

Comment

Sovereignty of Aves Island: An Argument Against Standardized, Compulsory Arbitration

Introduction

Territorial boundaries, if well-established and recognized, add stability to relations between neighbor states.¹ Boundary uncertainties, however, often lead to disputes which significantly hamper state relations.² While territorial boundary disputes directly affect a state's citizens,³ maritime boundary disputes often affect economic relations between states.⁴ If states' claims of sovereignty of territory and resources located therein conflict, disputes may quickly escalate unless states employ means of dispute resolution.⁵

For example, Venezuela currently maintains a dispute over the sovereignty of the Isla Aves (Bird Island) with various Caribbean countries.⁶ Venezuela and Dominica, in particular, claim sovereignty of the Island and the natural resources located in its surrounding maritime territory.⁷ Since neither Venezuela nor Dominica appears willing to compromise,⁸ the increasing tension between the states may result in armed conflict unless they engage in preemptive dispute resolution.⁹

States engaging in preemptive dispute resolution frequently call upon adjudicative or diplomatic means to resolve

territorial boundary disputes and comply with international law.¹⁰ In light of reduced efficacy of such dispute resolution mechanisms,¹¹ however, some propose that all states should engage in compulsory, standardized arbitration subject to International Court of Justice ("I.C.J.") review to resolve their boundary disputes.¹² Although arbitration is an effective method of international dispute resolution in certain cases,¹³ standardized arbitration will not effectively resolve all boundary disputes between neighbor states.¹⁴

This Comment argues against the proposition that the United Nations ("U.N.") implement a standardized arbitration mechanism and discusses implications of such a requirement on the current dispute over the sovereignty of Aves Island.¹⁵ Part I first presents Venezuela's and Dominica's claims of sovereignty of the Island.¹⁶ Part I next highlights arbitration and mediation as internationally accepted means of dispute resolution and discusses the use of arbitration in Case Concerning East Timor ("Portugal v. Australia"),¹⁷ and Case Concerning Land and Maritime Boundary Between Cameroon and Nigeria ("Cameroon v. Nigeria").¹⁸

Part II argues against a U.N. compulsory arbitration requirement by first discussing its inconsistency with Venezuela's and Dominica's sovereignty in light of Portugal v. Australia.¹⁹ Part II next discusses Cameroon v. Nigeria to

demonstrate that compulsory arbitration subject to I.C.J. review will not effectively resolve the Aves Island dispute because the I.C.J. is unable to enforce decisions.²⁰ Part II also illustrates how compulsory arbitration decreases the efficiency of international dispute resolution in light of Cameroon v. Nigeria.²¹

Part III recommends that the U.N. should not implement compulsory, standardized arbitration but rather provide a forum in which states engage in a combination of mediation and arbitration ("Med-Arb") to resolve their disputes.²² Part III also recommends that Venezuela and Dominica, similar to the parties in International Business Machines, Corp. v. Fujitsu, Ltd. ("I.B.M. v. Fujitsu"), engage in Med-Arb to capitalize on its advantages to resolve their dispute.²³ Part IV then concludes that all states should engage in Med-Arb in their international boundary disputes to achieve effective redress in the future.²⁴

I. Background

Because the sovereignty of Aves Island has significant economic implications for both Venezuela and Dominica, both states claim sovereignty of the Island and the resources located in its surrounding maritime territory.²⁵ To prevent disputing states such as Venezuela and Dominica from resorting to force to settle their dispute, the U.N. provides diplomatic and

adjudicative means of dispute resolution which states may employ to peacefully resolve their disputes.²⁶ Portugal v. Australia demonstrates that dispute settlement requires state consent.²⁷ Cameroon v. Nigeria highlights the inefficacy of dispute settlement where non-consenting states fail to recognize and comply with settlement awards.²⁸ Finally, I.B.M. v. Fujitsu indicates that consensual dispute settlement may increase the efficacy and efficiency of dispute resolution.²⁹

A. Venezuela and Dominica Have Conflicting Claims of Sovereignty of Aves Island and the Resources Located in its Surrounding Maritime Territory

Venezuela recently reaffirmed its claim of sovereignty of Aves Island.³⁰ Dominica and various Caribbean countries, however, object to Venezuela's increased show of authority over the Island and may seek resolution of the long-standing dispute through maritime dispute resolution mechanisms.³¹ Aves Island, located approximately 350 nautical miles ("nm") northeast of Venezuela and 140 nm southwest of Dominica,³² is famous for its spectacular birds and endangered sea turtles.³³ More importantly, the Island is surrounded by maritime territory with significant natural resources.³⁴ Because the natural resources comprise approximately twenty percent of the world's natural gas reserves, the dispute has significant economic implications for the international community.³⁵

1. Venezuela Claims Sovereignty of Aves Island Based on Historic Title

Venezuela claims that its historic title and sovereignty of the Island dates to the nineteenth century.³⁶ Although other countries claimed sovereignty of the Island during the past two centuries,³⁷ Venezuela consistently exercised authority over the Island during the end of the twentieth and beginning of the twenty-first centuries.³⁸ Venezuela also claims sovereignty of the maritime territory surrounding the Island that extends approximately 335 nm north of its coastal baselines.³⁹ Lastly, though Venezuela has not yet ratified the U.N. Convention on the Law of the Sea ("UNCLOS"),⁴⁰ Venezuela claims that its sovereignty of Aves Island grants it rightful access to any territorial waters, exclusive economic zone ("EEZ"), and continental shelf under UNCLOS' provisions.⁴¹

2. Dominica Claims Sovereignty of Aves Island Because it Lies Within Dominica's Exclusive Economic Zone

In contrast, Dominica and other Caribbean countries claim that Dominica has sovereignty of Aves Island under the provisions of UNCLOS and object to Venezuela's increasing show of authority over the Island.⁴² Dominica asserts that its claim to Aves Island is stronger than that of Venezuela's because the Island, located within 140 nm of Dominica's coastal baselines,

falls within its EEZ under UNCLOS.⁴³ Dominica also objects to Venezuela's claim of sovereignty of the maritime territory that surrounds Aves Island because it apports significant maritime territory away from Dominica and other Caribbean Islands.⁴⁴

B. Venezuela and Dominica May Resolve Their Dispute over the Sovereignty of Aves Island Through Internationally Accepted Means of Dispute Resolution

Dispute resolution mechanisms allow states to settle disputes without employing force.⁴⁵ The U.N., in fact, even obligates member states to attempt peaceful resolution of disputes.⁴⁶ The U.N. Charter identifies eight acceptable methods of dispute resolution which are either adjudicative or diplomatic in nature.⁴⁷ Whether states engage in adjudicative or diplomatic means to resolve their disputes,⁴⁸ all such mechanisms rely on states' consent for dispute settlement.⁴⁹

1. Arbitration as an Adjudicative Dispute Resolution Mechanism

Adjudicative means of dispute resolution require governing bodies to apply precedent and customary international law when resolving disputes between states.⁵⁰ States employing adjudicative means of dispute resolution may elect formal, in-court adjudication or arbitration by temporary arbitral tribunals.⁵¹ States often prefer international arbitration over adjudication to resolve their disputes because arbitration ideally offers more efficiency and expediency than that offered

by adjudication.⁵² After states consent to arbitration,⁵³ they compose a set of rules and procedures for the arbitral tribunal to follow during arbitration.⁵⁴ The tribunal then issues an award that is binding on the parties.⁵⁵

2. Mediation as a Diplomatic Dispute Resolution Mechanism and Alternative to Arbitration

Mediation, a diplomatic method of dispute resolution, offers states an opportunity to resolve their dispute through negotiations mediated by a neutral third-party.⁵⁶ States engage in diplomatic means of dispute resolution, mediation in particular, to reconcile their interests and reach a consensual agreement.⁵⁷ Mediation is an advantageous method of dispute resolution because it grants states significant autonomy and flexibility during the resolution process,⁵⁸ results in an impartial award by third-party mediators,⁵⁹ and is even more efficient than arbitration.⁶⁰

C. Portugal's and Australia's Dispute over East Timor Demonstrates that Dispute Settlement Requires State Consent

1. Framing Portugal's and Australia's Historical Claims of Sovereignty of East Timor

Although the Democratic Republic of East Timor is now independent, its sovereignty has been disputed since the sixteenth century.⁶¹ While both Portugal and Holland exercised sovereignty over East Timor between the sixteenth and twentieth centuries, East Timor unilaterally declared its independence

from Portugal in 1975.⁶² A dispute between Portugal and Australia arose in 1991 when Portugal alleged that Australia engaged in actions which failed to respect Portugal as East Timor's administering power.⁶³ Australia, in contrast, contended that the East Timorese granted it international responsibility for Timor.⁶⁴

2. Portugal v. Australia Implicates a Third State Which Did Not Consent to I.C.J. Adjudication

Portugal initiated proceedings against Australia because Australia failed to recognize Portugal's sovereignty of East Timor prior to 1991.⁶⁵ Both states consented to arbitration by the I.C.J.,⁶⁶ but Australia objected to arbitration without Indonesia's consent as an interested third-party.⁶⁷ The I.C.J. decided that Indonesia's actions with regard to East Timor directly influenced the Court's determination of whether Australia acted lawfully with respect to East Timor.⁶⁸ Because Indonesia did not consent to arbitration, the I.C.J. lacked jurisdiction over the dispute and could not rule without undermining Indonesia's sovereign right to consent to arbitration.⁶⁹

D. Nigeria Fails to Comply with the Decision of the I.C.J. in Cameroon v. Nigeria

1. Framing Cameroon's Dispute over the Bakassi Peninsula with Nigeria

Cameroon's border dispute with Nigeria, centering on the sovereignty of the Bakassi Peninsula and maritime territory surrounding Lake Chad,⁷⁰ stemmed from ambiguous demarcation of German territory in Western Africa after World War One.⁷¹ Before tension over the border dispute escalated to armed conflict,⁷² however, Cameroon submitted the dispute to the I.C.J for binding demarcation of the peninsula and the maritime area surrounding Lake Chad.⁷³

2. The I.C.J. Is Unable to Enforce Its Award in Cameroon v. Nigeria

Cameroon submitted its boundary dispute with Nigeria to the I.C.J. for binding adjudication in 1994.⁷⁴ Both Cameroon and Nigeria claimed that they inherited title to the Bakassi Peninsula through the concept of uti possidetis juris when they became independent states.⁷⁵ Under this concept, disputing states such as Cameroon and Nigeria inherit their colonial borders when they become independent.⁷⁶ In its 2002 decision the I.C.J. granted Cameroon sovereignty of Bakassi Peninsula and a large portion of the maritime territory surrounding Lake Chad.⁷⁷ Although the award supposedly had binding force, however,

Nigeria did not initially recognize the decision and has yet to legitimize or comply with the I.C.J.'s order to withdraw from Bakassi.⁷⁸

E. I.B.M. and Fujitsu Use a Combination of Mediation and Arbitration to Resolve Their Landmark Dispute

In I.B.M. v. Fujitsu, a landmark copyright infringement case, I.B.M. and Fujitsu engaged in a combination of mediation and arbitration to resolve their dispute.⁷⁹ Employing Med-Arb allowed the arbitrators to capitalize on the advantages of both mediation and arbitration to facilitate an efficient settlement process.⁸⁰ Med-Arb consists of two distinct stages.⁸¹ In the first stage of Med-Arb, mediators attempt to facilitate agreement between the parties by directing negotiations.⁸² If disputing parties fail to reach an agreement through mediation, however, the same third-party mediator then arbitrates the dispute.⁸³ In Med-Arb, the arbiter has traditional arbitral duties and eventually issues a decision that has binding force on the parties.⁸⁴

II. Analysis

The U.N. should not require arbitration of all boundary disputes because it violates state sovereignty embodied in Article 2 of the U.N. Charter.⁸⁵ First, compulsory arbitration violates the sovereignty of disputing states such as Venezuela and Dominica because it eliminates their right to consent to

dispute resolution and to self-determination.⁸⁶ Second, compulsory arbitration will not resolve boundary disputes effectively because it results in settlement noncompliance and creates international enforcement issues.⁸⁷ Lastly, compulsory arbitration creates inefficiencies in dispute settlement because it eliminates the opportunity for states such as Venezuela and Dominica to resolve their dispute through bilateral negotiations or other regional settlement mechanisms.⁸⁸

A. Requiring Venezuela and Dominica to Arbitrate Their Dispute with Regard to Aves Island Violates Their Sovereignty Under Article 2 of the U.N. Charter

The U.N.'s implementation of compulsory, standardized arbitration violates Venezuela's and Dominica's state sovereignty for two reasons.⁸⁹ First, compulsory arbitration violates Article 2 of the U.N. Charter, which grants disputing states such as Venezuela and Dominica sovereign equality.⁹⁰ Second, Portugal v. Australia demonstrates that Venezuela's and Dominica's sovereignty encompasses the right to consent to the resolution of their dispute over Aves Island.⁹¹ Finally, compulsory arbitration is inconsistent with the U.N.'s grant to member states of self-determination in Article 55, which grants them the sovereign right to choose a method of dispute resolution from the range of internationally accepted means.⁹²

1. Compulsory Arbitration Violates Venezuela's and
Dominica's Sovereignty Under Article 2 of the
U.N. Charter

Implementing a requirement that states engage in arbitration directly conflicts with the right of sovereignty granted to states by Article 2 of the U.N. Charter.⁹³ This article, granting sovereign equality to all member states of the U.N.,⁹⁴ vests states with the sovereign right to use, dispose of, and prevent unauthorized access to their territory by other states.⁹⁵ More broadly, this sovereign right empowers states to act in manners reasonably necessary to further state interests and those of their citizens.⁹⁶

Not surprisingly, the Aves Island dispute affects both Venezuela's and Dominica's state sovereignty.⁹⁷ When they ratified the U.N. Charter and became member states, Venezuela and Dominica received sovereign equality as member states under Article 2.⁹⁸ Thus the U.N. Charter grants Venezuela and Dominica, as sovereign states, the right to take action and protect their state interests and the best interests of their citizens.⁹⁹ Compulsory arbitration violates Venezuela's and Dominica's state sovereignty under Article 2 of the U.N. Charter because it denies their right to political and economic independence.¹⁰⁰

2. Portugal v. Australia Demonstrates that Compulsory Arbitration is Inconsistent with Venezuela's and Dominica's Sovereignty Because it Dispenses with Their Right to Consent to Resolution of Their Dispute

Venezuela and Dominica have a sovereign right to consent to settlement of their dispute over Aves Island.¹⁰¹ In Portugal v. Australia, for example, the I.C.J. found that it could not decide a dispute that involved a non-consenting state party.¹⁰² With regard to Aves Island, both Venezuela and Dominica may refer to the I.C.J.'s rationale in Portugal v. Australia and argue that a requirement of compulsory arbitration will undermine their sovereign right to consent to the resolution of their dispute.¹⁰³ This argument is especially persuasive in the case of Venezuela because it has not yet ratified UNCLOS.¹⁰⁴ This demonstrates that Venezuela does not desire to be bound by mandatory arbitration in its international disputes.¹⁰⁵ As such, compulsory arbitration will violate Venezuela's and Dominica's sovereign right to consent to the resolution of their dispute over Aves Island.¹⁰⁶

3. Compulsory Arbitration Violates Article 55 of the U.N. Charter Which Grants Member States the Right to Self-Determination

As U.N. member states, both Venezuela and Dominica have the right to self-determination under Article 55 of the U.N. Charter.¹⁰⁷ Because self-determination encompasses the sovereign right to consent to dispute settlement, compulsory arbitration

violates Venezuela's and Dominica's right under Article 55 to consent to the resolution of their dispute over Aves Island.¹⁰⁸ Additionally, Article 55 specifically indicates that member states enjoy self-determination with regard to economic and social conditions and development.¹⁰⁹ Thus Venezuela and Dominica, under this article, have the right to take action and protect both the stability of their economic, inter-state relations and their individual state interests.¹¹⁰

Applying Article 55 of the U.N. Charter to the Aves Island dispute, Venezuela and Dominica justifiably may seek to exercise their sovereign right to self-determination with regard to their dispute.¹¹¹ Aves Island itself, for example, will provide both states with a significant source of additional income from its increasing tourism activities.¹¹² More importantly, however, sovereignty of the Island may grant either state control over its coastal baselines under UNCLOS Articles 3, 57, and 76.¹¹³

Under these provisions, for example, Dominica or Venezuela may obtain exclusive rights to exploit the vast natural gas reserves located within the maritime territory surrounding the Island.¹¹⁴ Dominica, in particular, has a strong claim to sovereignty of Aves Island and the available natural resources because the Island is located within Dominica's EEZ under UNCLOS Article 57.¹¹⁵ Because both states have significant interests in Aves Island and the resources in its surrounding maritime

territory, compulsory arbitration violates their sovereign right to consent to resolution in a manner that best protects their state interests and those of their citizens.¹¹⁶

4. Portugal v. Australia Supports the Right of Venezuela and Dominica to Self-Determination of Their Dispute

Entitled to self-determination under Article 55 of the U.N. Charter, Venezuela and Dominica have a sovereign right to select an acceptable method of dispute resolution from those enumerated in Article 33 of the U.N. Charter.¹¹⁷ The I.C.J. supported the sovereign right of states to self-determination in Portugal v. Australia.¹¹⁸ In that case, the I.C.J. noted that self-determination vested all states interested in East Timor with the right to protect their sovereignty of disputed resources.¹¹⁹

Applying Article 55 and the I.C.J.'s rationale in Portugal v. Australia to the instant dispute, Venezuela and Dominica are similarly entitled to choose an acceptable method of dispute resolution.¹²⁰ Consistent with the I.C.J.'s ruling in Portugal v. Australia, Venezuela and Dominica may select a means of dispute settlement that best protects their state interests and those of their citizens with regard to Aves Island and the resources in its surrounding maritime territory.¹²¹ Because compulsory arbitration denies Venezuela and Dominica their right to select optimal dispute resolution methods, both states will lose

autonomy to select means of settlement and procedures that best protect their state interests and those of their citizens.¹²²

When exercising its right under Article 55 of the U.N. Charter to self-determination, Venezuela may want to engage in mediation with Dominica as the most effective method of dispute settlement.¹²³ As a larger, more economically powerful state,¹²⁴ Venezuela could apply political and economic pressures to Dominica during bilateral negotiations where it could not in the more formalized procedures of arbitration or adjudication.¹²⁵ This, in turn, may coerce Dominica into premature or unnecessary compromise; thereby saving Venezuela the burden and additional costs of formal arbitration or adjudication.¹²⁶

Dominica, in contrast, may rely on the I.C.J.'s rationale in Portugal v. Australia and consider formal arbitration or adjudication to be the best dispute resolution method to protect its interests in Aves Island and the resources in the Island's surrounding maritime territory.¹²⁷ Such formal procedures may provide a higher guarantee of impartiality and equality in any award.¹²⁸ Additionally, because Dominica is not as economically powerful, it may want to stipulate specific conditions and procedures of settlement.¹²⁹ By denying Venezuela and Dominica an opportunity to select the procedures of their settlement, compulsory arbitration not only undermines dispute resolution's intended flexibility but violates their right to self-

determination under Article 55 of the U.N. Charter and the rationale of the I.C.J. in Portugal v. Australia.¹³⁰

B. Compulsory Arbitration Subject to I.C.J. Review Will Not Resolve the Aves Island Dispute Because the I.C.J. is Unable to Enforce Decisions Against Non-Consenting States

The U.N. requirement that all states engage in compulsory, standardized arbitration subject to I.C.J. review is unpersuasive for two reasons.¹³¹ First, Cameroon v. Nigeria demonstrates that disputing states such as Venezuela and Dominica may not cooperate during settlement or comply with an arbitral award where they do not originally consent to the resolution of their dispute.¹³² Second, although Article 94 of the U.N. Charter provides the U.N. Security Council with the capability to enforce I.C.J. decisions, I.C.J. decisions are effectively unenforceable unless disputes rise to a level that endangers international peace and security.¹³³

1. Compulsory Arbitration Reduces the Likelihood for Compliance with an Arbitral Award Where Either Venezuela or Dominica Withholds Consent to Settlement of Their Dispute

Effective resolution of international boundary disputes requires states such as Venezuela and Dominica to cooperate during settlement through recognition and compliance with any resulting award.¹³⁴ Articles 2 and 33 of the U.N. Charter, in fact, obligate U.N. member states to attempt peaceful resolution of their disputes in good faith.¹³⁵ Venezuela's and Dominica's

cooperation in resolving their dispute over Aves Island is especially important because the dispute affects the allocation of vast amounts of economic resources located in the maritime territory surrounding the Island.¹³⁶ Subjecting the dispute to compulsory arbitration, however, falsely assumes that both Venezuela and Dominica will cooperate during dispute settlement and then recognize and comply with any resulting arbitral award.¹³⁷

In Cameroon v. Nigeria, for example, Nigeria did not comply initially with the I.C.J.'s award of Bakassi Peninsula to Cameroon because it considered the decision of the I.C.J. invalid where Nigeria withheld its consent to dispute settlement.¹³⁸ Similarly, if either Venezuela or Dominica is predisposed to withhold consent to the settlement of their dispute, then it is unlikely that they will cooperate during settlement or comply with an award because they may not consider the settlement or its award legitimate.¹³⁹

Venezuela, for example, demonstrated its lack of consent to be bound by compulsory dispute settlement when it failed to ratify the provisions of UNCLOS.¹⁴⁰ If the I.C.J. determines that Venezuela is the losing state then it may oblige Venezuela to implement an unfavorable judgment as it obliged Nigeria in Cameroon v. Nigeria.¹⁴¹ Venezuela, however, is unlikely to comply with an unfavorable decision where it specifically has not

consented to dispute settlement.¹⁴² Therefore, compulsory arbitration will not resolve Venezuela's dispute with Dominica over Aves Island where either party withholds consent and then fails to comply with an arbitral award.¹⁴³

2. The I.C.J. Lacks Capability to Enforce an Award if Either Venezuela or Dominica Fail to Comply with Compulsory Arbitration

Compulsory arbitration subject to I.C.J. review will not resolve the Aves Island dispute because the I.C.J. lacks enforcement capability over Venezuela and Dominica.¹⁴⁴ Cameroon v. Nigeria demonstrates that international bodies are unable to enforce decisions.¹⁴⁵ After the I.C.J. issued an unfavorable ruling against Nigeria, Cameroon had the ability under Article 94 of the U.N. Charter to seek enforcement of the award through the U.N. Security Council.¹⁴⁶ Unlike Cameroon v. Nigeria, where both states previously accepted the compulsory jurisdiction of the I.C.J., neither Venezuela nor Dominica have consented to the I.C.J.'s compulsory jurisdiction.¹⁴⁷ Because the I.C.J. may only entertain disputes in which states consent to its jurisdiction, compulsory arbitration will result in an innocuous and unenforceable award.¹⁴⁸

Even if Venezuela and Dominica accept the compulsory jurisdiction of the I.C.J., however, international law lacks effective remedies for noncompliance with arbitral awards.¹⁴⁹ In that instance, for example, either state may seek judicial

enforcement of an arbitral decision under Article 94 of the U.N. Charter.¹⁵⁰ As demonstrated in Cameroon v. Nigeria, however, Article 94 offers disputing states ineffective remedies.¹⁵¹ Though its language is vague, Article 94 expressly empowers the Security Council to recommend action to resolve the dispute.¹⁵²

Additionally, although Article 94 of the U.N. Charter empowers the U.N. Security Council to intervene and enforce I.C.J. decisions through imposing economic and political sanctions and using force, the Security Council is unlikely to intervene in the instant dispute unless the conflict rises to a level that endangers international peace and security.¹⁵³ Even if the Security Council intervenes, Venezuela could withstand economic and political pressure because of its status as an economically powerful state.¹⁵⁴ Intervention might affect Dominica if deemed the losing state; however, Dominica also may withstand economic pressure by relying on resources from other members in the Caribbean Community.¹⁵⁵ Because the U.N. Security Council's enforcement capability will likely have limited effect on the Aves Island dispute, compulsory arbitration thus fails to effectively resolve the dispute between Venezuela and Dominica.¹⁵⁶

C. Compulsory Arbitration Subject to I.C.J. Review Creates Inefficiency for the I.C.J. and for Disputing States Such as Venezuela and Dominica

Requiring states to engage in standardized arbitration under I.C.J. review is an inefficient process of dispute resolution.¹⁵⁷ First, mandatory arbitration subject to I.C.J. review creates inefficiencies in the hierarchy of dispute resolution bodies set forth in Article 33 of the U.N. Charter.¹⁵⁸ Second, Cameroon v. Nigeria demonstrates that compulsory arbitration also deprives disputing states such as Venezuela and Dominica the efficiencies of engaging in bilateral negotiations or regional dispute settlement mechanisms.¹⁵⁹

1. Compulsory Arbitration Bypasses Preliminary Diplomatic Dispute Settlement Procedures Embodied in the U.N. Charter

Though proposed to make international dispute resolution more efficient, mandatory arbitration subject to I.C.J. review in fact decreases its efficiency.¹⁶⁰ Under Article 33 of the U.N. Charter, the U.N. set forth a hierarchy of settlement methods from which states should choose to resolve their disputes.¹⁶¹ By first referencing negotiation, mediation, and conciliation in its list of acceptable means of dispute settlement, Article 33 indicates that states engaging in such preliminary bilateral procedures add to the administrative efficiency of the hierarchy of international dispute resolution.¹⁶²

Compulsory arbitration subject to I.C.J. review, for instance, eliminates the opportunity for Venezuela and Dominica to negotiate bilaterally by mandating initial arbitration of the Aves Island dispute before the I.C.J.¹⁶³ Even if bilateral negotiations between Venezuela and Dominica fail, compulsory arbitration will deprive them an opportunity to settle regionally before mechanisms such as the Permanent Council of the Organization of the American States as well.¹⁶⁴ By eliminating these opportunities, compulsory arbitration decreases the efficiency of the dispute resolution hierarchy embodied in Article 33 by requiring all disputes be reviewed at the I.C.J. level.¹⁶⁵

2. Compulsory Arbitration Deprives Disputing States Such as Venezuela and Dominica the Efficiencies of Engaging in Bilateral Settlement Procedures

Implementing compulsory arbitration not only decreases administrative efficiency of international dispute resolution, but deprives disputing states such as Venezuela and Dominica the efficiencies of bilateral settlement procedures as well.¹⁶⁶ In Cameroon v. Nigeria, the I.C.J. noted that "regional agencies," geared towards the resolution of geographically specific disputes, are often the appropriate settlement mechanism for territorial boundary disputes.¹⁶⁷ In addition, Article 52 of the U.N. Charter emphasizes the efficiency of regional settlement mechanisms.¹⁶⁸ This emphasis indicates that regional settlement

mechanisms may offer Venezuela and Dominica efficiencies that standard adjudication or arbitration lack.¹⁶⁹

For example, regional settlement might offer Venezuela and Dominica the benefits of local expertise with regard to regional law, customs, and agreements.¹⁷⁰ Regional experts, in consensus with regard to local law, add predictability and transparency to awards from regional settlement mechanisms while shortening the time necessary for dispute resolution.¹⁷¹ Thus, mandatory arbitration will deprive Venezuela and Dominica the efficiencies of lower costs, faster results, and access to justice that regional mechanisms offer.¹⁷²

III. Recommendations

By providing a forum for states to engage in Med-Arb when resolving their disputes, the U.N. may foster a more effective and efficient means of dispute resolution than that offered through compulsory, standardized arbitration.¹⁷³ First, Med-Arb is an effective means of dispute resolution for disputing states such as Venezuela and Dominica because it encourages state cooperation in dispute settlement and compliance with settlement awards.¹⁷⁴ Second, Med-Arb adds efficiency to the dispute resolution process by providing states such as Venezuela and Dominica with the advantages of both mediation and arbitration in their dispute settlement.¹⁷⁵

A. Venezuela and Dominica Should Engage in Med-Arb Because it Will Make Their Settlement Processes More Effective

By engaging in Med-Arb, Venezuela and Dominica could add efficacy to settlement procedures and results with regard to their dispute over Aves Island.¹⁷⁶ In recognizing Venezuela's and Dominica's sovereign right to consent to resolution of their dispute, Med-Arb will make their dispute resolution process more effective by encouraging both states to cooperate and attempt resolution of the Aves Island dispute in good faith.¹⁷⁷ Second, because Med-Arb increases the likelihood that states reach settlement, it will add efficacy to Venezuela's and Dominica's dispute resolution by encouraging settlement compliance and curing any potential enforcement issues with regard to their dispute.¹⁷⁸

1. Med-Arb Will Increase the Effectiveness of Dispute Settlement by Encouraging Both Venezuela and Dominica to Cooperate During Settlement and Make Good-Faith Attempts at Dispute Resolution

Venezuela and Dominica can increase the effectiveness of their dispute resolution process through using Med-Arb in their settlement.¹⁷⁹ Med-Arb, unlike compulsory arbitration, is based upon the consent of disputing parties to resolve their dispute.¹⁸⁰ The parties in I.B.M. v. Fujitsu, for example, established consent to the processes of Med-Arb in their initial meetings.¹⁸¹ This consensus allowed the parties to establish a

framework agreement that encompassed the development of the processes of Med-Arb and each party's obligations.¹⁸²

Similarly, Venezuela and Dominica should undergo Med-Arb in their dispute over Aves Island to increase the effectiveness of their dispute settlement.¹⁸³ For example, establishing a framework agreement that defines the development of their settlement and its processes will clarify and offer direction to both Venezuela and Dominica with regard to their obligations during settlement.¹⁸⁴ In addition, Venezuela and Dominica are more likely to cooperate with procedures and honor obligations that they agree to in a framework agreement.¹⁸⁵

2. Med-Arb Encourages Compliance with Settlement and Cures Enforcement Issues

Med-Arb may also increase the effectiveness of settlement of the Aves Island dispute because Med-Arb encourages compliance with awards.¹⁸⁶ As I.B.M. v. Fujitsu demonstrates, parties are more likely to recognize and comply with Med-Arb awards because they stem from consensual negotiations during the mediation phase of Med-Arb mediation phase.¹⁸⁷ If Venezuela and Dominica agree to engage in Med-Arb to settle their dispute, they, similarly, are likely to recognize any resulting award because they initially consented to Med-Arb and its procedures.¹⁸⁸

I.B.M. v. Fujitsu also demonstrates that Med-Arb encourages mutually favorable agreements by allowing disputing parties such

as Venezuela and Dominica to choose resolution procedures autonomously.¹⁸⁹ Where Venezuela and Dominica autonomously set Med-Arb procedures and guidelines, they are more likely to comply because they previously consented to Med-Arb's processes.¹⁹⁰ Even if Venezuela and Dominica fail to reach complete agreement during the initial mediation phase, they may agree to a binding award issued during Med-Arb's arbitration phase.¹⁹¹ Further, Venezuela and Dominica may draft enforcement clauses that offer either party various forums in which to enforce the award.¹⁹² Thus since Venezuela and Dominica will have more autonomy during Med-Arb, they are more likely to comply with its result.¹⁹³

B. Venezuela and Dominica Should Engage in Med-Arb Because it Adds Efficiency to Their Dispute Resolution Process

Med-Arb increases the efficiency of Venezuela's and Dominica's dispute resolution because it allows them to capitalize on the advantages of both mediation and arbitration to resolve their dispute.¹⁹⁴ Med-Arb affords disputing states such as Dominica and Venezuela various procedural efficiencies.¹⁹⁵ After the arbiters in IBM v. Fujitsu attempted dispute resolution through various unstructured processes, they then streamlined their dispute resolution process by employing a two step Med-Arb process that conserved resources.¹⁹⁶

Venezuela and Dominica, similarly, may profit procedurally by conserving resources if they engage in Med-Arb.¹⁹⁷ For example, if Venezuela and Dominica reach an agreement with regard to the parties' relationship during the initial mediation phase, the arbiters will save resources typically required to determine allocations of fault in the dispute.¹⁹⁸ Med-Arb also allows disputing states such as Venezuela and Dominica to resolve preliminary issues in its mediation phase and thus reduce the number of outstanding issues subject to arbitration in the subsequent arbitration phase.¹⁹⁹ If Venezuela and Dominica fail to reach a complete agreement in the initial mediation phase of Med-Arb, however, their third-party mediator will transition into the role of a third-party arbiter equipped with standard arbiter duties and enforcement abilities.²⁰⁰

As I.B.M. v. Fujitsu demonstrates, this role change will likely increase the efficiency of Venezuela's and Dominica's dispute settlement because the arbiters may focus on the states' core interests and settlement goals instead of their rights.²⁰¹ In addition, third-party arbiters may eliminate discovery in fact-intensive disputes such as that over Aves Island because they are already familiar with the dispute and its facts.²⁰² Because it allows the arbiters to save time and discovery expenses, Med-Arb thus affords disputing states such as

Venezuela and Dominica procedural efficiencies that compulsory arbitration may lack.²⁰³

Conclusion

States contribute to international peace and security by resolving their disputes through accepted means of dispute resolution.²⁰⁴ States are entitled to select from a myriad of accepted dispute settlement mechanisms to resolve their disputes.²⁰⁵ A requirement that disputing states such as Venezuela and Dominica engage in arbitration is ineffective because it undermines state sovereignty by dispensing with their right to consent to submit the dispute for resolution and requires states to be bound by its processes and procedures.²⁰⁶

If the U.N. subjects the Aves Island dispute to compulsory arbitration, it will encourage settlement noncompliance, extend U.N. Security Council inabilities to enforce noncompliance, and foster inefficiencies in the settlement of Venezuela's and Dominica's border dispute.²⁰⁷ Instead, Venezuela and Dominica should engage in a combination of mediation and arbitration to resolve their dispute.²⁰⁸ Engaging in Med-Arb will allow Venezuela and Dominica to maximize the efficacy and efficiency of their dispute resolution process.²⁰⁹ By engaging in Med-Arb, Venezuela and Dominica may reach a mutually beneficial agreement, further international peace and security for all

states affected, and set a precedent for diplomatic resolution of disputes in the near future.²¹⁰

¹ See Jan Paulsson, Boundary Disputes into the Twenty-First Century: Why, How . . . and Who?, 95 **Am. Soc'y Int'l L. Proc.** 122, 122 (2001) (expressing that stable boundaries reduce the likelihood of conflict or dispute between neighbor states).

² See id. at 122-23 (realizing that boundary disputes may result in armed conflict thereby threatening international peace and security); see also **Antonio Cassese, International Law** 217 (2001) (conveying that states which use force to settle disputes may also weaken relations with other states not party to the dispute because the international community is globally interconnected).

³ See Paulsson, supra note 1, at 123 (noting delimitation of states' territorial boundaries may reapportion the property of states' citizens).

⁴ See id. (recognizing that maritime disputes often are based on title to fishery and natural resources such as gas and oil reserves).

⁵ See Srecko Vidmar, Compulsory Inter-State Arbitration of Territorial Disputes, 31 **Denv. U. L. Rev.** 87, 89 (2002) (asserting disputes that remain unresolved are likely to escalate to armed conflict).

⁶ See Wikipedia: The Free Encyclopedia, Isla Aves [hereinafter Isla Aves], http://en.wikipedia.org/wiki/Isla_de_Aves (last visited Mar. 4, 2006) (pointing out that Caribbean Island States object to Venezuela's claim of sovereignty of Aves Island).

⁷ See CNN.com, Caribbean Countries and Venezuela Dispute Sovereignty of Aves Island [hereinafter Caribbean Countries and Venezuela Dispute], <http://www.onepaper.com/deals/?v=d&i=&s=Caribbean:Paradise+News&p=1105690677> (last visited Mar. 4, 2006) (reporting that Venezuela and Dominica have not agreed upon maritime boundaries around the Island). Access to the Island's fishery and natural resources underlie the dispute. Id. Though the Island is rich in fishery resources such as tuna, grouper, and red snapper, access to natural gas reserves is driving the dispute. Id.

⁸ Compare id. (conveying that Dominica wishes to engage in international arbitration to resolve the dispute over Aves Island), with Daily Journal, Caricom Discusses Las Aves Dispute, <http://www.thedailyjournalonline.com/article.asp?CategoryId=10717&ArticleId=201067> (last visited Mar. 4, 2006) (reporting Venezuelan President Hugo Chavez's insistence that Aves Island belongs to Venezuela).

⁹ See Caribbean Countries and Venezuela Dispute, supra note 7 (implying international dispute resolution may prevent Venezuela

and Dominica from using force to resolve their dispute); c.f. CNN.com, Peru, Ecuador Sign Historic Peace Treaty, <http://www.cnn.com/WORLD/americas/9810/26/peru.ecuador.02/> (last visited Mar. 4, 2006) (reporting that Peru and Ecuador ended armed conflict by resolving their border dispute over the Amazon Jungle through peaceful dispute resolution).

¹⁰ See Anne Peters, Article, International Dispute Settlement: A Network of Cooperational Duties, 14 **Eur. J. Int'l L.** 1, 4 (2003) (classifying dispute resolution methods as either diplomatic-political or adjudicative-legal in nature).

¹¹ See discussion infra Part II.A (discussing the disadvantages of compulsory arbitration with regard to the dispute over Aves Island).

¹² See Vidmar, supra note 5, at 89 (reasoning the United Nations ("U.N.") should implement compulsory arbitration through a general resolution or treaty because it currently places no "affirmative duty on states" to arbitrate their disputes).

¹³ See U.N. Charter art. 33, para. 1 (enumerating arbitration as a method of dispute resolution which U.N. member states may employ in resolving their disputes); see also Vidmar, supra note 5, at 101 (attributing the effectiveness of arbitration to its impartial processes and awards).

¹⁴ See Vidmar, supra note 5, at 99 (conceding that compulsory arbitration is only suitable for a “range” of boundary disputes); see also Paulsson, supra note 1, at 126 (noting that effective settlement of boundary disputes requires more than systematic application of uniform principles to fact-intensive disputes).

¹⁵ See discussion infra Parts II.A, II.B, II.C (arguing that compulsory arbitration will not resolve effectively or efficiently the Aves Island dispute because it undermines Venezuela’s and Dominica’s sovereignty, results in settlement noncompliance and ineffective enforcement, and eliminates dispute settlement’s inherent efficiencies); see also Carla S. Copeland, Note, The Use of Arbitration to Settle Territorial Disputes, 67 **Fordham L. Rev.** 3073, 3107 (1999) (positing that a uniform method of dispute resolution is not appropriate to resolve every boundary dispute).

¹⁶ See discussion infra Part I.A (explaining that Venezuela bases its claim to Aves Island on historic title whereas Dominica bases its claim to the Island on its geographic relation to Dominica’s coastal baselines).

¹⁷ See generally East Timor (Port. v. Austl.), 1995 I.C.J. 90 (June 30) (ruling on Portugal and Australia’s competing claims of sovereignty of East Timor).

¹⁸ See generally Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nig.), 2002 I.C.J. 94 (Oct. 10) (ruling on Cameroon and Nigeria's competing claims of sovereignty to the Bakassi Peninsula and Lake Chad).

¹⁹ See discussion infra Part II.A (claiming compulsory arbitration will undermine Venezuela's and Dominica's sovereignty by violating their sovereign right to consent to resolution of their dispute).

²⁰ See discussion infra Part II.B (asserting that disputing states such as Venezuela and Dominica are unlikely to recognize and comply with compulsory arbitration's award where they do not consent initially to the resolution of their dispute and discussing how their noncompliance will lead to enforcement inability).

²¹ See discussion infra Part II.C (arguing compulsory arbitration will reduce the inherent efficiencies of dispute resolution by eliminating the opportunity for disputing states such as Venezuela and Dominica to resolve their dispute through bilateral negotiations or regional settlement mechanisms).

²² See discussion infra Part III (suggesting that Venezuela and Dominica should engage in a combination of mediation and arbitration ("Med-Arb") to resolve their dispute over Aves

Island because it will allow them to make their settlement process more effective and efficient).

²³ See generally *Int'l Bus. Mach., Corp. v. Fujitsu, Ltd.*, 4 Am. Arb. Ass'n No. 13T-117-0636-85 (1987) (Jones & Mnookin, Arbs.) (ruling on a commercial arbitration dispute between I.B.M. and Fujitsu). In making their decision, Jones and Mnookin discussed the advantages of using Med-Arb to resolve disputes. Id. See James T. Peter, Note & Comment, Med-Arb in International Arbitration, 8 **Am. Rev. Int'l Arb.** 83, 84 (1997) (asserting that although Med-Arb is infrequently used in international disputes, disputing states such as Venezuela and Dominica should engage in Med-Arb to resolve efficiently their international disputes).

²⁴ See discussion infra Part IV (concluding that all states which employ Med-Arb to resolve their disputes may obtain redress of their dispute effectively and efficiently while contributing to international peace and security).

²⁵ See Alexander's Gas & Oil Connection: News and Trends: Latin America, The Barbados-Trinidad and Tobago Dispute, <http://www.gasandoil.com//goc/news/ntl41059.htm> (last visited Mar. 4, 2006) (reporting that the seabed of the Caribbean Sea contains approximately seventy three trillion cubic feet ("t.c.f.") of natural gas); see also Society of Petroleum Engineers, How Much Oil and Natural Gas is Left?,

http://www.spe.org/spe/jsp/basic/0,,1104_1008218_1109511,00.html
(last visited Mar. 4, 2006) (reporting that only 6,100 t.c.f. of natural gas reserves remained at the beginning of the 2004); American Petroleum Institute, Natural Gas Facts, http://www.naturalgasfacts.org/factsheets/nat_gas_facts.html (last visited Mar. 4, 2006) (reporting that Americans alone will increase their use of natural gas by forty percent before 2025); Anouk Honoré, Future Natural Gas Demand in Europe: The Importance of the Power Sector, Oxford Institute for Energy Studies: Natural Gas Research Programme 13 (2006) (projecting that natural gas will continue to be the fastest growing source of fossil fuel in Europe over the next two decades), available at <http://www.oxfordenergy.org/pdfs/NG10.pdf> (last visited Mar. 4, 2006).

²⁶ See U.N. Charter art. 33, para. 1 (enumerating eight acceptable methods of peaceful dispute settlement that states should first use to resolve their disputes). The U.N. Security Council may intervene in disputes and require states to engage in peaceful dispute settlement when necessary. Id. para. 2.

²⁷ See East Timor (Port. v. Austl.), 1995 I.C.J. 90, para. 34 (June 30) (failing to rule on the dispute between Portugal and Australia where it implicated Indonesia's rights and obligations and where Indonesia did not consent to the dispute).

²⁸ See IRINNEWS.ORG: UN Office for the Coordination of Humanitarian Affairs, Cameroon-Nigeria: Cameroon Soldier Killed on Disputed Bakassi Peninsula, http://www.irinnews.org/report.asp?ReportID=47731&SelectRegion=West_Africa&SelectCountry=CAMEROON-NIGERIA (last visited Mar. 4, 2006) (indicating that Nigeria did not comply with the I.C.J.'s initial decision that required it to pull troops out of the Bakassi Peninsula). Nigeria has continued to demonstrate its unwillingness to comply with I.C.J. mandates through missing bilateral meetings and failing to meet additional I.C.J. pull-out deadlines. Id.

²⁹ See Peter, supra note 23, at 83-85 (suggesting that states that engage in Med-Arb may benefit from the advantages of both mediation and arbitration when resolving their disputes).

³⁰ See Christopher Toothaker, Venezuelan Troops on Remote Island Assert Claim in Territorial Dispute, **Associated Press**, Oct. 17, 2005 (reporting that Venezuela recently positioned seventeen sailors on its newly established base on Aves Island), available at <http://www.signonsandiego.com/news/world/20051017-0037-venezuela-disputedisland.htm> (last visited Dec. 22, 2005). Commenting on Venezuela's recent action with regard to Aves Island, Venezuelan Commander Guillermo Isturiz noted: "Aves Island belongs to Venezuela. Several nations in the Eastern

Caribbean dispute that claim, but we are reaffirming our sovereignty here." Id.

³¹ See Caribbean Countries and Venezuela Dispute, supra note 7 (reporting Caribbean countries may request the U.N. to resolve the dispute over the sovereignty of Aves Island through international arbitration); see also Infoplease Daily Almanac, Venezuela [hereinafter Infoplease Venezuela], <http://www.infoplease.com/ipa/A0108140.html> (last visited Mar. 4, 2006) (indicating that Dominica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines object to Venezuela's claim of sovereignty of Aves Island).

³² See Isla Aves, supra note 6 (indicating that Aves Island is a small, remote island east of the Caribbean Islands of Sotavento).

³³ See Griffin St. Hilaire, Bird Island: Time to Act, <http://da-academy.org/birdisl.html> (last visited Mar. 4, 2006) (noting the Island is a breeding and resting place for five different species of birds and the green sea turtles); see also Toothaker, supra note 30 (noting that many scientists visit Aves Island specifically to study the different species of birds and endangered sea turtles).

³⁴ See Toothaker, supra note 30 (stating the Aves Island dispute centers not on the sovereignty of the territorial Island, but

rather on the access to natural gas and oil in Island's surrounding maritime territory).

³⁵ See Alexander's Gas & Oil Connection, supra note 25 (suggesting that exploration of the Caribbean maritime territory may lead the states to discovery of more natural gas reserves farther in the Atlantic Ocean).

³⁶ See Griffin St. Hilaire, supra note 33 (indicating Venezuela claims that it obtained sovereignty of Aves Island in 1865, when Queen Isabella II of Spain awarded Venezuela title to the Island after Spain's dispute with the Netherlands); see also Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nig.), 2002 I.C.J. 94, para. 64 (Oct. 10) (recognizing historic title as a valid and enforceable claim of sovereignty against all states).

³⁷ See News from Russia, Caribbean Countries Argue with Venezuela, <http://newsfromrussia.com/world/2005/11/07/67127.html> (last visited Mar. 4, 2006) (noting Spain, Britain, the United States, the Netherlands and Venezuela have occupied Aves Island during the last two centuries).

³⁸ See Toothaker, supra note 30 (reporting that Venezuela recently set up military outposts on Aves Island, conducted

weddings and baptisms on the Island, patrolled the surrounding waters, and conducted scientific research around the Island).

³⁹ See Patrick J. O'Donoghue, Transnational Companies Behind Caricom Claim over Isla de Aves?,

http://www.vheadline.com/printer_news.asp?id=10031 (last visited Mar. 4, 2006) (conveying that Venezuela currently maintains delimitation treaties with the United States, France, the Netherlands, the Dominican Republic and Trinidad and Tobago covering maritime territory in the Caribbean Sea).

⁴⁰ See **U.N. Oceans & L. Sea, Declarations and Statements with Respect to the United Nations Convention on the Law of the Sea and to the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea**, U.N.

Sales No. E.97.V.3 (1996) [hereinafter **Declarations and Statements**] (noting that Venezuela has not ratified UNCLOS since the U.N.'s last official publication of ratifications in 1996), available at

http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm (last visited Mar. 5, 2006).

⁴¹ See United Nations Convention on the Law of the Sea art. 121, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS] (providing that an island, a "naturally formed area of land, surrounded by water, [and] above water at high tide," exercises rights to a

territorial sea, exclusive economic zone (“EEZ”), and a continental shelf). States that have ratified UNCLOS enjoy a right to exercise sovereignty within 12 nm of territorial seas, 200 nm of an EEZ, and 150 nm of a continental shelf. Id. arts. 3, 57, 76, para. 5.

⁴² See Toothaker, supra note 30 (expressing St. Vincent Prime Minister Ralph Gonsalves’ opinion that Aves Island definitely belongs to Dominica).

⁴³ See News from Russia, supra note 37 (indicating Aves Island is located closer to Dominica than it is to Venezuela). While it is located within 140 nm of Dominica’s coastal baselines, Aves Island is located approximately 380 nm from Venezuela’s coastal baselines. Id.

⁴⁴ See id. (noting that Venezuela’s claim of sovereignty to Aves Island encompasses the EEZs of Caribbean Islands Montserrat and Grenada).

⁴⁵ See **Cassese**, supra note 2, at 103 (conveying that in addition to the U.N. Charter’s espousal of peaceful dispute resolution, customary international law and recent international cases support the use of dispute resolution mechanisms to prevent states from resorting to force in their disputes).

⁴⁶ See U.N. Charter art. 2, para. 3 (obliging all U.N. member states to “settle their international disputes by peaceful means

in such a manner that international peace and security, justice, are not endangered”).

⁴⁷ See U.N. Charter art. 33, para. 1 (setting forth that states may employ “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort[ing] to regional agencies or arrangements, or other peaceful means” to resolve their disputes); see Peters, supra note 10, at 4 (differentiating adjudicative measures of dispute resolution from diplomatic methods due to their different standards and binding processes).

⁴⁸ See Peters, supra note 10, at 4 (pointing out that negotiation, inquiry, mediation and conciliation are considered diplomatic mechanisms that result in nonbinding awards whereas arbitration and litigation are adjudicative in nature and result in binding awards).

⁴⁹ See id. (suggesting that binding awards are optimal because neither party to the dispute may avoid the award unilaterally). Ideally, however, the parties will reach an agreement resulting in an enforceable award in both adjudicative and diplomatic dispute resolution mechanisms. Id.

⁵⁰ See id. (explicating that adjudicative methods of dispute resolution include formal, court adjudication and arbitration by arbitral tribunals). Arbitration is different from adjudication

because it offers a more flexible settlement procedure and allows the party to retain more autonomy than does adjudication. Id. at 7.

⁵¹ See **Barry E. Carter et al., International Law** 284 (4th ed. 2003) (describing the development of adjudicative methods of dispute resolution). The Permanent Court of International Justice ("P.C.I.J.") and its successor, the I.C.J., are the principle international courts to which states have submitted their disputes for adjudication in the twentieth century. Id. The I.C.J. replaced the P.C.I.J. because it became increasingly unable to enforce its decisions. Id.

⁵² See Peter, supra note 23, at 87 (summarizing arbitration as "another form of litigation . . . more suited to the needs of [the] international [community which] avoids the pitfalls of litigation."). States engage in arbitration over adjudication because it offers 1) a neutral forum for the resolution of the dispute, 2) surer enforcement mechanisms, 3) confidential procedures, 4) expert arbiters, and 5) limited discovery. Id.

⁵³ See Peter, supra note 23, at 87-88 (asserting that states' consent to arbitration is imperative to the award's enforceability).

⁵⁴ See **Thomas Buergenthal & Harold G. Maier, Public International Law in a Nutshell** 70-71 (2nd ed. 1990) (noting that disputing states formalize arbitral procedures in a comprimis agreement).

⁵⁵ See Lucy V. Katz, Related Article, Arbitration as a Bridge to Global Markets in Transitional Economies: The Republic of Cuba, 13 **Willamette J. Int'l L. & Disp. Resol.** 109, 138 (2005) (conveying that arbitral awards are similar to binding court orders or even final judgments).

⁵⁶ See Carlos De Vera, Article, Arbitrating Harmony: 'Med-Arb' and the Confluence of Culture and Rule of Law in the Resolution of International Commercial Disputes in China, 18 **Colum. J. Asian L.** 149, 152 (noting that neutral mediators first listen to the dispute and then meet separately with each party to moderate their positions).

⁵⁷ See Peter, supra note 23, at 83 (proposing that states which engage in voluntary mediation increase the likelihood that they reach a mutually beneficial agreement).

⁵⁸ See **Carter**, supra note 51, at 276 (conveying that mediation allows parties to retain control over the dispute and set mediation's procedures).

⁵⁹ See De Vera, supra note 56, at 152 (indicating that when parties fail to reach agreement through negotiations, disinterested, third-party mediators may facilitate dispute

settlement by helping parties to focus more on aligning their interests and less on their entitlements).

⁶⁰ See **Alan Redfern & Martin Hunter, Law and Practice of International Commercial Arbitration**, 31 (3rd. ed. 1999)

(observing that mediation is more efficient “in terms of time and money” than is arbitration).

⁶¹ See Wikipedia: The Free Encyclopedia, East Timor [hereinafter East Timor], http://en.wikipedia.org/wiki/East_Timor (last visited Mar. 4, 2006) (reporting that disputes over the sovereignty of East Timor began in the sixteenth century when the Portuguese and Dutch colonized East Timor and its surrounding islands). Japan’s invasion of East Timor in 1941 resulted in more recent conflicts between the Dutch, Australians and Japanese over Timor’s control. Id.

⁶² See id. (reporting that East Timor declared itself an independent nation on October 16, 1975 after Portugal effectively abandoned East Timor).

⁶³ See East Timor (Port. v. Austl.), 1995 I.C.J. 90, para. 1 (June 30) (alleging in addition that Australia failed to recognize the right of the East Timorese to self-determination).

⁶⁴ See id. para. 18 (noting that Australia acted upon this authority and established a “zone of cooperation” with Indonesia regarding joint exploration of resources in East Timor).

⁶⁵ See id. para. 19 (alleging that Australia, by negotiating its 1989 Treaty with Indonesia, violated Portugal's sovereignty of East Timor and other Security Council provisions as well).

⁶⁶ See id. para. 1 (noting the I.C.J. had jurisdiction over the dispute because Portugal and Australia accepted compulsory jurisdiction under Article 36 of its statute); see also Statute of the International Court of Justice art. 36, para. 2, Oct. 24, 1945, 832 U.S.T.S. 993 [hereinafter I.C.J. Statute] (proclaiming that the I.C.J. may exercise compulsory jurisdiction, ipso facto, over consenting states with regard to matters of treaty interpretation, international law questions, disputes with regard to breaches of international obligations, and reparation thereto).

⁶⁷ See Port. v. Austl., 1995 I.C.J. para. 21 (contending, in fact, that there was no dispute between Australia and Portugal).

⁶⁸ See id. para. 25 (concluding that the I.C.J. must consider the legality of Australia's 1989 Treaty with Indonesia because its subject matter pertained to Portugal's dispute with Australia).

⁶⁹ See id. para. 34 (emphasizing the "well-established principle . . . that the [I.C.J.] can only exercise jurisdiction over a state with its consent.").

⁷⁰ See Wikipedia: The Free Encyclopedia, Bakassi [hereinafter Bakassi], http://en.wikipedia.org/wiki/Bakasi_Peninsula (last

visited Mar. 4, 2006) (implying Cameroon and Nigeria dispute the sovereignty of the Bakassi Peninsula because they seek access to its vast oil reserves).

⁷¹ See Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nig.), 2002 I.C.J. 94, para. 35 (Oct. 10) (recanting that after World War II, France and Britain apportioned German territory encompassing the disputed Bakassi Peninsula).

⁷² See Asisi Asobie, Conflict Between Nigeria and Bakassi: Political Context and Contending Principles, Vanguard, June 6, 2003, <http://news.biafranigeriaworld.com/archive/2003/jun/06/0071.html> (last visited Mar. 4, 2006) (noting that border clashes on the Bakassi Peninsula during the 1980s and 1990s nearly caused Cameroon and Nigeria to engage in war).

⁷³ See Cameroon v. Nig., 2002 I.C.J. para. 1 (indicating that Cameroon submitted its dispute with Nigeria to the I.C.J. because their bilateral negotiations stagnated and noting that Cameroon wished to avoid further strife between the countries as Nigeria maintained military troops in the disputed territory).

⁷⁴ See Press Release, I.C.J., Land and Mar. Boundary Between Cameroon and Nig. (Cameroon v. Nig.: Eq. Guinea Intervening) (Jan. 28, 2002) (pointing out that Cameroon requested the I.C.J.

to "specify definitively the frontier between itself and Nigeria from Lake Chad to the sea" and to require Nigeria to withdraw its troops from Cameroonian territory), available at http://www.icj-cij.org/icjwww/ipresscom/ipress2002/ipresscom2002-26_cn_20021010.htm (last visited Feb. 5, 2006).

⁷⁵ See Cameroon v. Nig., 2002 I.C.J. para. 26 (summarizing Cameroon's main contention that Nigeria violated uti possidetis juris by failing to respect the boundary demarcated by the Anglo-German Agreement of 1913. But see Adaeze Ifesi, Offshore Delimitation of Resource Deposits Situated Across National Boundaries: The International Court of Justice Decision in Cameroon v. Nigeria Lending Clarity or Compromise?, 1 **Transnat'l Disp. Mgmt.** 1 (2004) (portraying Nigeria's contention that the Anglo-German agreement lacked binding effect on Nigeria because Nigeria, in fact, inherited sovereignty of the Bakassi from the Kings and Chiefs of Old Calabar).

⁷⁶ See Steven R. Ratner, Drawing a Better Line: Uti Possidetis and the Borders of New States, 90 **Am. J. Int'l L.** 590, 590 (1996) (noting that states used the concept of uti possidetis juris to form boundaries in Latin and South America in the 1800s).

⁷⁷ See Cameroon v. Nig., 2002 I.C.J. para. 225 (finding the 1913 Anglo-German Agreement enforceable and thus granting the sovereignty of Bakassi Peninsula to Cameroon).

⁷⁸ See IRINNEWS.ORG, supra note 28 (reporting that Nigeria still occupies the Bakassi Peninsula and implying Nigerian soldiers recently killed Cameroonian soldiers stationed on the peninsula); see also I.C.J. Statute, supra note 66, art. 59 (indicating a decision of the I.C.J. is binding on the states party to the dispute). The decision of the I.C.J. is "final and without appeal." Id. art. 60.

⁷⁹ See Int'l Bus. Mach., Corp. v. Fujitsu, Ltd., 4 Am. Arb. Ass'n No. 13T-117-0636-85 (1987) (Jones & Mnookin, Arbs.) (recanting the dispute centered on I.B.M.'s claim that Fujitsu misappropriated its operating system and accompanying programs in order to develop and market I.B.M. compatible operating systems). But see Anita Stork, The Use of Arbitration in Copyright Disputes: I.B.M. v. Fujitsu, 3 **High Tech. L.J.** 241, 242-43 (pointing out, however, that I.B.M. failed to register its operating system for copyright protection). Fujitsu claimed that it did not misappropriate I.B.M.'s operating system because the system, as the industry standard, became public domain. Id. at 243-44.

⁸⁰ See Peter, supra note 23, at 103 (noting that mediation facilitates a subsequent, efficient arbitration by allowing the parties to establish a framework agreement that resolves preliminary issues and defines settlement procedures); see also Stork, supra note 79, at 250 (conveying that Med-Arb's process allows parties to select individually third-party facilitators, tailor informal processes to their needs, conduct private hearings, obtain faster resolution of their dispute, and expend less cost in the process).

⁸¹ See Peter, supra note 23, at 88-90 (emphasizing that Med-Arb is most effect when disputing parties first engage in mediation and then transition to arbitration). But see De Vera, supra note 56, at 155 (noting however, that mediation may merge into the arbitration thereby making Med-Arb's stages less distinct).

⁸² See De Vera, supra note 56, at 156 (stating that disputing parties may avoid engaging in Med-Arb's arbitration phase where they reach a mutually beneficial agreement in Med-Arb's mediation phase).

⁸³ See Peter, supra note 23, at 90 (averring this role change equips the third-party facilitator with prior understanding of the parties' relationship and ultimate goals which results in a more efficient dispute resolution).

⁸⁴ See id. at 88-89 (observing that courts grant Med-Arb awards more deference than settlements which are purely mediated). Parties may seek to enforce Med-Arb awards as contracts or arbitral awards binding under the New York Convention. Id. See United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. 3, June 10, 1958, 330 U.N.T.S. 3, 21 U.S.T. 2517 [hereinafter New York Convention] (obliging states party to the convention to recognize arbitral awards as binding and enforce those awards where relied upon by disputing states), available at <http://www.jus.uio.no/lm/un.arbitration.recognition.and.enforcement.convention.new.york.1958/doc.html> (last visited Mar. 4, 2006).

⁸⁵ See discussion infra Part II.A.1 (arguing that compulsory arbitration violates Article 2 by denying disputing states such as Venezuela and Dominica their state sovereignty).

⁸⁶ See discussion infra Parts II.A.2, II.A.3, II.A.4 (claiming that state sovereignty encompasses the right to consent to dispute resolution and to self-determination).

⁸⁷ See discussion infra Part II.B (reasoning that compulsory arbitration will result in settlement noncompliance by states which withhold initial consent dispute resolution and suggesting

such noncompliance makes compulsory arbitration innocuous due to weak international enforcement capabilities).

⁸⁸ See discussion infra Part II.C (arguing that arbitration will not maximize the efficiencies of dispute resolution under Article 33 of the U.N. Charter).

⁸⁹ See Vidmar, supra note 5, at 99 (conceding that compulsory arbitration is, in fact, vulnerable to criticisms of violating state sovereignty).

⁹⁰ See U.N. Charter art. 2, para. 1 (noting the founders of the U.N. organized the U.N. based on the "sovereign equality of all its members").

⁹¹ See, e.g., East Timor (Port. v. Austl.), 1995 I.C.J. 90, para. 34 (June 30) (referencing the international standard that the I.C.J. cannot exercise jurisdiction over states without their sovereign consent); Armed Activities on the Territory of Congo (Dem. Rep. Congo v. Rwanda), 2006 I.C.J. 126 (Feb. 3) (emphasizing that although states may imply consent to I.C.J. adjudication in certain circumstances, the I.C.J.'s basis for entertaining jurisdiction must stem from state consent according to its statute); Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahr.), 2001 I.C.J. 87 (Mar. 16) (failing to rule on the dispute between Qatar and Bahrain where Britain did not consent to I.C.J. adjudication and where

the dispute affected Britain's interests); *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14 (June 27) (conveying that the necessity of state consent to international adjudication predated the establishment of the I.C.J.).

⁹² See U.N. Charter art. 55 (basing the right to self-determination on the need for peaceful and friendly relations between all states). Article 56 obliges all U.N. members to recognize the right of states to self-determination under Article 55. Id. art. 56.

⁹³ See id. art. 2, para. 7 (stating that the "U.N. may not intervene in matters which are essentially the domestic jurisdiction of any state or . . . require [its] members to submit such matters to settlement under the present charter . . ."). Thus compulsory arbitration undermines the sovereign right of U.N. members such as Venezuela and Dominica their territorial and political independence. Id. arts. 1, 4.

⁹⁴ See id. art. 2 (indicating that states should use their equality to pursue the U.N.'s purposes set forth in Article 1); see also id. art. 1 (proclaiming that states should cooperate to solve international problems that are "economic, social, cultural, [and] humanitarian in character. . . ."); **Cassese**, supra note 2, at 88 (distinguishing sovereign equality of states

from states' legal equality and noting that sovereign equality serves as the basis for international law).

⁹⁵ See Cassese, supra note 2, at 89-90 (mentioning that state sovereignty also encompasses the right to exercise authority over individuals that live within a state's territory, immunity for sovereign state actions in the jurisdiction of foreign courts, and immunity for official actions performed by state representatives).

⁹⁶ See id. at 89 (correlating a state's right to protect the best interests of its citizens with a duty to promote state security within its territory).

⁹⁷ See Daily Journal, supra note 8 (reporting the Aves Island dispute significantly affects Venezuela's and Dominica's maritime boundaries and their right to exercise control over the resources located in the Island's surrounding maritime territory).

⁹⁸ Press Release, United Nations, United Nations Member States, U.N. Doc. ORG/1360/Rev.1 (Oct. 2, 2004) (recounting that Venezuela joined the U.N. on Nov. 15, 1945 and Dominica joined the U.N. on Dec. 18, 1978), available at <http://www.un.org/News/Press/docs/2004/ORG1360.rev.1.doc.htm> (last visited Mar. 5, 2006).

⁹⁹ See U.N. Charter art. 2, para. 4 (granting U.N. member states the right to act to protect their “territorial integrity [and] political independence . . .”).

¹⁰⁰ See id. (mandating that no state deprive U.N. member states their right to protect state interests and those of their citizens).

¹⁰¹ C.f. East Timor (Port. v. Austl.), 1995 I.C.J. 90, para. 34 (implying that all interested states in a dispute must consent to dispute resolution before the I.C.J. can review the case).

¹⁰² See id. para. 35 (refusing to entertain jurisdiction over Portugal and Australia where it needed to determine the lawfulness of Indonesia’s actions without its consent).

¹⁰³ See id. para. 24 (noting that the I.C.J. may not rule with regard to states’ international responsibility where the ruling affects the legal interests of the non-consenting states). Even if Dominica seeks resolution of the Aves Island dispute under I.C.J. review, Venezuela could argue its legal interests in Aves Island form the subject matter of the dispute thereby precluding compulsory arbitration without its consent. Id.

¹⁰⁴ See **Declarations and Statements**, supra note 40 (reporting that while Venezuela has not yet submitted to UNCLOS’ compulsory provisions, it may ratify the convention at any time and specify the forums for resolution of its disputes).

¹⁰⁵ See UNCLOS, supra note 41, art. 287, para. 1 (declaring states are free to choose to accept the jurisdiction of the International Tribunal for the Law of the Sea, the I.C.J., or other special arbitral tribunals to resolve their territorial disputes when signing or ratifying UNCLOS).

¹⁰⁶ Compare id. (empowering states such as Venezuela and Dominica with the sovereign right to choose to accept UNCLOS' compulsory jurisdiction provisions), with I.C.J. Statute, supra note 66, art. 36 (granting states a sovereign right to consent to its compulsory jurisdiction).

¹⁰⁷ See U.N. Charter art. 55 (indicating that states' right to self-determination encourages international stability and well-being).

¹⁰⁸ C.f. Port. v. Austl., 1995 I.C.J. para. 34 (correlating a violation of state sovereignty with a violation of states' right to self-determination).

¹⁰⁹ See U.N. Charter art. 55 (highlighting that states enjoy a right to self-determination in "conditions of economic and social progress and development").

¹¹⁰ See id. art. 2, para. 4 (empowering U.N. member states to act to further their economic and political interests).

¹¹¹ See id. art. 56 (noting that U.N. members should take action to further their right to self-determination under Article 55).

¹¹² See Islas o Dependencias Federales, <http://espanol.geocities.com/josegarmo/islas.html> (last visited Mar. 4, 2006) (attributing the Island's increasing tourism to its many beaches and natural attractions).

¹¹³ See UNCLOS, supra note 41, arts. 3, 57, 76 (setting forth that member states' territorial sea, EEZ, and continental shelf are measured from their coastal baselines).

¹¹⁴ See Alexander's Gas & Oil Connection, supra note 25 (observing that access to the Caribbean maritime territory in dispute will grant states the exclusive right to explore and exploit its significant natural resources).

¹¹⁵ See UNCLOS, supra note 41, art. 57 (providing UNCLOS member states with an EEZ up to 200 nm from their coastal baselines). In their EEZ, states have sovereign rights to explore, exploit, conserve and manage natural resources. Id. art. 56.

¹¹⁶ See **Cassese**, supra note 2, at 89 (positing that self-determination in fact obligates states to take action in the best interest of their citizens).

¹¹⁷ See U.N. Charter art. 33 (granting states the "choice" of enumerated dispute resolution methods to employ).

¹¹⁸ See generally East Timor (Port. v. Austl.), 1995 I.C.J. 90 (June 30) (considering Indonesia's sovereign right to consent to dispute resolution as an interested third-party).

¹¹⁹ See id. para. 34 (explaining that because the East Timor dispute implicated Indonesia's rights and obligations, Indonesia enjoyed the right to self-determination).

¹²⁰ See U.N. Charter art. 55 (vesting Venezuela and Dominica, as U.N. member states, with the right to determine a method of dispute resolution that will best resolve their dispute).

¹²¹ See id. art. 33 (vesting U.N. members a choice of internationally accepted methods of dispute resolution).

¹²² See Vidmar, supra note 5, at 101 (conceding that party autonomy and flexibility are integral to effective dispute settlement). But see id. at 89 (suggesting the U.N. should deprive states flexibility in resolving their territorial boundary disputes by implementing compulsory arbitration).

¹²³ See U.N. Charter art. 55 (emphasizing all states should recognize the right of U.N. member states to self-determination).

¹²⁴ Compare Infoplease Venezuela, supra note 31 (reporting Venezuela had a gross domestic product in 2004 of \$145.2 billion), with Infoplease Daily Almanac, Dominica, <http://www.infoplease.com/ipa/A0107471.html> (last visited Mar. 5, 2006) (reporting that Dominica only approximates a gross domestic product of \$384 million).

¹²⁵ See Vidmar, supra note 5, at 99 (noting that formal dispute resolution is less important for larger, more powerful states because they may utilize their economic resources to apply pressure to smaller and weaker nations).

¹²⁶ See id. (implying that economically powerful nations may not even need to engage in formal dispute resolution).

¹²⁷ See id. at 99-100 (noting smaller and more economically weak states may seek to employ means of dispute resolution that will place them on equal footing with more economically powerful states).

¹²⁸ See Peter, supra note 23, at 87 (conveying that impartial procedures and arbiter neutrality are two of arbitration's main advantages). But see id. at 86-87 (attributing the costly procedures of international arbitration to the arbitral bodies' required opinion).

¹²⁹ See id. at 84 (noting autonomy and flexibility of procedures are two of mediation's advantages). Dominica, for example, may wish to specify time and date restrictions, facilitator rights and duties, and various enforcement provisions in an agreement with Venezuela. Id.

¹³⁰ Compare U.N. Charter art. 33 (granting U.N. member states flexibility by allowing them to choose their preferred method of dispute settlement), with East Timor (Port. v. Austl.), 1995

I.C.J. 90, para. 34 (June 30) (emphasizing the right of states to choose to engage in dispute resolution).

¹³¹ See discussion infra Part II.B (arguing that compulsory jurisdiction will not effectively resolve the dispute over Aves Island because it will encourage noncompliance and create enforcement issues).

¹³² See discussion infra Part II.B.1 (discussing why losing parties are unlikely to implement unfavorable judgments).

¹³³ See discussion infra Part II.B.2 (averring that even though Article 94 of the U.N. Charter empowers the Security Council to take action to enforce the I.C.J.'s decisions, the Security Council's unwillingness to intervene makes the provision essentially ineffective).

¹³⁴ See Peters, supra note 10, at 2 (claiming the Friendly Relations Doctrine imparts a general duty for all states to cooperate in their interstate relations).

¹³⁵ See U.N. Charter arts. 2, 33 (correlating the duty of U.N. member states to attempt, in good faith, peaceful resolution of their international disputes). States should attempt to maintain friendly relations with other states as well. Id. arts. 55-56.

¹³⁶ See Alexander's Gas & Oil Connection, supra note 25 (reporting that although the disputed maritime territory contains fishery resources, the vast amount of natural gas that

lies in the seabed is actually driving the dispute; see also Paulsson, supra note 1, at 123 (imparting that more than fifteen percent of un-delimited maritime territory contains oil and natural gas reserves).

¹³⁷ See Peters, supra note 10, at 17 (conveying that state cooperation stems from their initial consent to dispute resolution).

¹³⁸ See Nejjib Jebril, Note and Comment, The Binding Dilemma: From Bakassi to Badme - Making States Comply with Territorial Decisions of International Judicial Bodies, 19 **Am. U. Int'l L. Rev.** 633, 635 (attributing Nigeria's noncompliance with the I.C.J.'s grant of Bakassi Peninsula to Cameroon to Nigeria's failure to consent to resolution of the dispute). This case exemplifies the I.C.J.'s inability to enforce decisions. Id. at 636, 645.

¹³⁹ See Vidmar, supra note 5, at 99 (remarking that no method of dispute resolution may prove effective where states are disinclined to cooperate); c.f. Bakassi, supra note 70 (commenting that although Nigeria did not openly reject the I.C.J.'s judgment, it failed to comply with the I.C.J.'s decision and called for more negotiations with Cameroon because it claimed that it did not accept the I.C.J.'s jurisdiction).

¹⁴⁰ See **Declarations and Statements**, supra note 40 (iterating that Venezuela has not signed, ratified, or acceded to the compulsory provisions of UNCLOS).

¹⁴¹ See Bakassi, supra note 70 (reporting that Nigeria refused to withdraw its military from the Bakassi Peninsula after the I.C.J. granted its sovereignty to Cameroon).

¹⁴² See Jack J. Coe, Jr., The Serviceable Texts of International Commercial Arbitration: An Embarrassment of Riches, 10 **Willamette J. Int'l L. & Disp. Resol.** 143, 145 (2002) (noting that contractual enforcement may affect party compliance).

¹⁴³ See Peters, supra note 10, at 17 (theorizing that consent to dispute resolution is crucial to effective settlement of states' disputes).

¹⁴⁴ See Jibril, supra note 138, at 650-51 (commenting on international bodies' lack of enforcement power when states draft weak arbitration agreements).

¹⁴⁵ See IRINNEWS.ORG, supra note 28 (indicating that Nigeria has not recognized or complied with the I.C.J.'s decision).

¹⁴⁶ See U.N. Charter art. 94 (granting states the right to seek recourse and enforcement of the I.C.J.'s decisions through the U.N. Security Council). The U.N. Security Council may enforce I.C.J. decisions through military force if necessary. Id. art. 26.

¹⁴⁷ See International Court of Justice, Declarations Recognizing as Compulsory the Jurisdiction of the Court [hereinafter I.C.J. Declarations], <http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicdeclarations.htm> (last visited Mar. 5, 2006) (reporting that Venezuela and Dominica have not yet accepted the compulsory jurisdiction provisions of the I.C.J.).

¹⁴⁸ See East Timor (Port. v. Austl.), 1995 I.C.J. 90, para. 34 (June 30) (reiterating that the I.C.J. may only hear cases in which states consent to its jurisdiction).

¹⁴⁹ See Jibril, supra note 138, at 659 (conveying one reason the I.C.J.'s decisions are vulnerable to enforcement inability is due to states' amicable political connections with the Security Council).

¹⁵⁰ See U.N. Charter art. 94, para. 2 (setting forth: "If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council").

¹⁵¹ See Ifesi, supra note 75 (recanting that even though the I.C.J.'s 2002 decision had "binding" effect, Cameroon and Nigeria set up a commission to negotiate their interests further).

¹⁵² See U.N. Charter art. 94, para. 2 (empowering the U.N. Security Council to “make recommendations or decide upon measures” that it should take to enforce I.C.J. judgments).

¹⁵³ See Jibril, supra note 138, at 659 (discussing the U.N. Security Council’s hesitancy to intervene in disputes between member states); see also Ibrahim J. Gassama, World Order in the Post-Cold War Era: The Relevance and Role of the United Nations After Fifty Years, 20 **Brook. J. Int’l L.** 255, 266-67 (1994) (remarking the U.N. Security Council requires a substantial amount of time to organize military intervention).

¹⁵⁴ See Infoplease Venezuela, supra note 31 (conveying that Venezuela maintains large reserves of petroleum and iron ore).

¹⁵⁵ See Caricom, Caribbean Community Secretariat: The Caricom Single Market Economy, http://www.caricom.org/jsp/single_market/single_market_index.jsp?menu=csme (last visited Mar. 5, 2006) (emphasizing a major goal of the Caribbean Single Market Economy is to increase intra-regional movement of resources between Caribbean States).

¹⁵⁶ See I.C.J. Declarations, supra note 140 (pointing out that since the I.C.J.’s formation in 1945, Venezuela has not accepted its compulsory jurisdiction).

¹⁵⁷ See discussion infra Parts II.C.1, II.C.2 (arguing compulsory arbitration creates inefficiencies for both international

dispute resolution bodies and disputing states such as Venezuela and Dominica).

¹⁵⁸ See discussion infra Part II.C.1 (claiming that mandatory arbitration will create inefficiency in the hierarchy of acceptable dispute resolution mechanisms set forth in Article 33 of the U.N. Charter).

¹⁵⁹ See discussion infra Part II.C.2 (suggesting that states such as Venezuela and Dominica will lose the benefits and efficiencies of regional dispute settlement mechanisms).

¹⁶⁰ See U.N. Charter art. 33, para. 1 (implying resolution of disputes through bilateral negotiations or regional settlement potentially decreases the number of disputes that U.N. member states submit to the I.C.J. for review).

¹⁶¹ See id. (intimating states should only resort to I.C.J. adjudication where bilateral dispute resolution fails to resolve their dispute).

¹⁶² See Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nig.), 1998 I.C.J. 94, para. 66-67 (June 11) (Preliminary Objections) (discussing how regional mechanisms such as the Lake Chad Commission may increase dispute resolution's efficacy and efficiency where disputes involve facts specific to their region).

¹⁶³ See Vidmar, supra note 5, at 99 (suggesting arbitration subject to I.C.J. review encourages states to bypass bilateral negotiations and regional settlement mechanisms).

¹⁶⁴ See Charter of the Organization of American States art. 85, December 13, 1951, 119 U.N.T.S. 3 (providing the Permanent Council "shall assist the parties and recommend the procedures it considers suitable for peaceful settlement of the dispute"), available at <http://www1.umn.edu/humanrts/iachr/oascharter.html#ch12> (last visited Mar. 5, 2006).

¹⁶⁵ See Vidmar, supra note 5, at 99 (assuming, falsely, that the I.C.J.'s review of all territorial disputes adds effectiveness and efficiency to dispute resolution because all territorial disputes involve the same principles). But see Paulsson, supra note 1, at 126 (noting that the application of uniform principles to disputes which involve different, case-specific facts will not effectively resolve all boundary disputes).

¹⁶⁶ See generally U.N. Charter arts. 52-54 (providing U.N. member states the opportunity to engage in dispute resolution within regional bodies).

¹⁶⁷ See Cameroon v. Nig., 1998 I.C.J. paras. 66-67 (noting the Lake Chad Commission, a regional settlement body, appropriately

hears and decides issues of international peace and security specific to its region).

¹⁶⁸ See U.N. Charter art. 52, para. 2 (obliging U.N. members to attempt resolution of their disputes through regional settlement mechanisms before submitting their disputes to the U.N. for resolution).

¹⁶⁹ See id. para. 1 (emphasizing that certain disputes between U.N. member states are best resolved through regional mechanisms).

¹⁷⁰ See USAID Supports Alternative Dispute Resolution in Latin America and the Caribbean, www.usaid.gov/locations/latin_america_caribbean/pdf/dg_conflict.pdf (last visited Mar. 5, 2006) (indicating the use of experts during mediation increases the states' productivity during the settlement process).

¹⁷¹ See Symposium, International Rule of Law, A.B.A., Latin America & Caribbean Law Initiative Council (Nov. 9-10, 2005), <http://www.rolsymposium.org/lalic.html> (last visited Mar. 5, 2006) (noting mediation may strengthen relations between neighbor states and aid the development of states' individual governments).

¹⁷² See World Bank Group: Legal and Judicial Reform, Alternative Dispute Resolution,

http://www4.worldbank.org/legal/leglr/institutions_adr.html

(last visited Mar. 5, 2006) (stating additionally that effective dispute settlement will reduce caseloads that international bodies must review).

¹⁷³ See discussion infra Parts III.A, III.B (advocating that Med-Arb is a more effective and efficient method of dispute resolution for territorial boundary disputes than is compulsory arbitration).

¹⁷⁴ See discussion infra Parts III.A, III.B (suggesting that states which engage in Med-Arb to resolve their territorial boundary disputes are more likely to reach and comply with a mutually beneficial agreement).

¹⁷⁵ See discussion infra Part III.B (proposing that Venezuela and Dominica may capitalize on the benefits of both mediation and arbitration if they employ Med-Arb during their dispute settlement).

¹⁷⁶ C.f. *Int'l Bus. Mach., Corp. v. Fujitsu, Ltd.*, 4 Am. Arb. Ass'n No. 13T-117-0636-85 (1987) (Jones & Mnookin, Arbs.) (discussing how I.B.M. and Fujitsu made the resolution of their dispute more effective by engaging in Med-Arb).

¹⁷⁷ See U.N. Charter arts. 2, 33 (obliging U.N. member states to attempt to resolve their international disputes in good faith).

¹⁷⁸ See De Vera, supra note 56, at 152 (implying that parties that reach agreement through mediation are more likely to resolve their dispute definitively and comply with the agreement).

¹⁷⁹ See Peter, supra note 23, at 106-14 (discussing how Med-Arb effectively resolves international disputes in China, Germany, and Switzerland).

¹⁸⁰ See De Vera, supra note 56, at 153 (observing the arbitration phase of Med-Arb requires states to consent to settlement).

¹⁸¹ See Peter, supra note 23, at 103 (recanting that I.B.M. and Fujitsu documented their consent to be bound by Med-Arb's subsequent processes in an agreement they formed during the initial phase of Med-Arb).

¹⁸² See id. at 103-04 (commenting that the parties initial framework agreement encompassed the details of the parties' future negotiations, mediation, arbitration, negotiated rule-making and other various dispute resolution procedures).

¹⁸³ Cf. id. (noting that Med-Arb facilitated various agreements which made the rest of the parties' dispute resolution process more effective).

¹⁸⁴ See De Vera, supra note 56, at 156 (adding that even partial agreements are beneficial because they allow the parties to resolve certain factual issues).

¹⁸⁵ See Peters, supra note 10, at 26-27 (emphasizing that cooperation is integral to effective enforcement of decisions).

¹⁸⁶ See Peter, supra note 23, at 105 (suggesting that states may increase the effectiveness of their dispute settlement process by employing Med-Arb because it will allow them to establish a relationship for future cooperation).

¹⁸⁷ See id. at 106 (suggesting parties that reach an agreement during Med-Arb's mediation phase increase the likelihood that Med-Arb will effectively settle their dispute).

¹⁸⁸ See Peters, supra note 10, at 6-7 (theorizing that methods of dispute resolution which avoid a "winner-takes-all solution" but reaches a consensual agreement are more effective and likely to encourage compliance). Because Med-Arb is consistent with Venezuela's and Dominica's sovereignty and will foster a mutually beneficial agreement, Venezuela and Dominica will likely comply with any resulting award. Id.

¹⁸⁹ See generally Int'l Bus. Mach., Corp. v. Fujitsu, Ltd., 4 Am. Arb. Ass'n No. 13T-117-0636-85 (1987) (Jones & Mnookin, Arbs.) (allowing I.B.M. and Fujitsu to autonomously set the procedures of mediation and arbitration during their dispute settlement).

¹⁹⁰ C.f. id. at 29, n.3 (noting that both I.B.M. and Fujitsu agreed to abide by the arbitral rules of the American

Arbitration Association). Such agreement made their dispute resolution process more effective. Id.

¹⁹¹ See De Vera, supra note 56, at 161 (noting that Med-Arb awards vest “the settlement reached by parties” with legal effect). Similarly, Venezuela and Dominica may agree for a Med-Arb award to have binding effect on both states. Id.

¹⁹² See New York Convention, supra note 84, art. 1 (granting signatories the right to seek enforcement of foreign arbitral awards in host countries). The enforcing court may not, however, impose “more onerous conditions or higher fees” than that imposed for domestic awards. Id. art. 3.

¹⁹³ See Katz, supra note 55, at 111 (stating that international dispute resolution encourages effective settlement and compliance because it causes parties to trust the impartiality of its awards).

¹⁹⁴ See De Vera, supra note 56, at 155 (relating Med-Arb’s mediation phase may increase the efficiency of dispute resolution by saving parties time and expenses). But see id. (considering that cultural differences may undermine the efficiency of Med-Arb).

¹⁹⁵ See Peter, supra note 23, at 105 (indicating that the mediator’s ability to tailor Med-Arb’s subsequent arbitration

phase is one of Med-Arb's major procedural advantages in terms of efficiency).

¹⁹⁶ See id. at 104 (suggesting that I.B.M. and Fujitsu had resources sufficient to continue their settlement procedures for many years).

¹⁹⁷ See id. at 83-84 (positing that states may increase the efficiency of their dispute resolution procedures by employing Med-Arb); see also De Vera, supra note 56, at 154-55 (remarking that Med-Arb allows states to obtain settlement of their dispute both quickly and easily).

¹⁹⁸ See Peter, supra note 23, at 106 (implying that the time necessary to allocate the fault of disputing parties decreases the efficiency of dispute resolution).

¹⁹⁹ See De Vera, supra note 56, at 156-57 (averring that parties that reach agreement during Med-Arb's initial phase significantly increase the efficiency of the subsequent arbitration phase by resolving preliminary, factual issues).

²⁰⁰ See Peter, supra note 23, at 91 (discussing the opportunity for parties to engage in a modified version of Med-Arb where they question the mediator's validity as an arbiter).

²⁰¹ See id. at 105-06 (discussing how the third-party mediator's transition to arbiter increases Med-Arb's efficiency by allowing

the arbiter to focus on the goals of settlement rather than the parties' entitlements).

²⁰² See id. at 106 (noting the mediator's deeper understanding of the dispute makes the arbitration phase more efficient because the arbiter bases a decision on broader comprehension of the dispute).

²⁰³ See De Vera, supra note 56, at 156-57 (asserting the time and discovery expenses that the third-party facilitator saves during Med-Arb translates directly into a more efficient dispute settlement process for the parties employing Med-Arb).

²⁰⁴ See Paulsson, supra note 1, at 122 (implying the objective of international law is to resolve disputes before they escalate to armed conflict; thereby furthering international peace and security).

²⁰⁵ See supra Part I.B (discussing the internationally accepted means of dispute resolution set forth in the U.N. Charter).

²⁰⁶ See supra Part II.A (arguing the U.N. should not subject the Aves Island dispute to compulsory jurisdiction because it violates their state sovereignty and right to self-determination under Articles 2 and 55 of the U.N. Charter).

²⁰⁷ See supra Parts II.B, II.C (claiming a requirement that Venezuela and Dominica engage in compulsory arbitration may lead

to noncompliance, enforcement problems, and inefficiencies in their dispute resolution process).

²⁰⁸ See supra Parts III.A, III.B (suggesting Venezuela and Dominica should engage in Med-Arb to resolve their dispute over Aves Island because it will add efficacy and efficiency to their dispute resolution process).

²⁰⁹ See supra Parts III.A, III.B (predicting that Med-Arb will make Venezuela's and Dominica's dispute resolution more effective and efficient because it will encourage both states to cooperate during settlement, increase compliance with a resulting award, reduce costs and time requirements, and reduce the number of issues and/or disputes the I.C.J. must review).

²¹⁰ See Paulsson, supra note 1, at 87-88 (noting dispute resolution is effective if it prevents states from resorting to force to resolve their dispute thereby contributing to international peace and security).