THE GOODS AND ODDS OF STATE PARTIES IN DISPUTE SETTLEMENT PROCESSES

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ABSTRACT

The present phase of interactions existing between sovereign states brings out the impression that the said interactions may lead to a positive end, same as it may lead to disputes thus necessitating settlement, making recourse to any amongst the existing settlement mechanism laid down in article 33(1) of the UN Charter. In every process of dispute settlement, the comportment of the various state parties is of paramount importance so as to guarantee a positive end. This article stands to make illustrations on the role of state parties, presenting an exposure on why some dispute settlement processes are successful while others end up in a fiasco. In such illustrations, analyses have been made drawing inspirations from specialized texts, articles and case law. Hence we thus arrived at the understanding that, the successes and failures registered in the dockets of courts and tribunals all depend on the conducts of state parties in disputes. To this respect, state parties are called upon to be sincere, honest, faithful and transparent in dispute settlement processes. On the other way round, the organs of judgment should be well constituted, setting out strategies against the ills of certain recalcitrant state parties, likewise the existing settlement mechanisms may be reformed and adapted to set up a hybrid settlement mechanism that may be more efficient when the existing settlement mechanisms of article 33(1) are proving to be less productive.

Keywords: Inter-State, Dispute, Settlement, Applicant, Respondent, Good Conduct, Arbitration, Adjudication.

INTRODUCTION

The countless number of Inter-State disputes[i] registered in the Universe gives one the impression that, disputes comprise of a phenomenon that can be resolved, but will hardly be avoided on an absolute point. This is based on the fact that, the present world requires States to be in constant interaction amongst themselves of which such interactions often yield fruits same as may equally result to disputes, necessitating a peaceful settlement, making use of the various mechanisms laid down in article 33(1) of the UN Charter. The Peaceful procedures mentioned in the San Francisco charter of 1945 includes; negotiation, mediation and conciliation, fact findings or inquiries, arbitration and judicial settlement[ii].

Mindful of the fact that a handful of mechanisms have been mentioned in the charter of the UN, the present work shall focus more on the legal mechanisms of dispute settlement.[iii] Considering equally the fact that all the settlement mechanism of the San Francisco Charter, 1945 are of great importance, Preference is given to the legal mechanisms for reasons that, international arbitration and adjudication have proven remarkably to be effective as compared to the others. Studies have shown that these legal dispute settlement mechanisms are significantly more successful at resolving international territorial, maritime, and river disputes than is the case with other bilateral and third-party dispute resolution mechanisms.[iv] One must not ignore the fact that, once a dispute is born, States are not obliged to choose a particular or specific method provided they have not entered into legal commitments to that regards. To accept one or another procedure is deemed to constitute a sovereign decision. Considering that a dispute necessarily involves at least two parties, two sovereign decisions must therefore accord for the determination of a concrete modality for dispute settlement. This is a result of the basic principle of sovereign equality[v]. However, whatever may be the settlement mechanism chosen by the disputing parties, a reminder must be made on the fact that in the process of utilizing the peaceful mechanisms laid down in the Charter, the comportment of the state parties concerned is of paramount importance since the said comportments to a greater extent do determine the outcome of the whole settlement process. For purposes of clarity, before pushing forward on the equipment of comportment, certain worries on dispute settlement shall be envisage here.

❖ ***Is there a need for the settlement of international disputes?***

A reminder must be made on the fact that a dispute is not a bad situation from its origin. This is supported by the fact that, it appears as a factor for a proper and an objective scrutiny and clarification of a vital point of fact and or a law. There may be a point of contradiction or ambiguity in an aspect that relates two or more parties[vi]. In the case where the said contradiction or ambiguous point has not been discovered by the parties, there will hardly find an acute clarity unless the parties in question come to the knowledge of the ambiguous point and thus seek for clarifications[vii]. The interaction of persons requires understanding and cooperation considering that a controversial situation is never the best in the relation of parties.[viii] In the situation where the controversies or disagreement amongst parties may transform to a conflict, or when their social cost becomes excessive, it then becomes essential for the disagreement to be resolved, doing so with the dispute settlement mechanism the parties may decide to give preference to.

❖ ***Do States have the obligation to settle their disputes peacefully?***

It is well understood that, one most prominent task held by States within the international Community is the maintenance of peace and security. In order not to endanger International peace, justice and security, States are thus called upon to settle their disputes peacefully.[ix] One must however make clear the point that, a dispute will hardly remain unsettled except one of the parties or both decides not to settle it. This therefore stands to the conclusion that, the lark of good faith in a State's conduct may only complicate and lengthen the duration of a dispute settlement exercise but will not serve as an absolute bar to the dispute settlement process. Thus, if a State acting in a spirit of bad faith, decides to put a stiff resistance upon accepting the jurisdiction of an International Court, or accepts the said jurisdiction but renders the settlement process unnecessarily complicated,[x] the State in question cannot totally escape from all the mechanisms laid down in article 33(1) of the United Nations Charter.[xi]Considering further the fact that states will obviously require a settlement term on their points of disagreements, they will end up by striving for a long lasting solution which might be impossible if one amongst the mechanisms mentioned above is not taken into consideration. Whatever may be the mechanism chosen by the parties, the success of the settlement exercise will highly depend on the comportment of the various state parties before, during and after the settlement exercise. The comportment of state parties is a major determinant in the results that have been gotten in

all the disputes settlement exercises registered in the dockets of courts.[xii] With respect to the said assertion, the main worry that strikes the mine of the writer is; **what is expected from state parties in a dispute settlement process?** As a means of setting up an appropriate respond to the problem raised, one will need to make an exposure of the standard of conduct expected from state parties in a dispute settlement exercise, followed by an appraisal of such comportment posed by states parties in some selected cases.

THE CONDUCT OF STATE PARTIES: A FUNDAMENTAL INSTRUMENT IN DISPUTE SETTLEMENT PROCESSES

After haven expressed the consent for dispute settlement in good faith, what is next expected from state parties is to honour the engagements they made out of their free will. The respect of engagements for arbitral or adjudication jurisdictions can be done only by making recourse to the said institutions when disputes occur. Does it therefore imply that a State will wish or pray for the occurrence of a dispute as a result of haven consented for an arbitral or adjudication jurisdiction?

Inter-State disputes can be considered as an unfortunate yet unavoidable aspect of international relations and many efforts have been dedicated to their peaceful resolution.[xiii]Considering the fact that States of good faith will never wish or pray for the occurrence of disputes, and coupled with the fact that disputes amongst sovereign States remains an un-avoidable aspect, efforts need to be made available for the settlements of the disputes in question. Arbitral settlement becomes possible only when the States in the disputes have consented for it, either before, or after the occurrence of the dispute[xiv]. At this point in time, the comportment of the State parties to the dispute becomes an issue for concern. It is therefore in this light that one will proceed by working on good faith in the comportment of the State parties to the dispute as seen in (A) and (B) bellow

A. *State parties should operate in a positive and objective spirit*

The conduct of State parties in a dispute stands to be the primordial aspects in the settlement process. One may not be wrong to say that, the conduct of State parties to a dispute stand to be the primary aspect for the success of a dispute settlement exercise. Talking about the parties in

a dispute settlement exercise, one is making allusion to no one else than the applicant and the respondent State parties. These parties are called upon to confront the settlement procedure with positive conducts[xv]. Reason being that, the good conduct of state parties stands to be an inevitable factor required if one should expect a success in the entire settlement exercise. In the first place, it will be unreasonable for a State to give its consent to an international dispute settlement organ, and happen to turn down every proposal made with a co–disputing party to recourse to the said court when time arise. Such a State will be considered as acting in a spirit of bad faith, especially if the State in question is doing so without a concrete or valid reason. Good conduct requires state parties to be in a spirit of sincerity, honesty, and transparency before, during and after the entire settlement exercise.[xvi]

THE REQUIREMENT OF AN OBJECTIVE COMPORTMENT IN THE SETTLEMENT EXERCISE

An objective comportment calls for a handful of credential. The said credentials are required from both the applicant and the respondent state parties. No matter how positive a state party may be in terms of comportment, an adverse comportment from the opposite state party suffices to bring the entire settlement process to jeopardy. It is of no reasonable doubt that, every settlement exercise done within the international community requires a preliminary foundation which entails consent expression for the jurisdiction of a particular court or tribunal. Such a step taken by states is worth encouraging for reasons that the interaction of states within the international community makes disputes inevitable hence necessitating a settlement which cannot be realised if a jurisdictional foundation has not been laid down by the states in question. The establishment of such jurisdictions comes as a result of the awareness of the inevitable character of disputes amongst states and hence guarantees the settlement of the disputes in question, all for the purpose of maintaining peace security and friendly relations.[xvii]

After performing the duties of the preliminary requirement for seizure, the Applicant state party is called upon to respect the terms of the engagements signed wilfully, expressing consent for a given court. Compliance with the said engagement must be in the spirit of good faith. [xviii.] It is therefore by respecting the terms of the engagements previously consented for that the applicant state party stands the chance of seizing the jurisdiction of the court in question. In the

first place, it will be unreasonable for a State to give its consent for a given court either unilaterally or mutually[xix] with another State, and turns to undermine the jurisdictional arrangements made with the opposite State party when a dispute arises. Such a State will be considered as posing a bad conduct, especially if the State in question is doing so without a concrete or valid reason.

One can however make mention of the fact that, recourse to a given jurisdiction arrived at by means of a compromise, assures a greater guarantee for success in the dispute settlement exercise than has always been the case with consent expressed by means of a treaty clause.[xx] This may be supported by the fact that, a compromise is a mutual agreement set forth by States, expressing their consent either to adjudication or arbitration when a dispute is already in existence. Here, the compromise in question serves as a step toward the seizure of the tribunal and must be void of any waste of time. Contrary to the case of a compromise, a compromissory clause do provide valid jurisdiction to either arbitration or adjudication in any subsequent or future dispute that may occur, implicating the states in an agreement. Such a clause is expose to certain challenges that may surface with the progress of time. This is based on the fact that, treaty clauses after being signed may take several years before the occurrence of a dispute, demanding the materialization of the clause in question. These laps of time may serve as an advantage to a recalcitrant State to mobilize ***thoughts of thorns***[xxi] that may lead to un-warranted resistance in responding to summons of the court in question. Haven seen and explained above that a positive conduct requires State parties to exercise fairness, sincerity and honesty in their reactions towards an adjudication or arbitral tribunal, can one therefore say that, sincerity and honesty when seizing such tribunals will necessarily provide a successful position to the claimant State?

In attempting a respond to the above question, clarity must be made on the point that the successful end referred to in the question is with respect to the party to which justice is due in a given case. In this light, one may be tempted to answer in an affirmation. Talking of the case of arbitration, a State acting in fairness and honesty when seizing an arbitral tribunal will make sure that there exists a dispute when it is taking an action against an opposite State party. As a point of reminder, the dispute in question must be real and not eventual or anticipatory. The above affirmation remains true in the case of adjudication as seen in the land and maritime dispute opposing Nigeria to Cameroon.[xxii] Mindful the fact that a stiff resistance was raised by

the Federal republic of Nigeria against the claims tabled by Cameroon; it was rather based on questions of jurisdiction and not on the existence of the dispute.[xxiii] At this juncture, one will therefore stand on the point that, everything being equal, honesty and sincerity in States behaviour when seizing an arbitral or adjudication Court may lead to a positive end on the part of the claimant State.[xxiv] Parties must not be of good conduct only in the phase of jurisdictional establishment but must maintain the same spirit in the settlement process. The settlement phase in jurisdictional proceedings is handled by the organs of judgement. Such may either be arbitrators in the case of arbitration and judges in the case of adjudication, couple with the role played by witnesses and experts whose services can be qualified as mainly participative.[xxv] Beside the recently mentioned actors, the role played by the various State parties cannot be ignored based on the fact that, they remain the most prominent actors, or the architects of the entire settlement exercise. The demand for a good conduct is paramount to all though the weight lies most on the shoulders of the State parties since they are the ones to lay down the *raison d'être* on which the entire process will be based[xxvi].

However, mindful of the fact that good conduct guarantees success in a dispute settlement exercise; this may not be true in every circumstance. Irrespective of the fact that sincerity, honesty and fairness normally matter when making recourse to a dispute settlement organ, what matters the most is the existing facts pertaining to the dispute in question. A State may exercise good faith in seizing an arbitral or adjudication tribunal but may end up losing the entire process when it has very little or no substantial grounds, evidence and or argument to offer in support of its claims. making reference to the dispute in the lake Lanoux region between the Republic of Spain and France,[xxvii]one may not be wrong to say that, Spain had a good case, but lacked enough arguments and facts to convince the arbitral panel, thus leading to an arbitral settlement that ended in favour of France which was rather a respondent State party to the case. It is therefore based on the available facts and argument that an arbitrator or the judge bases its analysis; couple with existing laws and principles to produce a valid judgment. Irrespective of the fact that the applicant State party is expected to be of good conduct when tabling its claim, the reaction of the respondent state must be given a close attention.

THE REACTION OF THE RESPONDENT STATE PARTY

The respondent State is equally expected to put forth positive actions that will lead to the smooth realization of the settlement exercise. The respondent State after haven been notified of the case however has the liberty to accept the claims of the dispute, or negate it by means of preliminary objections. Accepting the claims of the dispute when the dispute exists in the first place shows clean signs of good faith manifestation.

In the Cameroon / Nigerian boundary case, the federal Republic of Nigeria after making arguments on the inadmissibility of the Cameroonian claim still remained faithful in the rest of the court exercise. That was equally an aspect of good faith manifestation from the Nigerian government. However, objecting the admissibility of a claim deposited by an applicant State do not necessary signify a sign of bad conduct. The defending State's objections may be based on valid considerations. Aspects of bad faith manifestation shall intervene in circumstances where the defending State is raising up flimsy arguments which are not well founded either in law or in fact, with the aim of frustrating the smooth functioning of the arbitral or court proceedings. Looking at the situation in the Guinea Bissau v Senegal case, concerning the validity of the arbitration award of 31st July 1989, the application of Guinea Bissau contending the validity of the arbitral award was not well grounded, implying, any objection raised by Senegal in relation to the said claim will be seen as valid.[xxviii] We equally have circumstances of tacit or implied acceptance of a claim. Here, we are talking of the *forum prorogatum* doctrine where the court infers the consent of the State expressed in an implied manner after the case has been tabled to the court. There have been circumstances where, consent has been given after the initiation of proceedings in an implied or informal manner, by the succession act.[xxix] In the Corfu channel case, the Court pointed out that, Albania which was not a party to the Statute, would have been entitled to object to the jurisdiction of the Court by virtue of the unilateral initiation of the proceedings by the United Kingdom. Nevertheless, as indicated in its letter of 2nd July 1947 to the Court, Albania accepted the recommendation of the Security Council and the jurisdiction of the Court for the case.[xxx]

Working on a good conduct test in what concerns the reaction of the respondent State in this case, one may not be wrong to affirm that, the gesture of Albania accepting the court's jurisdiction was an act worth appreciating since it stood the challenge of accepting the summon

of the court though through the recommendation of the Security Council, whereas it wasn't a State member to the statute. Therefore, Albania was precluded thereafter from objecting to the jurisdiction. This gesture of Albania is to be saluted based on the fact that, many other States summoned before the court in liked manner disregarded the court's jurisdiction as one could see in the case of USA which filed an application in March 3rd 1954 against Hungary and USSR, instituting proceedings against the two States and the two respondent States showed their unwillingness to submit to the court's jurisdiction. From this reaction, all the court could do was simply to remove the case from its list.[xxxi] Furthermore, one can however affirm to the ideas of Anand R-P who argues that, to adjudicate upon the international responsibility of Albania without her consent, runs contrary to a well-established principle of international law embodied in the courts statute, outlining the idea that, the court can only exercise jurisdiction over a State with its consent.[xxxii]This sounds paradoxical based on the fact that, the consensual bases of international jurisdictions are well established in the court's statute. Hence, it sounds funny for the same court to accept an application filed against a respondent State which has never consented for the court's jurisdiction. Thus, looking at the above doctrine of *forum prorogatum*, one may not be wrong to stand on the point that, this doctrine is without a firm backing, though well accepted and established by the court. This argument was however counted by Shabtai Rosenne who opined that, the absence of the *forum prorogatum* doctrine from the statute is a deliberate omission from the statute and the Rules, thus requesting rectifications.[xxxiii] Judge Lauterpacht added to this argument by saying that, the requirement of an applicant State to mention the bases of the jurisdiction of the court and to precise the nature of the claim is merely desirable and must be mention in the application as far as possible.[xxxiv] The institution of the *forum prorogatum* doctrine is thus traced from the words *as far as possible*, implying, an application can be rejected *inlimine* simply because such specification has been omitted, but will be transmitted to the other party. If this party accepts the summon expressly or by conduct, the court becomes seized of the case.[xxxv] Thus at this level, one can presume that the respondent State is inevitably in a good faith spirit. Looking forth to the case of arbitration, can we therefore assume that the refusal to execute an arbitration agreement or an act of breach of an arbitration agreement by the respondent state will necessarily be considered as manifesting bad conduct?

Looking at this question from a plain reasoning, or working on the assumption of *'everything being equal'*, one may stand to affirm the point that, the refusal of the respondent State party to execute an arbitration agreement will be tantamount to an act of bad faith manifestation, especially if the recalcitrant State party has done so just for selfish reasons to frustrate the smooth discharge of justice. This is often witnessed in cases where the respondent State party foresees defeats in the settlement exercise. Notwithstanding, in certain circumstances, refusal to perform an arbitration agreement or a breach of the agreement may not necessary be seen as an act of bad faith. This statement will be valid if the deserting State party is doing so based on valid considerations.[xxxvi]Likewise, the submission to an arbitration agreement must not necessarily be an act of good faith manifestation. Though however, one will conclude by taking a stand on the point that, in a general sense and in many circumstances, refusal to arbitrate or breach of an arbitration agreement by respondent State parties are generally manifested in bad faith which are conducts worth dissuading in dispute settlement exercises.

A positive comportment will give weight to the outcome of the dispute settlement exercise

Every dispute settlement exercise must end up with an outcome which may either be an award in the case of arbitration or a judgment in the case of adjudication. A settlement verdict once delivered, is final and without appeal and is binding upon the parties. Article 59 of the Statute makes it clear that, such decisions of the Court in the case of the ICJ have binding force between the parties and in respect of that particular case. The binding effect of dispute settlement verdicts thus gives reasons for the execution of the said verdicts by the parties to whom the verdict is destined. As one may witness, despite the binding character vested on the dispute settlement verdicts, many States still stand the grounds of disrespecting and not executing the said verdicts thereby weakening the effectiveness of the courts as 'solution factories'[xxxvii]

The respect for the verdicts of international dispute settlement institutions is one of the fundamental elements which determine the usefulness of the courts as institutions for the peaceful settlement of disputes. Just as it is in the case of arbitral settlement, the first observation one can make in this connection is that, compliance with judicial decisions has always been best ensured when the parties established the jurisdiction of the court in view of a given case by way of a common consent (compromise).[xxxviii] This is due to the fact that, the notion of joint consent of the parties comes as a result of acts of cooperation which portrays

aspects of good faith manifestation from the parties hence, resulting to compliance.[xxxix] One must equally make clear the point that, in various dispute settlement exercises, there may be an interlocutory decision relating to interim measures of protection, followed by the final judgment which is qualified as definite and marks the end of the settlement exercise. It is in this light that we shall examine the conduct of State parties in what concerns interim measures of protection, before proceeding with the conduct of State parties in the case final verdicts.

REACTION OF STATE PARTIES TOWARD ORDERS FOR INTERIM PROTECTION

Dispute settlement exercises most often goes not without the phase of interim measures of protection. Such measures appear paramount in settlement exercises for reasons that disputes most often than not, are often accompanied with violence which may lead to loss of lives and destruction of valuable assets. The consequences of irreparable damages which may be recorded in such demonstrations therefore calls for the quick attention of the court which then responds by giving an order which is binding,[xl] calling on parties to refrain from violent act so as to maintain the statuesque and hence prevent the occurrence of irreparable or difficultly reparable damages that might be registered before the pronouncement of the final verdict by the court. Some parties often exercise good conduct by abiding and executing the said orders as was the case in the Burkina Faso / Mali case, while others will not refrain from their ill conducts of often undermining the said orders.[xli]

In the Burkina Faso / Mali case, armed conflict broke out in the end of 1985, following contestations between the two States on the delimitations of their frontiers. As a result of severe damages susceptible of having irreparable characters, both parties made parallel request from the court for the institution of provisional measures as stated in article 41 of the statute[xlii]. Judging carefully from the reactions put forth by both parties in the court proceedings, one cannot deny the presence of good faith in the conduct of the parties who both had the joint feeling of putting an end to acts of hostilities and thus preventing the consequences of irreparable damages, which would have been registered on both sides if quick actions of compliance were never put in place. To this regard, in January 1986, the court granted an order, indicating the said measures to avoid circumstances that could aggravate the effects of the

dispute. The court in question demanded both parties to go in for a cease fire agreement. The court further ask both governments to withdraw their armed forces behind each territorial line as may be determined within twenty days from the issuance of the order. As per the court, within 20days, the clear line of demarcation had to be established as a result of the agreement of the two States. In addition to the court's recommendation of establishing a demarcation line, the terms of the withdrawal of troops equally had to be led down in the said agreement for demarcation. As a means of assuring effectiveness in the court's request, in case of failure to resort to agreement by the parties, the court itself had to indicate them by means of an order.

Hence, in line with what was recommended by the court, both parties through their agreement for ceasefire respected their engagements by complying with the terms of the court's recommendations where, they latter sent a communiqué to the court on the 18th January 1986, on an extra-ordinary conference of heads of States and government of member countries of the ANAD.[xliii] The report of the communiqué stated that, both parties had complied with the court's request by withdrawing their forces from the affected areas. This was a further instance of good conduct detected from the comportment of both parties, which gave further credits to the court's authority as a world court with binding decisions. The success indeed was quite remarkable due to the quick and spontaneous compliance of both parties to the order, void of any argument made by either of the parties on issues of jurisdiction, as has always been the case with many other disputes.

The judgment of 22nd December 1986 was equally received by both parties, not only with statements of satisfaction, but with enthusiasm and devotion for judicial settlement of international dispute. One may not be wrong to attest that, this successful compliance from both parties was indeed a glaring result of their good faith manifestation, thereby raising the Burkina-Faso/Mali case as one amongst the success stories in Africa, in what concerned compliance with the court's decision in general and provision measures in particular.[xliv] Such an example is to be encouraged and followed by the rest of sovereign States in the African continent, and the world at large.[xlv]

On the other hand, some States will show proof of bad conduct by undermining the orders for interim measures as could be seen in the case between DRC Congo vs. Uganda. In this case, the Democratic Republic of Congo filed a request to the court for the institution of provisional

measures against the acts of violence orchestrated by Uganda. In responds to the '*cry*' of the DRC, the president of the court acting in conformity with article 74(4) of the rules of the court, drew the attention of both parties in the need to act in such a way as to enable compliance towards the orders for interim measures. With respect to the orders of the court, mindful of the Anglo-Saxon proverb which say "*he who seek justice must come with clean hands"*, DRC Congo which was the applicant State party, went ahead manifesting bad faith by deploying its troops to attack the Ugandan embassy, confiscated properties belonging to the Ugandan government, maltreated Ugandan diplomats and nationals present on the premises of their mission and those present at the Njoli international airport.[xlvi]

Uganda on the other hand equally showed traces of bad conduct in its reactions towards the orders of the court, instituting provisional measures. This can be proven, making reference to the words of the court which gave a report of non-compliance on the side of Uganda.[xlvii] The malpractice set forth by the disputant resulted in complicating issues on both sides. Likewise, in the land and maritime dispute between Cameroon and Nigeria[xlviii] where, compliance to the orders was only partial, the act of a partial compliance shows instances of bad faith on the side of the Nigerians. The said comportments of bad conduct manifested by some States have resulted in slopping down the court's curve as a judicial body of universal magnitude.[xlix]

THE REACTION OF STATE PARTIES TOWARD FINAL VERDICTS

The obligation of complying with international judicial and arbitral decisions as well as the faithful application of the principles of *pacta sunt servanda* and good faith is of great concern in our contemporary society. These three notions are grouped together because; they are complementary in application. It is of great honour to comply with court judgments because, it saves as the end result of the engagement for jurisdictional recognition which appears obligatory to State parties and must be accompanied by the spirit of good faith before it can be deemed satisfactory to the designators. This statement shows the bond of complementarily that exist between the three obligations above. This thus leads one to the understanding that, with the absence of either of the above cited obligations, the execution process can't be qualified as satisfactory.[l]

With respect to the expectations of compliance with court verdicts, some States have taken a positive step to comply with verdicts imputed on them, while others have shown traces of bad conduct by undermining definite court verdicts imputed on them. Note must be taken on the fact that, States most often than not do comply with definite court verdicts now a days as compared to the past. This can be supported by the fact that, many States manifesting bad faith by resisting compliance with court verdicts, ends up complying afterwards, as was the case with the Cameroon/Nigeria land and maritime boundary dispute.[li]

As a matter of fact, it is an undeniable truth that the positive conduct of State parties is a prerequisite for a successful end in every dispute settlement exercise though the question worth posing is; does a positive conduct from State parties suffice to produce a successful dispute settlement exercise? One will come to realize that, the conduct of State parties is an inevitable element of success but the role of the organs of judgment shouldn't be ignored especially in the case of arbitral settlement which is flexible in nature. The successful arbitration of the dispute over the Taba area opposing Egypt to Israel was a product of not only the parties conduct, but also as a result of the role played by the tribunal.[lii] The double dimensional approach of settlement adopted by the tribunal in which, the arbitrators acted both as judges and diplomats actually contributed to the success of the exercise.[liii] Equally, although the mandate granted to the tribunal by the agreement was too limited, the tribunal still managed to conduct the proceedings effectively and paid considerable regards to the complexity and political character of the dispute, added to the sensitive relationship between the parties and the need for a diplomatic, rather than strictly legal solution that is as practical and fair as possible in the circumstances.[liv] The scenario appears a little more different in the case of judicial settlement where the judgments are final and without a possibility of appeal.[lv] Here, the conduct of the parties occupies an absolute position as an element of compliance with the final judgment as one could see in the Burkina – Mali case where after the final judgment to the merits of the case was proclaimed in 1986,[lvi] the president of Burkina Faso Thomas Sankara and the Malian president at the time of the dispute, General Mousa Taure, sent to the president of the ICJ, Justice Bedjaoui, a message which reiterated their acceptance of the decisions from the court. These States promised in their letters to put forth attitudes of cooperation to facilitate the implementation of the decisions of the court as seen in their letters addressed on the 24 of December 1986 and January 1987 respectively. As one can note, both States stood to their

promises of complying with the judgment where, the final consequence was peace and friendly relations between the two States.

AN APPRAISAL OF STATE COMPORTMENT IN DISPUTE SETTLEMENT PROCESSES

The successes and failures registered in the globe is a direct product of the comportment put forth by state parties in dispute settlement processes. The comportment of state parties is equally a product of certain realities which shall be the point of focus of this part of the present document, that which we shall move on to access the outcome of settlement exercises, followed by recommendations as will be the point of discussion in the sub sections that follows.

An assessment of the outcome of dispute settlement exercises

The initiation of every dispute settlement process is for the purpose of providing possible solutions to curb down an atmosphere of discord between the various disputing state parties. At the beginning of a dispute settlement process, the presumed intent is that, it ends up successful. The success story of a dispute settlement process as initially mentioned above is a direct product of the comportment of state parties, though the institutions set out for the settlement exercise equally has a major role to perform. That said, the dockets of disputes settled so far in the universe thus shows disparities in results, be it in the case of arbitration or adjudication. It is thus in this light that an illustration shall be done on the positive and negative results registered in various settlement exercises.

AN ACCOUNT OF THE POSITIVE OUTCOMES

The success of a dispute settlement exercise starts from the authenticity of the dispute that is to be settled. When the root cause of the settlement exercise is faulty, nothing positive can be expected as an outcome. Once there is a dispute at first side, then there is a need for a settlement which will end with a positive outcome that will yield satisfaction to the disputing state parties and hence friendly ties and cooperation. In the boundary dispute between Burkina Faso and Mali[lvii] which is a clear example of a successful achievement in the dockets of the I.C.J, the

success of the case in question draws its origin from the authentic nature of the dispute which opposed the parties. Looking at the qualification of a dispute drawn from the Mavrommates Palestinian concession case[lviii], it was ruled by the P.C.I.J that *'A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons'*. From the said definition, no one will contest the fact that there existed a disagreement on a point of fact and law between Burkina-Faso and Mali.[lix]

The next point worth noting, that accounts for a positive outcome in dispute settlements, lies on the readiness of state parties to settle the dispute opposing them. The determination of the existence of a dispute as a point on its own does not suffice to put an end to the dispute unless there is the zeal and the decision to do so. Findings have proven to a greater extent that, a positive outcome is guaranteed when the decision of settling a dispute is arrived at by means of a special agreement, than has often been the case with the other modalities of the jurisdictional determination of a court or an arbitral tribunal.[lx] Making reference still in the case between Burkina Faso and Mali, it is obvious to say that, both parties went into the special agreement that provided jurisdiction to the ICJ with their free consent.[lxi] This gesture of establishing a special agreement for settlement is born from the cooperation between the disputing parties which is a factor of success.

The organization of the jurisdiction for settlement is another point worth paying attention to if one should expect a positive outcome in a dispute settlement process, especially in the case of settlement by means of arbitration.[lxii] Most often, the notion of freedom in the selection of those to serve as arbitrators may result to a wrong choice which is already a step towards a failure. Once a tribunal is well constituted there will be efficiency which is a factor of a successful end in a dispute settlement exercise.[lxiii] An arbitration panel constituted of qualified personnel obviously guarantees a successful outcome in the settlement exercise. The successful outcome registered in the *Ras Taba* arbitration between Egypt and Israel can be attributed to the objective nature in which the tribunal was constituted as presented in the arbitration agreement[lxiv]. The tribunal was solidly constituted of five members who where both nationals and non-nationals of both state parties, guaranteeing an atmosphere of a fair and impartial settlement.[lxv] When a solid settlement panel is constituted, the comportment of the personnel serving as arbitrators also matters for a successful outcome in the arbitral exercise. Looking at the *Ras Taba* arbitral panel, the two-dimensional approach adopted by the tribunal where the

arbitrators acted both as judges and diplomats really contributed to the success of the exercise. Equally, although the mandate granted to the tribunal by the agreement was too limited, the tribunal still managed to conduct the proceedings effectively and paid considerable regards to the complexity and political character of the dispute, added to the sensitive relationship between the parties and the need for a diplomatic, rather than strictly legal solution that is as practical and fair as possible in the circumstances.[lxvi] The constitution of the settlement institution is not a major worry in the case of adjudication since the courts are already well constituted with permanent infrastructures and a college of personnel.

REASONS FOR FAILURES

As illustrated in (1) above, the failures registered in most dispute settlement exercises can equally be traced as from the genesis of the exercise. Once the foundation of a dispute settlement exercise is poorly established, nothing positive may be registered from the settlement exercise. Despite the fact that several reasons may account for the failures registered in certain dispute settlement exercises, the greatest ill is that of bad faith often witnessed in the comportment of various state parties.[lxvii] Such ills may be characterised by acts like; the absence of willingness to cooperate in a dispute settlement exercise, infidelity in the engagements relating to the settlement exercise, corruption etc.

The first aspect that jeopardises the foundation of a dispute settlement exercise starts as from the engagements establishing jurisdiction for dispute settlement. As already explained above, a jurisdiction established on a special agreement has always proven to be more productive than is the case with the other modes of jurisdictional determination.[lxviii] Taking the case of a jurisdictional clause laid down in an agreement as a sample, some recalcitrant states have been fun of exercising poor conducts by turning to undermine the requirement of the settlement clause or rendering the settlement exercise unnecessarily complicated when disputes are born.[lxix] Most often, the nature in which jurisdictional clauses are drafted sounds problematic thereby weakening the effectiveness of the engagement in the future.[lxx] When drafting a jurisdictional clause in a treaty, it is wise to draft the text in such a way that, the obligation to recourse to the chosen settlement mechanism appears as mandatory, not directory. To be safer, it is better that the clause provides words like; disputes or differences ***"shall be referred to X***

as a court" rather than ***"may be referred to X".*** Looking at the two phrases, one can affirm that the former sounds more promising and safer than the latter which is mainly directory in character. Using the second phrase may give chance to a recalcitrant State party of bad faith to raise irrelevant bars to recourse to the competent court in the future, especially if the State in question foresees that a jurisdictional settlement will work at its disfavour.[lxxi]

The next aspect which is often a factor of failure in settlement exercises is the scope of the chosen settlement mechanism which is often a vector of manipulations from a recalcitrant State party. This is often done by excluding certain types of disputes or by listing the questions that are to be submitted to the chosen jurisdiction.[lxxii] In practice, broad inclusive consent clauses are generally preferable since they sound safer.[lxxiii] Narrow clauses listing only certain questions or excluding certain questions from the scope of settlement may lead to difficulties in determining the court's precise competence. In most cases, recalcitrant States wishing to frustrate the jurisdiction of the court or tribunal which had earlier been in a treaty always finds preference in cases where the clause is presented in a narrow scope.[lxxiv] Besides the act of laying down an appropriate foundation for jurisdiction in a dispute settlement exercise, the conduct of state parties at the stage of the settlement proper may also be a factor for the failure of the dispute settlement exercise. Most often, ill conducts such as the advancement of irrelevant objections in proceedings for the purpose of frustrating the settlement exercise, corrupting the judges or arbitrators, production of false witnesses and evidence leads to perversion of justice and hence failure in dispute settlement exercises.

CONCLUSION AND RECOMMENDATIONS

Considering the fact that disputes will difficultly be avoided at zero percent, and considering further those difficulties will always be encountered in the acts of putting up efforts to settle disputes, certain proposals may be advanced as a way of curbing down the challenges often witnessed in dispute settlement exercises. Considering the fact that the foundation of a dispute settlement exercise is vital point that must be handled with care, state parties should put in efforts to see that the said foundations are drafted solidly to sustain and guarantee a successful settlement exercise. In setting up jurisdictional bases for dispute settlement state parties should be covered with the spirit of good faith which entails sincerity, honesty, and fidelity towards

the engagements for jurisdictional determination. Good faith negotiations must be meaningful in nature[lxxv] implying; parties in negotiations for a future jurisdictional competence should avoid mere formalism but rather engage substantively with the subject matter of their negotiation. A State party in the negotiation of a clause for arbitration or adjudication should avoid making cunning statements to frustrate the purpose of the negotiation. When drafting a jurisdictional clause in a treaty, it is wise to draft the text in such a way that, the obligation to recourse to the chosen settlement mechanism appears as mandatory, not directory. As mentioned earlier, it is better that the clause provides for words like; disputes ***"shall be referred to X as a court"*** rather than ***"may be referred to X".*** Furthermore, parties should avoid unnecessary limits in the scope for jurisdictional determination. Narrow clauses may inadvertently exclude essential aspects of the dispute thereby making things complicated for dispute settlement organs in due time. As a point of example, Consent clauses contained in bilateral or multilateral agreements usually refer to ***"any dispute"*** or ***"all disputes"*** under the respective agreements. This example is worth implementing so as to prevent the occurrence of future complications.

Equally, as a means of rendering the settlement of disputes easier, there is a need for a reform on the already existing settlement mechanisms. Irrespective of the fact that the Charter of the United Nations has given provisions on mechanisms for the settlement of disputes in article 33(1), one should not ignore the end phrase of the said disposition which says ***'and other peaceful means'***. This therefore implies, article 33(1) is mainly illustrative but not exhaustive. This statement gives a clear understanding that States are therefore free to use that particular means which they consider most apt for the settlement of the particular dispute with which they are faced. In this case, if the normal mechanisms for dispute settlement lay down in the charter are proving to be unfruitful, other methods may be adopted provided the end course is to get rid of an existing dispute. Hence, existing mechanisms such as conciliation, mediation and other non-binding processes may be rendered binding on the parties concerned upon their unanimous agreement so as to avoid the usual resistance from unsatisfied state parties. Equally, for the purpose of procedural economy, state parties may combine two settlement mechanisms of similar characteristics in their treaties, under the works of a single designated organ.[lxxvi] To this effect, conciliation and arbitration may be combined in the works of a single organ in such a way that, if conciliation fails to provide a satisfactory result to the disputing state parties, the

same organ can move on with arbitration rather than starting it all over in thinking of a jurisdictional compromise for a new settlement process.[lxxvii] In the same light, negotiations and arbitration can be combined still in the works of a single organ where once a move for negation is proving complex, the negotiation commissioners are to proceed to serve as arbitrators, together with a newly appointed, neutral member, creating the situation of an odd number of arbitrators overall.[lxxviii]

NOTES

1. The Mavromattes Palestinian case defined a dispute as '*a disagreement on a point of law or fact, a conflict of legal views or interest between two persons,* Reports of the PCIJ 1924, Greece vs. United Kingdom.

3. One must equally not ignore the fact that beside the legal mechanisms mentioned above, disputes can also be settled peacefully via the political or diplomatic mechanisms which however operates as an alternative to the legal mechanisms of dispute settlement.

19. For the case of unilateral consent, see article 36paragraph2 of the statute of the I.C.J while a mutual expression of consent can be done either via a compromise or a compromisory clause for jurisdiction in all, see Vaughan Lowe and John Collier, the settlement of disputes in International Law, Oxford University press.

21. Talking of ***thoughts thorns***, one is simply referring to negative thoughts destined to frustrate part or the entire dispute settlement exercise.

25. They above persons are termed as participative agents though their role is so important to such an extent where if they are not present in a settlement exercise the whole show may end up in jeopardy, since they represent the acting arms of the arbitrators.

28. In this case, Guinea Bissau was contending that, *' the so called award is inexistent in view of the fact that, one of the two arbitrators making up the appearance of a majority in favour of the text of the award has by a declaration appended to it expressed a view in contradiction with the one apparently adopted by the vote. It further contended that the so called award is null and void since the tribunal failed to give a*

complete answer to the two fold question raised by the agreement and so did not arrive at a single delimitation line duly recorded in the map'

40. The binding character of these orders has been subject to worries with regards to the uncertain nature of the English Text relating to provisional measures. The English text of Article 41(1), reproduced above, mentions measures 'that ought to be taken, while paragraph 2 speaks of 'suggested' measures, thus conveying the notion that those measures are not binding. No such inference may be drawn from the French text of the same Article, which stipulates: '*1. La Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun doivent être prises a titre provisoire. 2. En attendant l'arrêt définitif, l'indication de ces mesures est immédiatement notifie´eaux parties et au Conseil de sécurité.* Taking a critical reading of the above Text, one will see that the English version of the Text sounds uncertain. See Serena Forlati, up cit. note 480, pp 88.

47. Haven observed that its orders on provisional measures under article 41 of the statute have bounding effect, it has found that Uganda is responsible for acts in violation of international humanitarian law, and international human right law. The court says just evidence shows that such violations as seen above were committed throughout the period when Ugandan troops were present in the D.R.C, including the period from 1st July 2000 until their final withdrawal in had June 2003, thus Uganda did not comply with its orders for provisional measures.

48. The court gave out an order for provisional measures on March 15 1996, demanding Nigeria to withdraw its troops from the Cameroonian territory. Despite such a request from the court, the compliance to it was merely partial. The troops were at least withdrawn throughout in its totality. This aspect of partial compliance still boils down to non-compliance side of the Nigerians tries portraying conducts of bad faith, which is totally uncalled for within the international community.

59. In the land and maritime case between Cameroon and Nigeria, despite a stiff resistance put forth by Nigeria towards the judgment rendered by the court, it finally complied with the said judgment thanks to the Green Tree agreement signed between the Presidents of both nations. ICJ Reports (2002).

71. There have been instances where jurisdictional clauses which provide that disputes ***"may be referred to X"*** have been held to be mandatory. Whatever may be the case;

such terminologies appear to be uncertain since there is no binding obligation to recourse to the said court **'X'** especially when the recalcitrant State party sees it as an advantage to place a bar to the said court.

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ENDNOTES

[i] The Mavromattes Palestinian case defined a dispute as '*a disagreement on a point of law or fact, a conflict of legal views or interest between two persons,* Reports of the PCIJ 1924, Greece vs. United Kingdom.

[ii]The settlement of dispute in international law, institutions and procedures by John COLLIER fellow of trinity hall, Cambridge and Vaughan LOWE fellow of corpus Christi college, Cambridge, Oxford University Press. p6.

[iii] One must equally not ignore the fact that beside the legal mechanisms mentioned above, disputes can also be settled peacefully via the political or diplomatic mechanisms which however operates as an alternative to the legal mechanisms of dispute settlement.

[iv] Stephen E. Gent, *'The Politics of International Arbitration and Adjudication'* Penn State Journal of Law & International Affairs (2013) p 68.

[v]Tomuschat (Christian), *(2001). International law; ensuring the survival of mankind on the eve of a new century, Martinus Nijhoff publishers , London*

[vi] ASANJI Roland Ndikum, (2020) *the good faith principle in the settlement of international disputes*, PhD thesis presented and defended publicly (unpublished), University of Yaoundé 2, p 7.

[vii] Idem

[viii] Idem

[ix] See article 2(3) of the UN charter san Francisco 1945.

[x] See for example the comportment of a recalcitrant state raising unnecessary objections all for purposes of delaying the settlement process which it estimates may not end in its favor.

[xi] See the UN Charter for details of the cited settlement mechanisms.

[xii] Asanji (R-N), supra note 6 p 16.

[xiii] Evan Luard, (1970) *"Frontier Disputes in Modern International Relations"* in Evan Luard, ed, The International Regulation of Frontier Disputes (New York, Washington: Praeger Publishers, pp 7

[xiv] Michele J. Gelfand Jeanne M. Brett, (2004), *hand book on Negotiation and culture*, Stanford Business Books, p29.

[xv] Asanji (R-N), supra note 6 p 83.

[xvi] ZOLLER Elizerbert (1977); *la bonne foi en droit international publique;* Paris, p 13.
[xvii] See the United Nations General Assembly Resolution 2625 adopted by the General Assembly on the 24th of October 1970 during the commemorative session to celebrate the twenty-fifth anniversary of the United Nations.
[xviii] The Vienna convention up sit, article 26, *''every treaty in force is binding upon the parties to it and must be performed by them in good faith.''*
[xix] For the case of unilateral consent, see article 36paragraph2 of the statute of the I.C.J while a mutual expression of consent can be done either via a compromise or a compromisory clause for jurisdiction in all, see Vaughan Lowe and John Collier, the settlement of disputes in International Law, Oxford University press.
[xx] See the case of the compromise signed between Chilli and Argentina for the beagle channel arbitration in 1971, and that signed between Israel and Egypt for the Taba arbitration in 1986
[xxi] Talking of ***thoughts thorns***, one is simply referring to negative thoughts destined to frustrate part or the entire dispute settlement exercise.
[xxii] Reports of the ICJ (1998) in this case, the republic of Cameroon was at a right position in tabling a claim against Nigeria due the existence of a real dispute
[xxiii] Idem
[xxiv] See Report of international arbitration awards, air service agreement of March 1946 between USA and France, award of Dec 1978, volume XVIII pp 417 - 493.
[xxv] They above persons are termed as participative agents though their role is so important to such an extent where if they are not present in a settlement exercise the whole show may end up in jeopardy, since they represent the acting arms of the arbitrators.
[xxvi] Asanji (R-N), supra note 6 p 154
[xxvii] Reports of international arbitral awards, the Lake Lanoux dispute between Spain and France, November 1957, volume VXII, page 17 of 80.
[xxviii] Report of ICJ, case between guinea Bissau v Senegal concerning the validity of the arbitration award of July 31st 1998. In this case, Guinea Bissau was contending that, *' the so called award is inexistent in view of the fact that, one of the two arbitrators making up the appearance of a majority in favour of the text of the award has by a declaration appended to it expressed a view in contradiction with the one apparently adopted by the vote. It further contended that the so called award is null and void since the tribunal failed to give a complete answer to the two fold question raised by the agreement and so did not arrive at a single delimitation line duly recorded in the map'*
[xxix] States enjoy wide liberty in formulating, limiting, modifying and terminating their declarations under Article 36(2), Fisheries Jurisdiction Case (Spain v. Canada), ICJ Reports 1998, paras. 44, 52 and 54. See also Phosphates in Morocco judgment, 1938, PCIJ Series A/B No. 74, p. 23 (the jurisdiction exists only in the limits within which it has been given and accepted). The Anglo-Iranian Oil Co. Case (United Kingdom v. Iran), ICJ Reports 1952, p. 104. (In interpreting the intention of the parties the Court would look to all the elements in a declaration as a unity and not seek a mere grammatical interpretation.)
[xxx] ICJ Reports, case between United Kingdom and Albania, (Preliminary objection), 1947-48, pp. 4 and 27.
[xxxi] Ram Prakash Anand, (1961), *Compulsory jurisdiction of the international court of justice,* New York : Asia Pub house pp 124-125.
[xxxii] Ibid, pp118.
[xxxiii] Ibid, pp123.
[xxxiv] Ibid, pp124.
[xxxv] Lauterpacht H, (1958) *the development of international law by international courts,* London pp 104.
[xxxvi] Valid consideration based on the fact that the deserting party has seen signs of partiality, or the opposite party to the dispute has been fun of challenging arbitral awards rendered at its disfavour or equally, it deems that the subject matter of the dispute is not that that can be submitted to arbitral settlement (see for example in cases criminal matters). See equally the case of breach of an arbitration agreement due to circumstances of force majeure.
[xxxvii] Asanji (R-N), supra note 6 p 265.
[xxxviii] Tomuschat (C), (2001) *International Law, ensuring the survival of mankind on the eve of a new centum general course on public international law,* London.
[xxxix]On the other hand, things have proven to be more difficult when enforcing a judgment which was obtained by having recourse to a general jurisdictional clause or by activating the system of the optional clause under article 36 (2) of the statute.
[xl] The binding character of these orders has been subject to worries with regards to the uncertain nature of the English Text relating to provisional measures. The English text of Article 41(1), reproduced above, mentions measures 'that ought to be taken, while paragraph 2 speaks of 'suggested' measures, thus conveying the notion

that those measures are not binding. No such inference may be drawn from the French text of the same Article, which stipulates: '*1. La Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun doivent être prises a titre provisoire. 2. En attendant l'arrêt définitif, l'indication de ces mesures est immédiatement notifie'eaux parties et au Conseil de sécurité.* Taking a critical reading of the above Text, one will see that the English version of the Text sounds uncertain. See Serena Forlati, up cit. note 480, pp 88.

[xli] See also ICJ Reports (2022), request for interim measures, Ukrain vs The Russian federation.

[xlii] ICJ statute article 41, "*The court shall have the power to indicate if it considers that circumstances so request any provisional measure which ought to be taken. Pending the final decision, notice of the measure suggested shall forthwith be given to the parties and the security council*."

[xliii]ANAD stands for « *accord de non-aggression et assistance en matière de défense.* »

[xliv] ICJ Rep. 1986, frontier disputes between Burkina Faso and Mali, p 554 & 559 para 10.

[xlv] See also the boundary dispute between Libya and Chard where Both parties had conflicts over the AUZOU territory, where the Libyan forces had invaded and occupied the Chadian territory. An agreement was also arrived at where Libya was asked to withdraw its troops from the Chadian territory. This was coupled with the Security Council manifestation forces which facilitated the withdrawal of the Libyan forces over the Chadian territory. This was also another instance of good faith from the Libyan state which finally complied with the orders of the courts requesting on the withdrawal of their forces

[xlvi] ICJ, Report 2005, Armed activities on the territories of the Congo and Uganda

[xlvii]Haven observed that its orders on provisional measures under article 41 of the statute have bounding effect, it has found that Uganda is responsible for acts in violation of international humanitarian law, and international human right law. The court says just evidence shows that such violations as seen above were committed throughout the period when Ugandan troops were present in the D.R.C, including the period from 1st July 2000 until their final withdrawal in had June 2003, thus Uganda did not comply with its orders for provisional measures.

[xlviii]The court gave out an order for provisional measures on March 15 1996, demanding Nigeria to withdraw its troops from the Cameroonian territory. Despite such a request from the court, the compliance to it was merely partial. The troops were at least withdrawn throughout in its totality. This aspect of partial compliance still boils down to non-compliance side of the Nigerians tries portraying conducts of bad faith, which is totally uncalled for within the international community.

[xlix] Asanji (R-N), supra note 6 p 270.

[l] Asanji (R-N), supra note 6 p 236.

[li] Ibid p 272.

[lii] Tamar (M), (2013), *Awakening the "Sleeping Beauty of the Peace Palace" –The Two-Dimensional Role of Arbitration in the Pacific Settlement of Interstate Territorial Disputes Involving Armed Conflict,* faculty of law, University of Toronto. pp 45

[liii] Ibid p 237.

[liv] Martin Wright, *Egypt-Israel (Taba Strip), in Border and Territorial Disputes,* pp 232, see (Alan J. Day 2d ed. 1987). At this time, Egypt was occupied by Great Britain, while remaining a vassal state of the Ottoman Empire

[lv] See article 59 and 60, Statute of the International Court of justice 1956.

[lvi] ICJ Reports, 1986, pp. 160 & 218

[lvii] ICJ Reports (1996) Burkina Faso vs. Mali

[lviii] Reports of the PCIJ (1924) the Greek Republic vs. great Britain

[lix] See also the land and maritime case between Cameroon and Nigeria where, despite a stiff resistance put forth by Nigeria towards the judgment rendered by the court, it finally complied with the said judgment thanks to the Green Tree agreement signed between the Presidents of both nations. ICJ Reports (2002).

[lx] Talking of the other modalities of jurisdictional determination, we are referring to the case a compromissory clause of jurisdiction in a treaty or convention, the optional clause modality laid down in article 36(2) of the ICJ statute, jurisdictional determination by conduct (*forum prorogatum*) etc.

[lxi] Thus, manifesting good faith in an intention to compromise, demands the States parties to abstain from malpractices that may lead to frustrate the purpose of the compromise.

[lxii] This is due to the fact that, in the case of adjudication, through an international court like is the case with the ICJ, the institution and procedures of settlement are already well constituted

[lxiii] Selecting the right persons entails selecting neutral persons who will make provisions of justice in fair and impartial manner.

[lxiv] The arbitration agreement signed between Egypt and Israel on the 11th of September 1986.

[lxv] The tribunal members included three non-nationals, Gunnar Lagergren (Sweden) as President, Pierre Bellet (France), and Dietrich Schindler (Switzerland), and two nationals of the parties, Hamed Sultan (Egypt) and Ruth Lapidoth (Israel).
[lxvi] Asanji (R-N), supra note 6 p 237.
[lxvii] See Elizerbert ZOLLER (1977), *la bonne foi en droit international publique, Paris*
[lxviii] In the case of adjudication, see the Burkina Faso Vs Mali case ICJ reports (1986), and the *Ras Taba* arbitration case (1988) between Egypt and Israel.
[lxix] See for example the Mexico V United State (2000), Italy V Cuba (2003), Peru V Chili (2003), Ecuador V USA (2011).
[lxx] Anna zueva, Helen Rogers, Jemma Corbett and Virginia Cathro (2007), *the influence on national culture on negotiating style: a New Zealand-UK Perspective*, Manchester Business school, University of Manchester.

[lxxi] There have been instances where jurisdictional clauses which provide that disputes ***"may be referred to X"*** have been held to be mandatory. Whatever may be the case; such terminologies appear to be uncertain since there is no binding obligation to recourse to the said court **'X'** especially when the recalcitrant State party sees it as an advantage to place a bar to the said court.
[lxxii] The 1993 Model Clauses offer the following formula for this purpose: Clause 4 The consent to the jurisdiction of the Centre recorded in citation of basic clause above shall [only]/[not] extend to disputes related to the following matters: . . .
[lxxiii] Michael Pryles (1993) ***"Drafting arbitration agreements"Adel LawRw p6 para 2.***
[lxxiv] Limits to arbitration clauses can be expressed ***"rationea personae, rationea materae and rationea tamporis."***
[lxxv] Judge C-G Weeramautry (2009) '*good faith negotiations leading to the total elimination of nuclear weapons', international human right clinic at the Harvard law school. P.41 paragraph 1.*
[lxxvi] See the Handbook on the Peaceful Settlement of Disputes between States, Office of Legal Affairs Codification Division, United Nations, New York, 1992.
[lxxvii] See the Special Agreement for the Submission of Questions relating to Fisheries on the North Atlantic Coast under the General Treaty of Arbitration concluded between the United States and Great Britain on 4 April 1908, signed at Washington on 27 January 1909.
[lxxviii] See the Agreement between Canada and France on their Mutual Fishing Relations, signed at Ottawa on 27 March 1972.