich-Einy (2017) as an aspect of online Dispute resolution which refers to court-initiated uses of online technology to manage and resolve disputes submitted to them. Court-related Online Dispute Resolution (Court-related ODR) is a public-facing digital space in which parties can convene to resolve their dispute or case; it has three main distinguishing elements - it operates exclusively online; is explicitly designed to assist litigants in resolving their dispute or case rather than a technology platform to support judicial or court staff decision-making; and it is hosted or supported by the judicial branch as well as integrates and extends dispute resolution services offered by the judicial branch into digital space to serve citizens efficiently, effectively, transparently, and fairly. Court-related ODR has the advantages of providing dispute resolution services without necessarily filing a formal complaint; supporting a variety of decision-making aids including discovery exchange; facilitating direct party-to-party settlement negotiations; offering synchronous or asynchronous mediation support; and providing technology-supported adjudication. In situations where cases need to be disposed of after the successful resolution of the disputes, court-related ODR can populate standard settlement agreement forms that can be automatically filed with the court. However, in cases where the litigants are unsuccessful, the program can provide a smooth entry into the court's traditional dispute resolution by automatically populating and filing necessary court forms (National Centre for State Courts, 2023).

3. International Diplomacy (ID)

International Diplomacy is a means of carrying on the business of international society through negotiation, communication and representation (Clinton, 2016) or a non-violent approach to managing international relations that relies principally upon dialogue to make effective two-way communications, negotiations, and compromises (Opeoluwa, 2017). International diplomacy can be linked to new diplomacy which refers to international relations in which citizens play a greater role (Pachios, 2002); new diplomacy addresses a broad range of issues such as human rights (for instance, the campaign to end South African apartheid and the Save Darfur campaign), humanitarian assistance, labour rights, environmental issues, and fair trade (Moomaw, 2007). International diplomacy can refer both to diplomacy between and among states and related actors and diplomacy at an international level (Yorke, 2020); it is mostly concerned with global issues such as war and peace; security, the environment, economics, international development, global health, migration, and human security (Bjola & Kornprobst, 2018).

4. Sustainable Peace, Humanitarian and Development Practice

IGI Global (2023) described sustainable peace as ‘existing in a state where the probability of using destructive conflict, oppression, and violence to solve problems is so low that it does not enter into any party’s strategy, while the probability of using cooperation, dialogue, and collaborative problem solving to promote social justice and wellbeing is so high that it governs social organization and life.’ IPI (2017) described sustaining peace as an explicit and deliberate policy objective for all states, regardless of whether they are beset by violent conflict; sustaining peace is underpinned by an infrastructure composed of institutions, norms, attitudes, and capacities spanning different sectors and levels of social organization. It is also an endogenous process which requires strong and inclusive national ownership and leadership; it is multi-sectorial and all-encompassing, amounting to a meta-policy deserving of attention at the highest levels of national government. According to the United Nations (2016), sustaining peace encompasses activities aimed at preventing the outbreak, escalation, continuation and recurrence of conflict; addressing root causes; assisting parties to conflict to end hostilities; ensuring national reconciliation; and moving towards recovery, reconstruction and development.

The concept of peacebuilding was introduced to global diplomacy by the UN Secretariat; in *the 1992 Agenda for Peace*, the former UN Secretary-General (Boutros-Ghali 1992: para 21) introduced peacebuilding as an ‘action to identify and support structures which will tend to strengthen and solidify peace to avoid relapse into conflict’. In his *1995 Supplement for an Agenda for Peace*, Boutros-Ghali (1995: para 47–56) broadened this definition beyond post-conflict actions and linked peacebuilding to conflict prevention, management and post-conflict reconstruction (Bjola & Kornprobst, 2018).

Humanitarian and development practice can be advanced from a nexus approach (humanitarian–development nexus) which refers to the transition or overlap between the delivery of humanitarian assistance and the provision of long-term development assistance (Strand 2020: 104). According to Lie (2020), the nexus approach promotes the engagement of humanitarians in conflict prevention and addressing root causes of conflict, which are activities not only typically designated the development segment but also activities taking place before the humanitarian crisis occurs, thus infringing on the notion of the humanitarian present. It also calls for an increased humanitarian emphasis on political diplomacy and conflict resolution. Furthermore, the nexus approach entails bringing together humanitarian, development and peacebuilding efforts, into what is known as the triple nexus, to harmonize different, diverging and potentially conflicting actors, activities and objectives.

5. The CADR–ID Nexus Approach to Sustainable Peace, Humanitarian and Development Practice

The *United Nations Sustainable Development Goal (SDG 16)* promotes ‘peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.’ Alternative Dispute Resolution (ADR) can enhance the achievement of SDG 16 through the promotion and integration of its methods (such as arbitration, mediation, negotiation, conciliation) into existing judicial systems, humanitarian and development frameworks that are necessary for stimulating sustainable peace and a culture of peace across the world. ADR can also enhance the promotion of human rights and facilitate access to justice, especially for individuals and groups that are not adequately or fairly served by the judicial system.

International Diplomacy is useful in achieving sustainable peace, humanitarian and development practices across the globe especially as it sets the parameters of peacebuilding; preventive diplomacy (PR) and international criminal justice (ICrJ) are two important mechanisms for diplomats’ reduction of violence both globally and locally. The United Nations defined preventive diplomacy as ‘diplomatic action taken, at the earliest possible stage, to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur’ (UN Secretary-General 2011: 2). International criminal justice refers

to the doctrines by which international law imposes criminal responsibility directly upon individuals, regardless of the national law (Broomhall 2003: 10). Preventive diplomacy helps in the peaceful evolution of the international order by anticipating threats to international peace and security and eliminating them before they take place, both in the short and the long term whereas international criminal justice facilitates peaceful change by acting much deeper: through the imposition of criminal responsibility on individuals regardless of an existing national law, international criminal justice aims to deter actors from resorting to violence in the short term and also encourages them to undermine the legal and moral legitimacy of the method of using force for settling disputes in the long term. On its part, international criminal justice has two purposes: to dispute the effectiveness of the use of force, and its legitimacy; it encourages the actors to relinquish the use of force because it does not 'pay off' and also lacks the moral authority to serve as a legitimate instrument for settling international disputes, except for a few and very limited circumstances identified in Chapters 3 and VII of the UN Charter (Bjola & Kornprobst, 2018). The field of international development is a key issue area of global diplomacy (Bjola & Kornprobst, 2018).

6. Specialized Training for Practitioners on the CADR–ID Nexus Model and Integration into the African Peace Fellowship Programme and Tertiary Education

Traditionally, diplomacy has been the realm of lawyers trained in international law because law shapes what counts as appropriate standards in diplomacy and what does not; however, law is not the only component of the context that guides diplomats on how to interact with other diplomats. Diplomats are also situated in deeper contexts that shape their interaction (Bjola & Kornprobst, 2018). Similarly, ADR practitioners are often lawyers, judicial officers or those in related fields. From the foregoing discourse, it is pertinent to underscore the importance of grooming a new cadre of scholars, practitioners and policymakers on contemporary ADR and international diplomacy in line with SDG 16 and to address emerging conflict situations across the world. The authors therefore propose and recommend the introduction of the Contemporary ADR and International Diplomacy (CADR-ID) Course as a model specialized training programme for lawyers, law enforcement officers, peace, humanitarian and development practitioners as well as the integration of same as an innovative Course into universities (starting with Redeemer's University and University of Ibadan, Nigeria and Sacramento University, USA) by the authors in partnership with the Centre for African Peace and Conflict Resolution (CAPCR) through the ongoing Africa Peace Fellowship program to spur more scholarly work, professionalization and practice.

The CADR-ID Course examines the evolving nature of peacebuilding and dispute resolution at national and international levels and explores emerging trends and subject areas such as digital democracy, inclusive diplomacy, para-diplomacy, online dispute resolution and online alternative dispute resolution, multi-track diplomacy, restorative and transitional justice, conflict resilience, private and public diplomacy, preventive diplomacy, and contemporary ADR.

7. Conclusion and Recommendations

This paper concludes that contemporary alternative dispute resolution (CADR) and International Diplomacy are necessary for resolving disputes and sustaining peace at national and international levels; as such, there is a need for in-depth research, humanitarian and development actions on both fields of studies among a cross-section of scholars, practitioners and policymakers without limiting the studies and practice to only lawyers and trained diplomats. The paper therefore recommends the adoption and introduction of the CADR-ID Course into the tertiary educational curriculum and as a specialized training programme for key stakeholders.

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