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Abstract

This paper examines the dispute resolution methods available in international institutions, with the ECOWAS as a case study. The research leading to the paper was doctrinal, analytical, and comparative. The doctrinal research approach involved the identification of the principles of law relevant to the subject matter of this paper and determining how and to what extent each of the rules applied to the research subject. The analytical component consisted of well-grounded, reasonable, and logical examination and documentation of the relevant aspects of the key variables in the subject matter of the paper. The research strategies were used to determine the value of the available dispute resolution methods to international organizations, as well as to identify the various ways in which the methods could better serve the needs of the organizations and their beneficiaries.The paper found that in line with the universal United Nations Organization Charter provision aimed at encouraging and ensuring peaceful settlement of disputes, ECOWAS provides for several ADR methods of dispute resolution in addition to armed settlement such as through the ECOMOG. The ECOWAS MediationGuidelines (EMGs) create methodical principles for mediators to become more successful in peaceful resolution of disputes and conflicts. Also, the EMGs stimulate culture-based mediation, preparedness at all stages of mediation, neutrality, gender sensitivity, consent, and impartiality, while ensuring that there is consistency with the ECOWAS and international standards.The ECOWAS emphasis on ADR methods to settle conflicts and disputes should be encouraged and strengthened because the methodsare credible, effective, and efficient among the member-States and their citizens.

Keywords: *International Organization, International Disputes, United Nations, and Dispute Resolutions*

1. INTRODUCTION

Grievances, conflicts, and disputes are inevitable wherever individuals are involved. The same obtains where nations associate with each other or one another, perhaps even more so. The various disagreements among the persons and groups are based on the divergent experiences, interests, and aspirations among the associating entities. As noted by Nader and Todd,[1]grievances and conflicts are more private in character than disputes, in the sense that grievances and conflicts are more restricted to the parties directly involved. Disputes are necessarily open and public; disputes typically require the inputs of others to resolve the issues at stake. Typically, the others involved in settling a dispute are formal (official government) authority figures and institutions, including the court and the police. On the other hand, grievances and conflicts are more localized (between or among the parties) and can be relatively easily settled between the parties or with the informal help of a significant other, such as a head of a family, religious leader, professional group leader, etc.

It is noteworthy that Nader and Todd's[2] explanations of grievances, conflicts, and disputes and the outlines of the relationships among the three have been significantly modified. As such the assumed relationship from *grievance*, through *conflict*, to *dispute*is not unquestionable. In his detailed examination of the nature and implications of the three concepts, AranzazuPagoaga Ruiz de la Illa[3] states as follows:

> … it is necessary to clarify what, if any, difference is implied in [the terms "dispute" and "conflict"] and establish whether they can be used interchangeably. [Considering] that focus will be on international dispute settlement, it is important to explain the criteria for deciding whether a dispute is considered international. Etymologically, "conflict" is defined as a state of opposition or hostilities; fight or struggle; the clashing of opposed principles; the opposition of incompatible wishes or needs in a person; clash; be incompatible; struggle or contend, and to "dispute" is to debate, argue; quarrel; discuss, especially heatedly; question the truth or correctness or validity of a statement, alleged fact, etc.; contend for; strive to win, controversy; a debate or disagreement. While both words describe a discrepancy, the main difference between them is the element of further seriousness or aggravation that conflict involves, generally interpreted as the use of violence by one or more of the parties. From the political-science perspective, elements other than violence are often taken into account when defining what conflict is. This is for example the position of Johan Galgtung, who introduced the element of socio-cultural violence in the study of the components of conflicts. According to him, conflicts have three necessary components. The first is an incompatibility of interests. The second element is negative attitudes in the form of perceptions or

[1]LNader and H F Todd, eds., *The Disputing Process–Law in Ten Societies* (1978) New York, NY, USA: Columbia University Press.
[2]Note 1.
[3]AP Ruiz de la Illa, 'International dispute settlement in Africa: Dispute Settlement and Conflict Resolution under the Organization of African Unity, the African Union, and African Traditional Practices: A Critical Assessment' (December 11, 2017) *Deusto Journal of Human Rights*<http://revista-derechoshumanos.revistas.deusto.es/article/view/1119> accessed July 20, 2019.

stereotypes about others. The third element would be the existence of coactive or threatening behaviours. Examined now from a legal perspective, according to Collier and Lowe, conflict is more related to a general state of hostility between the parties, and the term dispute signifies a specific disagreement relating to a question of rights or interests in which the parties proceed by way of claims, counter-claims, denials and so on. They argue that conflicts are often unfocused, and particular disputes arising from them are often perceived to be as much the result as the cause of the conflict. Conflicts can rarely, if ever be resolved by the settling of the particular disputes which appear to constitute them: the feelings of hostility almost inevitably survive the settlement of disputes. Therefore, dispute settlement could be defined as the procedure to handle concrete disputes, while conflict management or resolution will be the adequate way of referring to the resolution of conflicts. This means that, while dispute settlement mechanisms tackle particular disputes, conflict resolution would be understood as the set of initiatives primarily aiming to stop the acts of hostility, and achieve a durable peace between the parties. In addition, the explanation of Collier and Lowe indicates a difference between solutions *a priori* and *ex-post*. Thus, while dispute settlement attempts to resolve a disagreement before it escalates to violence, conflict resolution comprises the different actions primarily aiming at ending violence once attempts to settle the dispute peacefully had failed. While acknowledging the theoretical distinction explained by Collier and Lowe, I consider that, from the practical perspective of the application of dispute settlement techniques the difference is virtually irrelevant. Dispute settlement mechanisms such as negotiation, conciliation, mediation or good offices are also used as conflict resolution techniques. Conflict resolution merely adds a new set of tools, such as peacekeeping forces or humanitarian intervention, to the toolbox used in dispute settlement. This study addresses both the settlement of disputes before conflict occurs, and the settlement of conflicts themselves by the application of dispute settlement mechanisms, thus excluding further tools as described above from its scope.

However, for international institutions (in which independent, sovereign countries agree to associate with each other to engage in activities that are of common interest to them), grievances, conflicts, and disputes often arise. Although the countries frequently informally manage their *grievances* and *conflicts*,[4]the disputes between them require more concrete, elaborate, and formal processes for settlement.

On all the grievances, conflicts, and disputes, the methods available for resolving the disagreements are varied, including informal and formal alternatives. This paper identifies and analyzes the options for dispute resolution among members of international institutions, particularly the parties to the Economic Community of West African States (ECOWAS). Further, the paper recommends areas of particular importance and the need to emphasize them in the ECOWAS' quest to settle disputes and conflicts in the West African sub-region.

[4]Both concepts, as explained by Nader and Todd (Note 1).

2. RESEARCH METHODS

The research leading to this seminar paper was doctrinal and analytical. The doctrinal research approach involved the identification of the principles of law (established through customs, statutes, case law, etc.) relevant to the subject matter of this paper and determining how and to what extent each of the principles applied to the research subject. The analytical component of the research that resulted in the paper consisted of well-grounded, reasonable, and logical examination and documentation of the relevant aspects of the key variables in the subject matter of the paper, namely: available dispute resolution methods in international institutions, particularly the ECOWAS. The research strategies were used to determine the value or importance of the available dispute resolution methods to international organizations, and to identify the various ways in which the methods could better serve the needs of the organizations and their beneficiaries.

3. ANALYSIS OF THE METHODS OF DISPUTE RESOLUTION IN INTERNATIONAL INSTITUTIONS – ECOWAS

The universally applicable United Nations Organization (UN/UNO) Charter provides for diverse models for international dispute settlement, with the aim of ensuring the peaceful settlement of such disputes. The Charter provides as follows:[5]'[t]he parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice'.

Expounding the fundamental provisions of the UN Charter for the settlement of international disputes, Marotti and Palchetti state as follows:[6]

> The basic principles and methods governing the settlement of international disputes today—particularly interstate disputes—are substantially the same as those that were identified and enshrined in the Charter of the United Nations in 1945. Parties to a dispute are under a duty to settle it in a peaceful way (Article 2, paragraph 3 of the UN Charter). While barred from resorting to armed force, the parties remain however, at least in principle, "masters" of the procedure for dispute settlement, and of the outcome. In the absence of a precise treaty obligation, they are free to decide the particular means of dispute settlement they prefer (Article 33 of the UN Charter). More broadly, any settlement will inevitably depend, directly or indirectly, on the agreement of the parties. Thus, the whole edifice of dispute settlement at the international level is characterized by an inherent tension between a legal duty to settle disputes in a peaceful way and the absence of any real compulsory mechanism that may render such obligation effective. Against this legal background, the notion of dispute settlement covers a great variety of different

[5]Article 33, paragraph 1 of the UN Charter.
[6]LMarotti and P Palchetti, 'Dispute Settlement in International Law' (March 28, 2018) <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0074.xml> accessed July 26, 2019.

> settlement devices. Such procedures can be distinguished one from the other on the basis of different criteria, such as whether they contemplate the intervention of a third party, whether the settlement is based on the application of rules of international law, or whether the final outcome of the procedure has a binding or nonbinding character. The classification of these different procedures; the identification of their respective merits and shortcomings, in absolute or comparative terms; their suitability in relation to different categories of disputes—these are all issues that have been traditionally the object of a vast body of literature. On a broader perspective, recent trends, which have brought some changes in the field of the international dispute settlement, have also attracted the attention of doctrine. These trends include the progressive institutionalization of the procedures, thanks also to the growing role of international organizations in this area, the multiplication of settlement mechanisms and the ensuing problem of the possible interaction or conflict between them, the creation of new courts and tribunals, and the rise of adjudication as a means of dispute settlement.

In line with the UN provision and practice and the broader understanding of the methods for settling grievances, conflicts, and disputes, Pierre Schmitt has examined the groupings of the methods and the dynamics of the techniques in each category. According to him,[7]

> Several methods of classification of these dispute settlement mechanisms have been proposed in literature. Adopting a broad approach, Philippe Sands and Pierre Klein suggested dividing them into two categories, namely diplomatic means, in which the parties keep control over the settlement – such as negotiation, consultation, mediation, conciliation or inquiry – and legal means, in which the settlement is legally binding for the parties – such as arbitration and judicial mechanisms. A more sophisticated classification was suggested by Kirsten Schmalenbach on the basis of three factors: the institutional setting, the method of dispute resolution and assigned power.Following this latter classification, the first criterion permits distinguishing internal dispute settlement mechanisms, which are settled by the parties themselves, through negotiations for instance, from external mechanisms, which require the intervention of a third party. The latter may intervene as a mediator to help the parties to find a solution themselves or determine the settlement as adjudicator...

All international organizations have procedures for both internal and external dispute resolution. The internal dispute resolution concerns the management of grievances, conflicts, and disputes among employees of an organization or between an organization and its staff. On the other hand, external dispute resolution deals with the settlement of cases involving member States of an organization or the parties thereto. Whether internal or external, the dispute resolution processes are affected by the relevant national laws as well as the international laws and conventions. Related

[7] PSchmitt, 'International dispute settlement mechanisms: The Case of Individual Victims of Human Rights Violations' (August 25, 2017) *Deusto Journal of Human Rights*<https://www.elgaronline.com/view/9781786432889/13_chapter4.xhtml> accessed July 21, 2019.

to this is the fact that for the past five decades or thereabout, globalization has substantially impacted on the law by highlighting and enriching the international features of national laws as well as by amplifying the relevance of international organizations. Consequently, the expansion of international organizations – in quantityand reputation – has caused a re-examination of the traditional boundaries of municipal legal systems.

Implicated in the re-examination of the traditional boundaries of national legal systems is the doctrine of privileges and immunities. The doctrine concentrateson the conflictbetween international organizations and national legal systems. After the Second World War, the foremost powers in the world recognized the important role that international organizations could play in encouraging international collaboration. International organizations' originators and organizers appreciated that the strong performanceof their institutions depended on the libertyto act on behalf ofvaried, global memberships without meddlingby domestic legal systems. Therefore, the need to create domestic laws to grantprivileges and immunities to the international organizations becameunambiguous.By the doctrine of privileges and immunities, internal dispute resolution processes are developed to confer a collectiveset of rights such as among employees of an international institution. Thus, as a way of living up to their responsibilities under international law and ensure efficiency and harmony in staff relations, international organizations created many-sided dispute resolution systems.

The UN dispute resolution model illustrates the legal framework of dispute resolution in international organizations. The privileges and immunities of the UN can be found in the Convention on the Privileges and Immunities of the United Nations (also known as the General Convention). This outlines the Organization's legal personality to include the following rights: the right to acquire and dispose of property, the right to contract, and the right to institute legal proceedings.[8] The General Convention further demonstrates that the UN's jurisdictional immunity extends to every type of legal process, except where such is "expressly waived."[9]

Based on the internal-external dichotomy to dispute or conflict resolution, two categories of such disputes are identifiable: employment-based or staff-related disputes (internal) and member-States or parties disputes (external). For each category of disputes, the challenge for an international organization is to successfully manage the applicable national and international laws to achieve justice.

On employment matters and issues of employer-employee, the privileges and immunities of the UNO and other international organizations characteristically prohibit employees with work-related complaints from seeking remedyin national courts. However, the prohibitions inevitably substantially restrict the rights of individuals. Inappreciation of this drawback, law and justice professionals worldwide acknowledgea matching obligation owed by the international

[8]Convention on the Privileges and Immunities of the United Nations, February 13, 1946, 1 U.N.T.S. 15, at art.I, sec. 1 [hereinafter "General Convention"].

[9]Note 8,art.II, sec. 2.However, the Convention requiresthe UN to provide "appropriate modes of settlement" for disputes arising out of its contracts or disputes of a private legal character. *Id.*

organizations to furnish"reasonable alternative means" for resolving employment disputes.[10] It is no wonder then that dispute resolution systems have become firmly entrenched in many international organizations' frameworks, even if there is scepticism as to the obligations of the organizations to create and maintain such systems.[11]

Employment-related disputes are some of the more common disagreements that occur in international organizations. In view of this, there abound internal dispute resolution practices at individual international organizations. The practices are innovative and are used to resolve employment-related disputes.[12]The procedures followed to resolve the disputes within an organization vary accoding to the particular organization. However, in every circumstance, the procedurerecognizes and caters to the need to protect the rights and interests of the organization's employees.

Beyond the matter of employment dispute(which is localized, and the parties are fewer and easier to manage), disputes between or among countries pose greater challenges to international organizations mainly because of the wider interests involved therein and the more dire consequences of failing to manage the multifaceted and delicate issues properly.

The Economic Community of West African States (ECOWAS), which is the sample international organization for this paper, employs certain strategies for resolving the internal and external disputes.

ECOWAS, which was established in 1975, aimed at integrating the West African sub-regional community in the areas of commerce, trade, and industry for the purpose of developing the sub-region economically.[13]The sub-regional body later shifted from the economic focus to more broad areas such as political fields as they concern conflict prevention, conflict management, and conflict resolution. ECOWAS has played vital roles in conflict management and resolution within the sub-region, particularly through peacekeeping operations in such countries as Sierra Leone, Liberia, Guinea-Bissau, and Cote d'Ivoire.[14]The formation of the ECOWAS Monitoring Group(ECOMOG) by Nigeria, Guinea, Ghana, Sierra Leone, and The Gambia on the 6th-7th of August, 1990 during the meeting of the ECOWAS in Banjul, The Gambia, triggered the sub-regional efforts to keep peace. Besides the ECOMOG (ECOWAS) role in the Liberian civil war,

[10]Seeas an example, *Waite and Kennedy*, Application No. 26083/94, Eur. Ct. H.R., 18 February 1999 (1999), ECHR 13; 116 ILR 121, 134, para. 68.

[11]K Schmalenbach, 'Law of International Organisations: Dispute Settlement' (June 13, 2011). Research Handbooks in International Law, 2011. Available at SSRN: <https://ssrn.com/abstract=2450128>accessed July 21, 2019.

[12]Norwich University Online 'Conflict Resolution in International Organizations' (November 1, 2017) <https://online.norwich.edu/academic-programs/resources/conflict-resolution-in-international-organizations>accessed July 22, 2019.

[13]I T Terwase, A N Abdul-Talib, and K T Zengeni, 'Conflict Resolution: The Truncated Zoning Arrangement and the Buhari Political Tsunami in Nigeria' *Journal of Government and Politics*, Vol.6 No. 2 (2015) 248-259.

[14]AAdeleke, 'The Politics and Diplomacy of Peacekeeping in West Africa: The ECOWAS Operation in Liberia' *The Journal of Modern African Studies*, 33(04) (1995) 569-593. Y Gershoni, 'War without end and an end to a war: the prolonged wars in Liberia and Sierra Leone' *African Studies Review*, 40(03) (1997) 55-76. A B Bah, 'Democracy and civil war: Citizenship and peacemaking in Côte d'Ivoire' *African Affairs*, 109(437) (2010) 597-615. D J Francis, 'Peacekeeping in a bad neighbourhood: The Economic Community of West African States (ECOWAS) in peace and security in West Africa' *African Journal on Conflict Resolution* 9(3) (2009).

the sub-regional body has replicated some of its peace and conflict resolution efforts in some other West African countries.

The more recent violent activities of Boko Haram have not escaped the attention of the ECOWAS. Boko Haram sect is a security threat to the members of the ECOWAS. Consequently, ECOWAS has adopted a strategy to stop the terrorism within the region.Boko Haram started her attacks in Nigeria; they later spread to other countries such as Chad, Niger, and Cameroon.[15]

The ECOWAS attention to military solutions to conflicts in the sub-region is not the onlystrategy through which the body attempts to prevent and settle disputes. In recognition of the utility of non-violent means along this line, the ECOWAS has validated and fully supports mediation as a method of dispute resolution in the sub-region. The ECOWAS Commission has strengthened its interventions capacity through the validation of a set of guidelines to increase the professionalization of its mediation process. In accordance with the Community's legal and normative framework, the ECOWAS Mediation Guidelines (EMGs) were validated during a two-day workshop of experts and partners on July 13-14, 2017, at the ECOWAS Commission in Abuja, Nigeria. Among other things, the EMGs are designed to create methodical principles for mediators to secure more success in achieving peaceful resolution of disputes and conflicts in the sub-region.Also, the EMGs are to stimulate culture-based mediation, preparedness at all stages of mediation, neutrality, gender sensitivity, consent, and impartiality, while ensuring that there is consistencywith the ECOWAS and international standards.

The EMGs are made up of eleven key guiding principles for mediators. The guidelines range from quickandwell-timed, across-the-board, as well as combinedinterventions. The guidelines are:[16]
Principle 1: Early and Timely Interventions: Prioritising Preventive Action
Principle 2: Comprehensive and Integrated Interventions: An ECOWAS Preventive Diplomacy and Mediation System
Principle 3: The Profile of the Mediator: Professionalism and Skills
Principle 4: Preparedness at All Stages of Mediation: Professional Mediation Support, Expertise, and Capacity
Principle 5: Consent
Principle 6: Culturally Grounded Mediation
Principle 7: Impartiality and Neutrality
Principle 8: Gender Sensitivity and Engendered Mediation
Principle 9: Inclusivity and Participation
Principle 10: Coherence with ECOWAS and International Norms
Principle 11: Subsidiarity, Collaboration, Complementarity, and Comparative Advantage

[15]F C Onuoha, 'A Danger Not to Nigeria Alone: BokoHarams's Transnational Reach and Regional Responses' (2014) Friedrich-Ebert-Stiftung Regional Office.H Onapajo, U O Uzodike, and A Whetho, 'Boko Haram terrorism in Nigeria: The international dimension' *South African Journal of International Affairs* (2012) 19(3), 337-357.
[16]ECOWAS Mediation Guidelines, developed and published by ECOWAS in partnership with the Crisis Management Initiative (CMI), (February 2018) <www.ecowas.int>, accessed July 28, 2019. See also ECOWAS validates mediation interventions guidelines (July 16, 2017)<https://www.ecowas.int/ecowas-validates-mediation-interventions-guidelines/> accessed July 27, 2019.

The ECOWAS' strong interest and investment in ADR methods to settle disputes are apparent in the foregoing principles of its EMGs. In furtherance of this stand, the regional body continually reiterates the importance of ADR at its various fora. Specifically, the organization recognizes the importance of arbitration for dispute resolution. Consequently, it has called for the creation of a Regional Arbitration Forum as an Alternative Dispute Resolution Mechanism to boost the sub-region's economic potentials.[17] Closely related to arbitration are the Diplomatic Methods of Conflict Resolution, which have beensuccessfully used to restore peace in Sierra Leone, Liberia, Togo, Cote d'ivoire, Guinea Bissau, Senegal and Gambia. Thus, the methods are useful in settlement of disputes and should be encouraged because the decision is reached by the parties themselves and enforcement of such agreement may be easier. The current use of council of elders on ad-hoc basis for peaceful resolution of conflicts is not sufficient. The ECOWAS should establish Commission of Mediation, Conciliation and Arbitration as it will serve as a reminder to disputants that there is still the last opportunity to resolve their differences. Those to be appointed mediators should have good track records in terms of high level work experience and character, be endowed with negotiating skills and able to bring about peace and reconciliations that can be employed in potential conflict situations.[18]

Overall, the ECOWAS' strong focus on ADR mechanisms for dispute resolution is manifest. This is encouraging because it demonstrates that the organization appreciates the critical role of non-violent methods for dispute resolution, peace-building, and enduringharmony.

4. CONCLUSION AND RECOMMENDATIONS

It is inevitable that conflict issues of politics, economics, social and identity disagreements, etc. occurperiodically. However, ECOWAS' role in peace and conflict resolution in West Africa has prominently improved the stability of the region. The ECOWAS has been instrumental in restoring stability and peace in several countries (Liberia, Gambia, Sierra Leon, Guinea, and Cote d'Ivoire inclusive) so that issues that could have destabilized and perhaps balkanized the countries were resolved through the ECOWAS efforts. To further strengthen dispute resolution through ECOWAS, it is necessary for the organization to maintain and diversify its outreach to its subjects wherever possible. It is trite that effective and enduring dispute resolution is best guaranteed by a process and outcome to which the parties consent; armed force provides limited effectiveness. If the ECOWAS can get the parties to a dispute before it to settle the dispute amicably or accept a third-party settlement, the matter is more likely to remain settled than a situation where a decision is imposed upon them, even if by the force of arms.

Also, effective dispute resolution in the West African sub-region necessarily includes prevention of the said disputes. It is typically cheaper to prevent a dispute or conflict than to settle it. Therefore, ECOWAS will do well to invest in programmes that aim at removing those factors that

[17]See for example,ECOWAS calls for Regional Arbitration Forum for dispute resolution (October 11, 2017) <https://isds.bilaterals.org/?ecowas-calls-for-regional> accessed July 25, 2019.

[18]L I Okere, 'Diplomatic Methods of Conflict Resolution (A Case Study of ECOWAS)' Global Journal of Politics and Law Research Vol. 3, No. 2, pp. 27-42 (June 2015), European Centre for Research Training and Development UK <https://www.eajournals.org/journals/global-journal-of-politics-and-law-research-gjplr/vol-3issue-2-june-2015/diplomatic-methods-of-conflict-resolution-a-case-study-of-ecowas/> accessed July 20, 2019.

lead or are likely to lead to conflicts and disputes in the sub-region. These variables include poverty, hunger, unemployment (particularly youth unemployment), lack of education, freedoms and civil liberties, etc. Finally, the establishment of an early warning system to identify and address potential problems and have them nipped in the bud will go a long way in preventing conflicts and disputes in West Africa.