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# Sovereignty of Aves Island: An Argument Against Compulsory, Standardized Arbitration of Maritime Boundary Disputes Subject to Review by the International Court of Justice

M. Scott Garrison

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## COMMENTS

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M. Scott Garrison\*

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### I. INTRODUCTION

Territorial boundaries, if well-established and recognized, add stability to relations between neighbor states.<sup>1</sup> Unclear boundary demarcations, however, often lead to disputes that significantly hamper state relations.<sup>2</sup> While maritime boundary dis-

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1. See Jan Paulsson, *Boundary Disputes into the Twenty-First Century: Why, How . . . and Who?*, 95 AM. SOC'Y INT'L L. PROC. 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

putes directly affect a state's citizens,<sup>3</sup> they often affect economic relations between disputing states as well.<sup>4</sup> If states' claims of sovereignty of maritime territory and resources located therein conflict, disputes may quickly escalate unless states employ an effective means of dispute resolution.<sup>5</sup>

For example, Venezuela currently maintains a dispute over the sovereignty of Isla de Aves ("Aves Island") with various Caribbean states.<sup>6</sup> Venezuela and Dominica, in particular,<sup>7</sup> claim sovereignty of Aves Island and the natural resources located in its surrounding maritime territory.<sup>8</sup> Because neither Venezuela nor Dominica appear willing to compromise,<sup>9</sup> the increasing tension

conflict which thereby threatens 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 that the delimitation of maritime territories may reapportion the property and resources of states' citizens).

4. See Jonathan I. Charney, *Rocks That Cannot Sustain Human Habitation*, 93 AM. J. INT'L L. 863 (1999) (commenting that a primary question underlying disputes over contested maritime territory is that of sovereignty to the territory and the economic resources located in the maritime territory); see also Paulsson, *supra* note 1, at 123 (recognizing that maritime disputes "can have significant implications for [states'] ownership and control of resources").

5. See Srecko "Lucky" Vidmar, *Compulsory Inter-State Arbitration of Territorial Disputes*, 31 DENV. J. INT'L L. & POL'Y 87, 89 (2002) (asserting that disputes which remain unresolved are likely to escalate to armed conflict).

6. See Christopher Toothaker, *A Big Deal over a Tiny Island: Chavez Asserts Nation's Claim to Isla de Aves*, S. FLA. SUN-SENTINEL, Oct. 18, 2005, at 18A (pointing out that Caribbean island states including Dominica, Antigua, Grenada, Monsterrat, and St. Vincent object to Venezuela's claim of sovereignty of Aves Island).

7. See Nick Foster, *Venezuela Plans Birth of Baby to Colonise Bird Island*, DAILY TELEGRAPH (UK), Aug. 27, 2005, available at <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2005/08/27/wvenez27.xml&sSheet=/news/2005/08/27/ixworld.html> (implying Dominica is the predominant Caribbean state objecting to Venezuela's claim of sovereignty of Aves Island); see also *Caribbean Community to Hold Talks About Disputed Bird Island with Venezuela*, ASSOCIATED PRESS, July 4, 2006 [hereinafter *Caribbean Community to Hold Talks*] (reporting that the "United States, France and the Dominican Republic have recognized Venezuela's ownership" of Aves Island).

8. See Toothaker, *supra* note 6 (reporting that Venezuela and Dominica have not agreed upon the sovereignty of Aves Island, its surrounding maritime territory, or the fishery and natural resources located therein). "[M]ore than sovereignty is at stake" in the Aves Island dispute. Alexandra Olson, *Latin Border Dispute Takes Wing with Aves Isle*, L.A. TIMES, Aug. 26, 2001, at 14. Access to the Island's fishery and natural resources underlie the dispute. *Id.* Access to the maritime territory's "mining, petroleum, and natural gas rights" might result in billion dollar revenues for either Venezuela or Dominica. *Id.*

9. See Toothaker, *supra* note 6 (conveying that both Venezuela and Dominica avidly claim sovereignty to Aves Island and reporting that their dispute continues to stagnate "despite Venezuela's recent agreement to sell Caribbean nations fuel under preferential terms").

between the states may result in armed conflict unless they engage in preemptive dispute resolution.<sup>10</sup>

States that engage in preemptive dispute resolution frequently call upon adjudicative or diplomatic means to resolve boundary disputes and comply with international law.<sup>11</sup> In light of reduced efficacy of bilateral dispute resolution mechanisms, however, some scholars propose that states should engage in standardized compulsory arbitration subject to review by the International Court of Justice (“I.C.J.”) to resolve boundary disputes.<sup>12</sup> Although arbitration is recognized as an effective method of international dispute resolution in certain cases,<sup>13</sup> standardized arbitration will not effectively resolve all boundary disputes between neighbor states because of the different factual circumstances and legal principles that underlie and govern territorial disputes.<sup>14</sup>

This Comment argues against the proposition that the United Nations (“U.N.”) should implement a standardized arbitration mechanism and discusses implications of such a requirement on the current dispute over the sovereignty of Aves Island.<sup>15</sup> Part I presents the claims of sovereignty of Venezuela and Dominica

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10. Cf. Julie M. Folger, *A Proposal to End the Stalemate in the Caspian Sea Negotiations*, 18 OHIO ST. J. ON DISP. RESOL. 529, 530 (2003) (discussing the need for states to use dispute resolution mechanisms to resolve the dispute over the oil-rich Caspian Sea in an effort to prevent the dispute from escalating to armed conflict).

11. See Anne Peters, *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).

12. See Vidmar, *supra* note 5, at 88-89 (reasoning the U.N. should implement compulsory arbitration through a general resolution or treaty because it currently places no affirmative duty on states to arbitrate 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 Carla S. Copeland, *The Use of Arbitration to Settle Territorial Disputes*, 67 FORDHAM L. REV. 3073, 3107 (1999) (noting that arbitration is an appropriate method to resolve territorial boundary disputes in certain circumstances); 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 a 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 effectively or efficiently resolve the Aves Island dispute because it undermines the state sovereignty of Venezuela and Dominica, results in settlement noncompliance and ineffective enforcement, and eliminates dispute settlement’s inherent efficiencies); cf. Copeland, *supra* note 13, at 3107 (1999) (positing that a uniform method of dispute resolution is not appropriate to resolve every boundary dispute).

over the Island.<sup>16</sup> Part I also 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*”)<sup>17</sup> and *Case Concerning Land and Maritime Boundary Between Cameroon and Nigeria* (“*Cameroon v. Nigeria*”).<sup>18</sup>

Part II argues against a U.N. compulsory arbitration requirement by first discussing its inconsistency with the sovereignty of Venezuela and Dominica in light of *Portugal v. Australia*.<sup>19</sup> 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. Compulsory arbitration is not effective because the I.C.J. is unable to enforce decisions where states such as Venezuela and Dominica fail to consent to arbitration or then comply with arbitral awards.<sup>20</sup> Part II then illustrates how compulsory arbitration decreases the efficiency of international dispute resolution in light of *Cameroon v. Nigeria*.<sup>21</sup>

Part III recommends that the U.N., rather than implement compulsory, standardized arbitration, should provide a forum in which states may engage in a combination of mediation and arbitration (“Med-Arb”) to resolve boundary disputes.<sup>22</sup> This section

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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 the dispute between Portugal and Australia over the administrative control of East Timor).

18. See generally *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nig.: Eq. Guinea intervening)*, 2002 I.C.J. 303 (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 the sovereignty of Venezuela and Dominica by violating their sovereign equality, right to consent to the resolution of their dispute, and self-determination).

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

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).

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 in resolving their dispute over the sovereignty of Aves Island.<sup>23</sup> Part IV concludes that states should engage in Med-Arb in international boundary disputes to achieve effective redress in the future.<sup>24</sup>

## II. BACKGROUND

Aves Island, located approximately 380 nautical miles (“nm”) north of Venezuela and 140 nm west of Dominica,<sup>25</sup> is famous for its spectacular birds and endangered sea turtles.<sup>26</sup> More importantly, Aves Island’s surrounding maritime territory contains a significant amount of natural resources,<sup>27</sup> which Venezuela claims both sovereignty of<sup>28</sup> and the right to transport through the Carib-

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23. See *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 which Jones and Mnookin discussed the advantages of using Med-Arb to resolve disputes in making their arbitral award); see also James T. Peter, *Med-Arb in International Arbitration*, 8 AM. REV. INT’L ARB. 83, 83-84 (1997) (asserting that Med-Arb is a desirable dispute settlement mechanism for international disputes).

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

25. See Toothaker, *supra* note 6 (indicating that Aves Island is a small, remote island of 1,900 feet in length and 1,640 feet in width).

26. See *id.* (noting that Aves Island is a breeding and resting place for many different species of birds and green sea turtles and noting that Venezuela allows scientists to visit Aves Island to study its exotic birds and sea turtles).

27. See Judy Maksoud, *Global E&P Briefs: Americas*, OFFSHORE, Oct. 2002, at 12 (reporting that the seabed of the Caribbean Sea contains approximately seventy trillion cubic feet (“t.c.f.”) of natural gas and reporting that control of the natural gas located in the disputed maritime territory has significant economic implications because it represents approximately 1.2% of the world’s remaining natural gas reserves); Energy Information Administration, *Energy Outlook 2006*, Report DOE/EIA-0484 (June 2006), available at [http://www.eia.doe.gov/oi/af/ieo/nat\\_gas.html](http://www.eia.doe.gov/oi/af/ieo/nat_gas.html) (estimating worldwide reserves of natural gas to be 6,112 t.c.f. in 2006).

28. By claiming sovereignty of Aves Island, Venezuela also claims sovereignty over the Island’s surrounding maritime territory and the natural resources located therein. See United Nations Convention on the Law of the Sea 1833 U.N.T.S. 397, arts. 3, 57, 76, para. 5 (Dec. 10, 1982), available at [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf) [hereinafter UNCLOS] (vesting states that have ratified UNCLOS with a right to exercise sovereignty over the maritime territory within 12 nm of territorial seas, 200 nm of an exclusive economic zone (“EEZ”), and 150 nm of a continental shelf); see also *id.* arts. 3, 56, para. 1, art. 77, para. 1 (stating sovereignty of such maritime territory encompasses the exclusive right to explore and exploit resources located therein); Olson, *supra* note 8



bean Sea.<sup>29</sup> Dominica and various Caribbean states, however, object<sup>30</sup> to Venezuela's recent increased assertion of authority over the Island.<sup>31</sup> Though Venezuela and Dominica recently organized talks amongst Caribbean foreign ministers to resolve their boundary dispute,<sup>32</sup> Dominica may seek resolution of the long-standing dispute through formal dispute resolution mechanisms in the near future.<sup>33</sup>

To prevent states such as Venezuela and Dominica from resorting to force to settle their dispute, the U.N. offers diplomatic and adjudicative means of dispute resolution that states may employ to peacefully resolve such disputes.<sup>34</sup> *Portugal v. Australia* demonstrates that dispute settlement requires state consent.<sup>35</sup> *Cameroon v. Nigeria* highlights the inefficacy of dispute settlement where non-consenting states fail to recognize and comply with settlement awards.<sup>36</sup> Finally, *I.B.M. v. Fujitsu* indicates that

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(confirming that Venezuela claims sovereignty of natural resources located in the disputed maritime territory in the Caribbean Sea).

29. See Newsletter: Trinidad and Tobago, OIL & GAS JOURNAL, Oct. 6, 2003, at 8 (describing Venezuela's intent to construct a liquid natural gas pipeline in the Caribbean Sea which would supply natural gas to seven Caribbean states and potentially the United States as well); see also Maksoud, *supra* note 27 (reporting that Venezuela plans to complete its liquid natural gas pipeline in 2007).

30. See Toothaker, *supra* note 6 (voicing the objections of Caribbean states against Venezuela's claim of sovereignty to Aves Island, the Prime Minister of St. Vincent Ralph Gonsalves stated that "[i]t [Aves Island] certainly is Dominica's as far as we are concerned.").

31. See *id.* (reporting that Venezuela recently positioned seventeen sailors on a newly established base on Aves Island). Commenting on Venezuela's recent action with regard to Aves Island, Venezuelan Commander Guillermo Isturiz asserted that "Aves Island belongs to Venezuela. Several nations in the Eastern Caribbean dispute that claim, but we are reaffirming our sovereignty here." *Id.*

32. See *Caribbean Community to Hold Talks*, *supra* note 7 (reporting the talks will center on the classification of Aves Island as an island versus a sandbar).

33. See Bert Wilkinson, *Caribbean Countries May Ask U.N. to Settle Island Dispute with Venezuela Over Waters Around Remote Island*, ASSOCIATED PRESS WORLDSTREAM, Nov. 7, 2005 (reporting that Caribbean countries may request the U.N. to resolve the dispute over the sovereignty of Aves Island).

34. 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.

35. 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 the dispute implicated Indonesia's rights and obligations and where Indonesia did not consent to the dispute as an interested state).

36. See Paul Burkhardt, *Nigeria and Cameroon Reach Agreement Over Border Disputes in Oil-rich Peninsula*, ASSOCIATED PRESS, June 12, 2006 (indicating that Nigeria did not initially comply with the I.C.J.'s 2002 decision which required it to pull troops out of the Bakassi Peninsula, available at <http://africa.ibtimes.com/>

consensual dispute resolution allows parties to capitalize on the advantages of both mediation and arbitration, and thereby increase the efficacy and efficiency of their dispute settlement process.<sup>37</sup>

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

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

Venezuela claims that its historic title and sovereignty of Aves Island dates to the nineteenth century.<sup>38</sup> Although other states have claimed sovereignty of Aves Island,<sup>39</sup> Venezuela has consistently exercised authority over the Island during the end of the twentieth and beginning of the twenty-first centuries.<sup>40</sup> Venezuela also claims sovereignty of the maritime territory surrounding Aves Island, which extends into the maritime territory of several other Caribbean states.<sup>41</sup> While Venezuela has not yet

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articles/20060613/nigeria-039-s-withdrawal-of-roops-from-oil-rich-peninsula. Approximately four years after the I.C.J.'s ruling, "Nigeria has [finally] agreed to withdraw troops from the oil-rich Bakassi Peninsula." *Id.*

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

38. See GORDON IRELAND, BOUNDARIES, POSSESSIONS AND CONFLICTS IN SOUTH AMERICA 248 (1938) (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 L. Benjamin Ederington, *Property as a Natural Institution: The Separation of Property from Sovereignty in International Law*, 13 AM. U. INT'L L. REV. 263, 289 (1997) (suggesting that Venezuela claimed sovereignty of Aves Island in 1854, the year in which a dispute over the "discovery of guano deposits on the Aves Islands" ensued between the United States and Venezuela and suggesting that historic title is a valid and enforceable claim of sovereignty against all states).

39. See Toothaker, *supra* note 6 (noting "Britain, Spain, the United States, the Netherlands, and now Venezuela" have all claimed sovereignty over Aves Island).

40. See *id.* (reporting that Venezuela has demonstrated its sovereignty of Aves Island by recently setting up military outposts and conducting weddings and baptisms on the Island and specifying that even Venezuela "set up a scientific naval base on [Aves Island] in 1978").

41. See *id.* (indicating that Venezuela's claim of sovereignty to Aves Island and its surrounding maritime territory "would encompass Montserrat and Grenada"); see also VICTOR PRESCOTT AND CLIVE SCHOFIELD, THE MARITIME POLITICAL BOUNDARIES OF THE WORLD 358 (2005) (noting the maritime boundary between Aves Island and Montserrat is measured by a line 32 nm equidistant from both states); *id.* at 362 (implying that Grenada is located approximately 51 nm from Aves Island, which

ratified the U.N. Convention on the Law of the Sea (“UNCLOS”),<sup>42</sup> Venezuela’s claim to Aves Island would grant it rights to the Island’s territorial waters, exclusive economic zone (“EEZ”), and continental shelf if it ratified UNCLOS.<sup>43</sup>

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

In contrast, Dominica and various Caribbean states 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.<sup>44</sup> Both Dominica and other Caribbean states claim that Aves Island is merely an uninhabited sandbar<sup>45</sup> and therefore not entitled to its own territorial sea, EEZ, and continental shelf under UNCLOS.<sup>46</sup> Dominica, specifically, claims that Aves Island, located only 140 nm west of Dominica’s coastal baselines, falls within its EEZ under UNCLOS.<sup>47</sup> Dominica also

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serves as the point of equidistance that delimits Grenada’s maritime boundaries with other Caribbean states).

42. See The Secretary-General, *Report of the Secretary-General on Oceans and the Law of the Sea, 2-3, delivered to the General Assembly*, U.N. Doc. A/60/PV.56 (Nov. 29, 2005) [hereinafter *2005 Report on Oceans and Law of the Sea*], available at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/620/82/PDF/N0562082.pdf> (reporting that the provisions of UNCLOS are inapplicable to Venezuela because it is not party to UNCLOS and stating the reasons for which Venezuela has not yet ratified UNCLOS still persist).

43. See UNCLOS, *supra* note 28, art. 121 (providing that an island, defined as a “naturally formed area of land, surrounded by water, [and] above water at high tide,” exercises rights to a territorial sea, EEZ, and a continental shelf).

44. See Toothaker, *supra* note 6 (indicating Dominica’s claim of sovereignty to Aves Island is based on the Island’s closer proximity to Dominica than to Venezuela, which is located approximately 380 nm south of Aves Island).

45. See *Caribbean Community to Hold Talks*, *supra* note 7 (presenting the argument of Dominica and other Caribbean states that “Aves is not a true island but rather a sandbar, and that therefore Dominica has more of a claim to waters off the island.”).

46. See *id.* (stating that Dominica, in essence, claims that the Aves Island is incapable of sustaining human habitation and thus, similar to a rock, merits no EEZ or continental shelf under UNCLOS Article 121); *cf.* UNCLOS, *supra* note 28, art. 121, para. 3 (“[R]ocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.”).

47. Dominica is entitled to an EEZ because it is party to UNCLOS. See The Secretary-General, *Report of the Secretary-General on Oceans and the Law of the Sea, 101 n.2, delivered to the General Assembly*, U.N. Doc. A/54/429 (Sept. 30, 1999) [hereinafter *1999 Report on Oceans and Law of the Sea*], available at <http://daccessdds.un.org/doc/UNDOC/GEN/N99/283/83/PDF/N9928383.pdf> (reporting that Dominica has both signed and ratified UNCLOS); see also *Oceans and Law of the Sea: Division for Ocean Affairs and the Law of the Sea, Chronological Lists of the Ratifications of, Accessions and Successions to the Convention and the Related Agreements as at 14 Sept. 2006*, available at <http://www.un.org/depts/los/>

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 states.<sup>48</sup>

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

Engaging in a means of dispute resolution may enable Venezuela and Dominica to settle their dispute over Aves Island without employing force.<sup>49</sup> Engaging in such peaceful measures is, in fact, an obligation imposed on U.N. Member States when resolving their boundary disputes.<sup>50</sup> For example, the U.N. Charter identifies eight acceptable methods of dispute resolution that are either adjudicative or diplomatic in nature.<sup>51</sup> Whether states engage in adjudicative or diplomatic means to resolve their disputes,<sup>52</sup> such mechanisms require the consent of sovereign states for dispute settlement.<sup>53</sup>

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reference\_files/chronological\_lists\_of\_ratifications.htm (conveying that Dominica became party to UNCLOS when it ratified its provisions on Oct. 24, 1991).

48. See Toothaker, *supra* note 6 (noting that Venezuela's claim of sovereignty to Aves Island encompasses the EEZs of Caribbean Islands Montserrat and Grenada).

49. 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).

50. 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, and justice, are not endangered").

51. See U.N. Charter art. 33, para. 1 (providing 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 also Peters, *supra* note 11, at 4 (differentiating adjudicative measures of dispute resolution from diplomatic methods due to their different standards and binding processes).

52. See Peters, *supra* note 11, at 4 (pointing out that negotiation, inquiry, mediation and conciliation are diplomatic-political means which result in nonbinding awards whereas arbitration and litigation are adjudicative in nature and result in binding awards).

53. Ideally, parties will reach a consensual agreement resulting in an enforceable award in both adjudicative and diplomatic dispute resolution mechanisms. See *id.* at 5-7.

## 1. Arbitration as an Adjudicative Dispute Resolution Mechanism

Adjudicative means of dispute resolution require governing bodies to apply precedent and customary international law to resolve disputes between states.<sup>54</sup> States that employ adjudicative means of dispute resolution may elect formal in-court adjudication or arbitration by temporary arbitral tribunals.<sup>55</sup> States often prefer to engage in international arbitration over adjudication when resolving their disputes because arbitration ideally offers more efficiency and expediency than that offered by adjudication.<sup>56</sup> After states consent to arbitration,<sup>57</sup> they compose a set of rules and procedures for the arbitral tribunal to follow during arbitration.<sup>58</sup> The tribunal then issues an award that is typically binding on the disputing states.<sup>59</sup>

## 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 disputes through negotiations mediated by a neutral third-party.<sup>60</sup> States engage in diplo-

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54. *See id.* (explaining that adjudicative methods of dispute resolution include formal court adjudication and arbitration by arbitral tribunals).

55. *See id.* at 7 (commenting that arbitration is different from adjudication because it offers a more flexible settlement procedure and allows parties to retain more autonomy than does adjudication); *see also* BARRY E. CARTER ET AL., INTERNATIONAL LAW 284 (4th ed. 2003) (describing the development of adjudicative methods of dispute resolution where 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). The I.C.J. replaced the P.C.I.J. because it became increasingly unable to enforce its decisions. *Id.*

56. *See* Peter, *supra* note 23, at 87 (explicating that arbitration may be better suited for certain international disputes because it "avoids the pitfalls of litigation" whereby states engage in arbitration over adjudication because it offers a neutral forum for dispute resolution, surer enforcement mechanisms, confidential procedures, expert arbiters, and limited discovery).

57. *See id.* (asserting that states' consent to arbitration is imperative to the enforceability of an award).

58. *See* THE ARBITRATOR'S HANDBOOK: A PRACTICE GUIDE FOR DOMESTIC AND INTERNATIONAL ARBITRATION, ch. 2, para. 2.1 (1998) ("[A]n important aspect of any agreement to arbitrate is the written understanding of the parties as to what the scope of the arbiter's authority and jurisdiction will be.").

59. *See* Lucy V. Katz, *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).

60. *See* Carlos De Vera, *Arbitrating Harmony: 'Med-Arb' and the Confluence of*

matic means of dispute resolution, mediation in particular, to reconcile their interests and reach a consensual agreement.<sup>61</sup> Mediation is an advantageous method of dispute resolution because it grants states significant autonomy and flexibility during the resolution process,<sup>62</sup> results in an impartial award by third-party mediators,<sup>63</sup> and is typically even more efficient than arbitration due to resource conservation.<sup>64</sup>

*C. Portugal's Dispute with Australia 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,<sup>65</sup> its sovereignty has been in contention since the sixteenth century.<sup>66</sup> Portugal and Holland exercised sovereignty over East and West Timor, respectively, between the sixteenth and

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*Culture and Rule of Law in the Resolution of International Commercial Disputes in China*, 18 COLUM. J. ASIAN L. 149, 152 (2004) (noting that neutral mediators first "listen to an outline of the dispute and then meet each party separately to try to moderate their respective positions").

61. 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).

62. See CARTER, *supra* note 55, at 276 (conveying that mediation allows parties to retain control over the dispute and set mediation's procedures).

63. See De Vera, *supra* note 60, at 152 (indicating that when parties fail to reach an 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).

64. See *id.* at 153 (observing that mediation is more efficient "in terms of time and money" than is arbitration).

65. See Herbert D. Bowman, *Letting the Big Fish Get Away: The United Nations Justice Effort in East Timor*, 18 EMORY INT'L L. REV. 371, 376-77 (2004) (noting that the East Timorese passed a U.N. referendum on September 5, 1999, which recognized East Timor as an independent state, no longer under the control of Indonesia's military or militia). East Timor encompasses "the eastern part of the island of Timor[,] which includes the island of Atauro, 25 kilometers to the north, the islet of Jaco to the east, and the enclave of Oe-Cuesse in the western part of the island of Timor." East Timor (Port. v. Austl.), 1995 I.C.J. 90, para. 11 (June 30). The southern coast of East Timor is opposite the northern coast of Australia, which is located approximately 430 kilometers south of East Timor. *Id.*

66. See East Timor (Port. v. Austl.), 1995 I.C.J. 90, para. 11 (June 30) (reporting Portugal first colonized and claimed sovereignty of East Timor in the sixteenth century whereas "[t]he western part of the island came under Dutch rule and later became part of independent Indonesia").

twentieth centuries.<sup>67</sup> In 1949, however, Indonesia decolonized from Holland and subsequently annexed West Timor.<sup>68</sup> Indonesia then invaded East Timor in 1974, unilaterally annexing it as a province of Indonesia.<sup>69</sup>

Immediately thereafter, the U.N. Security Council issued two resolutions that recognized East Timor as a sovereign state and declared Portugal the temporary “administering power” of the State.<sup>70</sup> In 1991, a dispute between Portugal and Australia arose when Portugal alleged that Australia engaged in actions that failed to respect Portugal as East Timor’s continuing, administering power.<sup>71</sup> Australia, in contrast, contended that the East Timorese granted it international responsibility for Timor.<sup>72</sup>

## 2. *Portugal v. Australia* Implicates a Third State That Did Not Consent to Adjudication by the I.C.J.

Portugal initiated formal proceedings against Australia in

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67. See Bowman, *supra* note 65, at 373-74. Portugal colonized East Timor in 1513 and the Dutch colonized the western part of Timor by the middle of the eighteenth century. *Id.* In 1913, the countries ratified a border agreement which divided East and West Timor. *Id.* Then, after “the Dutch granted Indonesia its independence in 1949, West Timor became part of the Indonesian Republic while East Timor remained a Portuguese colony.” *Id.* Japan’s invasion of East Timor in 1941 resulted in more recent conflicts between the Dutch, Australians and Japanese over the control of Timor. *Id.*

68. See *id.* at 374 (stating that Portugal continued to exercise sovereignty over East Timor during Indonesia’s decolonization from Holland).

69. See East Timor (Port. v. Austl.), 1995 I.C.J. 90, para. 13 (June 30) (indicating that since “Indonesia intervened in East Timor” in 1975, Indonesia occupied and effectively controlled East Timor thereafter). Portugal withdrew from East Timor altogether on December 8, 1975, leaving East Timor to Indonesia’s sole control. *Id.* East Timor became “an integral part of the Republic of Indonesia” when “Indonesia enacted a law incorporating [East Timor] as part of its national territory.” *Id.*

70. See *id.* paras. 14-15 (noting the U.N. Security Council issued two general resolutions on December 22, 1975, and April 22, 1976, which demanded that Indonesia “withdraw without delay all of its forces from [East Timor]” and recognize the self-determination of its citizens). The U.N. Security Council requested Portugal “to co-operate fully with the U.N. so as to enable the people of East Timor to exercise freely their right to self-determination.” *Id.* para. 15.

71. See *id.* para. 1 (alleging that Australia failed to recognize the right of the East Timorese to self-determination); see also Bowman, *supra* note 65, at 377 (“[O]n September 20, 1999, a military force, spearheaded by Australian soldiers and labeled the International Force [of] East Timor (“INTERFET”), landed at Dili, East Timor’s capital city. By the end of October, INTERFET had secured the bulk of the half-island, thereby putting the United Nations in effective possession of the country.”).

72. See East Timor (Port. v. Austl.), 1995 I.C.J. 90, para. 1 (June 30) (indicating that Australia claimed Portugal deemed Australia internationally responsible for East Timor as well); see also *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).

1995 because Australia failed to recognize Portugal's role as administrator of East Timor, and because Australia acted contrary to the self-determination of the East Timorese.<sup>73</sup> Both States consented to arbitration by the I.C.J.,<sup>74</sup> but thereafter Australia objected to arbitration without Indonesia's consent as an interested third-party.<sup>75</sup> The I.C.J. noted that Indonesia was an interested third-party in the dispute between Portugal and Australia because its actions with regard to East Timor directly influenced the Court's determination of whether Australia acted lawfully.<sup>76</sup> Because Indonesia did not consent to arbitration, the I.C.J. lacked jurisdiction over the dispute, which prohibited the I.C.J. from ruling without undermining Indonesia's sovereign right to consent to arbitration.<sup>77</sup>

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73. *See id.* (presenting Portugal's official claim that Australia's conduct demonstrated it "failed to observe . . . the obligation to respect the duties and powers of [Portugal as] the administering Power [of East Timor] . . . and . . . the right of the people of East Timor to self-determination and the related rights"). Resolution 384 of the U.N. Security Council "called upon all States to respect the territorial integrity of East Timor as well as the inalienable right of its people to self-determination." *Id.* para. 15. However, Australia signed a treaty with Indonesia in 1989, which established a "provisional arrangement for the joint exploration and exploitation of the resources of an area of the continental shelf." *Id.* para. 18. Portugal claimed this treaty violated Portugal's role as the administrative Power and the self-determination of the East Timorese as it denied the East Timorese their right to exercise sovereignty over natural resources located in the disputed maritime territory. *Id.* para. 19.

74. *See id.* para. 1 (noting the I.C.J. entertained 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).

75. *See East Timor (Port. v. Austl.)*, 1995 I.C.J. 90, para. 21 (June 30) (contending that there was no dispute between Australia and Portugal, but rather a dispute which centered on the "question of the lawfulness of Australia's conduct" with respect to Indonesia).

76. *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).

77. *See id.* para. 34 (emphasizing that the I.C.J. did not rule on Portugal's claim against Australia without the consent of Indonesia because it would have violated the "well-established principle . . . that the [I.C.J.] can only exercise jurisdiction over a state with its consent").



*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, which centered on the sovereignty of the Bakassi Peninsula and maritime territory surrounding Lake Chad,<sup>78</sup> stemmed from the ambiguous demarcation of German territory in Western Africa after World War I.<sup>79</sup> In 1964, the states bordering Lake Chad established the Lake Chad Basin Commission to resolve local border disputes.<sup>80</sup> Cameroon bypassed the Commission, however, when it submitted its dispute over the sovereignty of Bakassi Peninsula to the I.C.J. for binding demarcation and delimitation of the maritime area surrounding Lake Chad.<sup>81</sup>

2. The I.C.J. is Unable to Effectively Enforce its Award in *Cameroon v. Nigeria*

Cameroon submitted its boundary dispute with Nigeria to the I.C.J. for binding adjudication in 1994.<sup>82</sup> 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.<sup>83</sup> Under this concept, disputing states inherit their respective colonial borders when they become independent.<sup>84</sup>

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78. See Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nig.), 2002 I.C.J. 94, para. 3 (Oct. 10) (implying Cameroon and Nigeria dispute the sovereignty of the Bakassi Peninsula because they seek access to its vast oil reserves).

79. See *id.* para. 35 (discussing how after World War II, France and Britain apportioned German territory that encompassed the disputed Bakassi Peninsula).

80. See *id.* para. 36 (noting the Lake Chad Basin Commission, which performs dispute settlement functions pursuant to Article IX of its Statute, has regularly met to discuss and resolve local border disputes since its inception).

81. See *id.* 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 with Nigeria).

82. See *id.* (including in its application that the dispute centered around the "sovereignty over the Bakassi Peninsula"); see also Press Release, I.C.J., Land and Mar. Boundary Between Cameroon and Nig. (Cameroon v. Nig.: Eq. Guinea Intervening) (Oct. 10, 2002), [http://www.icj-cij.org/icjwww/ipresscom/ipress2002/ipresscom2002-26\\_cn\\_20021010.htm](http://www.icj-cij.org/icjwww/ipresscom/ipress2002/ipresscom2002-26_cn_20021010.htm) (pointing out that Cameroon also objected to military troops that Nigeria positioned within the Bakassi Peninsula).

83. See Land and Mar. Boundary Between Cameroon and Nigeria (Cameroon v. Nig.), 2002 I.C.J. 94, para. 26 (Oct. 10) (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).

84. 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) ("[U]ti possidetis provides that states

In its 2002 decision, the I.C.J. granted Cameroon sovereignty of Bakassi Peninsula and required Nigeria to withdraw its administrative and military forces located in the region.<sup>85</sup> Although the award was binding, Nigeria did not initially recognize the decision as legitimate and has only recently agreed to comply with the I.C.J.'s order to withdraw from the Bakassi Peninsula.<sup>86</sup>

*E. I.B.M. and Fujitsu Used 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.<sup>87</sup> Employing Med-Arb allowed the arbiters to capitalize on the advantages of both mediation and arbitration and facilitate an efficient settlement process.<sup>88</sup> Med-Arb consists of two distinct stages.<sup>89</sup> First, mediators attempt to facilitate agreement between the parties by directing negotia-

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emerging from decolonization shall presumptively inherit the colonial administrative borders that they held at the time of independence.”). States used the concept of *uti possidetis juris* to form boundaries in Latin and South America in the 1800s. *Id.*

85. See *Cameroon v. Nig.*, *supra* note 83, at paras. 225, 315 (granting the sovereignty of Bakassi Peninsula to Cameroon based on the enforceability of the 1913 Anglo-German Agreement).

86. See Burkhardt, *supra* note 36 (reporting that the I.C.J. required Nigeria to withdraw all of its soldiers by August, 2006, and reporting that Nigerian “troops [had] a choice of being repatriated to Nigeria or remaining under the laws of Cameroon”).

87. See *generally* 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, 243 (1988) (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 accessible as public domain. *Id.* at 243-44.

88. 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 87, at 250 (conveying that arbitration allows parties to individually select third-party facilitators, tailor informal processes to their needs, conduct private hearings, obtain faster resolution of their dispute, and reduce costs during settlement).

89. See Peter, *supra* note 23, at 88-90 (suggesting that Med-Arb is most effect when disputing parties first engage in mediation and then transition to arbitration). *But see* De Vera, *supra* note 60, at 155-56 (noting that mediation may merge into arbitration and that this merger, in turn, may cause the stages of Med-Arb to be less distinct).

tions.<sup>90</sup> If disputing parties fail to reach an agreement through mediation, the same third-party mediators then arbitrate the dispute.<sup>91</sup> In Med-Arb, the arbiters have traditional arbitral duties and eventually issue a decision that has binding force on the parties.<sup>92</sup>

### III. ANALYSIS

The U.N. should not require arbitration of all boundary disputes because it violates state sovereignty embodied in the U.N. Charter.<sup>93</sup> In addition, compulsory arbitration will not resolve many boundary disputes effectively because it may result in settlement noncompliance and creates unenforceable awards.<sup>94</sup> Compulsory arbitration also creates inefficiencies in dispute settlement because it eliminates the opportunity for states such as Venezuela and Dominica to resolve disputes through bilateral negotiations or other regional settlement mechanisms.<sup>95</sup>

#### A. *Requiring Venezuela and Dominica to Arbitrate the Aves Island Dispute Violates State Sovereignty Under the U.N. Charter*

Compulsory, standardized arbitration subject to I.C.J. review

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90. See De Vera, *supra* note 60, at 156 (stating that disputing parties may avoid engaging in Med-Arb's arbitration phase when they reach a mutually beneficial agreement in Med-Arb's mediation phase).

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

92. See United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. 3, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3 (entered into force in the United States, Dec. 29, 1970) (codified at 9 U.S.C.A. §§ 201 et seq. (West 1999 & Supp. 2004)) [hereinafter New York Convention], available at [http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/XXII\\_1\\_e.pdf](http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/XXII_1_e.pdf) (obliging states party to the convention to recognize arbitral awards as binding and enforce those awards where relied upon by disputing states); see also Peter, *supra* note 23, at 88-89 (observing that courts grant arbitral awards more deference than settlements which are purely mediated and that parties may seek to enforce Med-Arb awards as contracts or arbitral awards binding under the New York Convention).

93. See discussion *infra* Part II.A.1 (arguing that compulsory arbitration violates Article 2 of the U.N. Charter because it undermines the state sovereignty of Venezuela and Dominica as U.N. Member States).

94. See discussion *infra* Part II.B (reasoning that compulsory arbitration will result in settlement noncompliance by states that withhold initial consent to dispute resolution and suggesting such noncompliance makes compulsory arbitration innocuous due to weak international enforcement capabilities).

95. See discussion *infra* Part II.C (arguing that compulsory arbitration will preclude Venezuela and Dominica from capitalizing on the efficiencies availed through engaging in bilateral dispute resolution).

would violate the state sovereignty of Venezuela and Dominica for three reasons.<sup>96</sup> First, compulsory arbitration violates Article 2 of the U.N. Charter, which grants disputing states such as Venezuela and Dominica sovereign equality.<sup>97</sup> Second, *Portugal v. Australia* demonstrates that the sovereignty of Venezuela and Dominica encompasses the right to consent to the resolution of their dispute over Aves Island, which compulsory arbitration would dispense with.<sup>98</sup> Third, compulsory arbitration is inconsistent with the U.N.'s grant of self-determination to Member States under Article 55, which implies Member States have the sovereign right to choose a method of dispute resolution from a range of internationally accepted means.<sup>99</sup>

### 1. Compulsory Arbitration Violates the Sovereign Equality of Venezuela and Dominica 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 under Article 2 of the U.N. Charter.<sup>100</sup> Article 2, by granting sovereign equality to all U.N. Member States,<sup>101</sup> vests states

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

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

98. 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 the 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); *Mar. Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahr.)*, 2001 I.C.J. 40 (Mar. 16) (failing to rule on the dispute between Qatar and Bahrain where Britain did not consent to I.C.J. adjudication and the dispute affected Britain's interests); *Military and Paramilitary Activities in and Against Nicaragua (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.).

99. See U.N. Charter art. 55 (basing the right to self-determination on the need for peaceful and friendly relations between all states); *cf. id.* art. 56 (obliging all U.N. members to recognize the right of states to self-determination under Article 55).

100. See *id.* art. 2, para. 7 ("[N]othing . . . in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or . . . require [its] members to submit such matters to settlement under the present Charter."); see also *id.* arts. 1, 4 (inferring that compulsory arbitration undermines the sovereign right of U.N. members, such as Venezuela and Dominica, to their territorial and political independence).

101. See *id.* art. 2 (indicating that the U.N. is based on the sovereign equality of all its members); *id.* art. 1 (proclaiming that states should cooperate to solve

with the sovereign right to use, dispose of, and prevent unauthorized access to their territory by other states.<sup>102</sup> Read broadly, this sovereign right empowers states to act in manners reasonably necessary to further state interests and interests of their citizens.<sup>103</sup>

Not surprisingly, the Aves Island dispute affects the state sovereignty of both Venezuela and Dominica.<sup>104</sup> Under the U.N. Charter, Venezuela and Dominica obtained sovereign equality under Article 2 when they became U.N. Member States.<sup>105</sup> Sovereign equality encompasses the right to take action and protect state interests and the best interests of the states' citizens.<sup>106</sup> Compulsory arbitration denies Venezuela and Dominica the right to political and economic independence<sup>107</sup> because it restricts their sovereign right to choose how to use, dispose of, and resolve disputes over their territory.<sup>108</sup> By denying Venezuela and Dominica the right to act independently, and in the best interest of their citizens, compulsory arbitration thus violates the state sovereignty of Venezuela and Dominica under Article 2 of the U.N.

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international problems that are "economic, social, cultural, [and] humanitarian in character"); see also CASSESE, *supra* note 2, at 88-91 (distinguishing states' sovereign equality from legal equality and noting that sovereign equality serves as the basis for international law).

102. See CASSESE, *supra* note 2, at 89-90 (noting that state sovereignty encompasses the right to use and dispose of territory under the state's jurisdiction and the right to exclude others from the state's territory).

103. See *id.* at 89 (observing that state sovereignty includes a state's right to protect the best interests of its citizens and a duty to promote state security within its territory).

104. See Maksoud, *supra* note 27 (implying that sovereignty of Aves Island would allow either Venezuela or Dominica to control the disputed maritime territory in the Caribbean Sea and allow either state to transport a significant amount of natural gas to various distribution points).

105. See U.N. Charter art. 2, para. 1 (emphasizing that the U.N. is "based on the principle of the sovereign equality of all its Members"); see also Press Release, United Nations Member States, U.N. Doc. ORG/1360/Rev.1 (Oct. 2, 2004), available at <http://www.un.org/News/Press/docs/2004/ORG1360.rev.1.doc.htm> (stating that Venezuela and Dominica became U.N. Member States on Nov. 15, 1945, and Dec. 18, 1978, respectively).

106. See U.N. Charter art. 2, para. 4 (stating that U.N. Member States "shall refrain in their international relations from the threat or use of force against the territorial integrity [and] political independence of any [Member] State").

107. See *id.* (mandating that no state may deprive U.N. Member States the right to protect their state interests and those of their citizens).

108. Cf. 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).

Charter.<sup>109</sup>

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

As signatories to the U.N. Charter, Venezuela and Dominica have a sovereign right to consent to the settlement of the dispute over Aves Island.<sup>110</sup> In *Portugal v. Australia*, for example, the I.C.J. found that it could not decide a dispute that involved a non-consenting third party.<sup>111</sup> In that case, the I.C.J. refused to rule on Portugal's claims against Australia where it required ruling on the conduct of Indonesia with respect to East Timor because Indonesia did not consent to the I.C.J.'s jurisdiction.<sup>112</sup>

Concerning the dispute over Aves Island, both Venezuela and Dominica may assert 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 the Aves Island dispute.<sup>113</sup> Though neither Venezuela nor Dominica has accepted the compulsory jurisdiction of the I.C.J.,<sup>114</sup> mandatory arbitration would subject the Aves Island dispute to review by the I.C.J., thereby undermining both States' right to

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109. See U.N. Charter art. 2; CASSESE, *supra* note 2, at 89-90.

110. Cf. *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 dispute).

111. See *id.* (refusing to entertain jurisdiction over Portugal and Australia where the I.C.J. needed to determine the lawfulness of Indonesia's actions without its consent).

112. See *id.* (stating that because all of Portugal's claims centered on the same question, "whether the power to make treaties concerning the continental shelf resources of East Timor belong[ed] to Portugal or Indonesia," it was unnecessary for the I.C.J. to consider Australia's claims as the I.C.J. could not rule without Indonesia's consent as an interested third-party).

113. See *id.* at 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 and implying that even if Dominica seeks resolution of the Aves Island dispute under I.C.J. review, Venezuela might argue that its legal interests in Aves Island form the subject matter of the dispute, thereby precluding the I.C.J. from mandating arbitration without its consent).

114. See I.C.J., *Declarations Recognizing as Compulsory the Jurisdiction of the Court* (Feb. 16, 2006) [hereinafter I.C.J. Declarations], <http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicdeclarations.htm> (indicating that Venezuela and Dominica have not yet accepted the compulsory jurisdiction of the I.C.J.).

consent to the resolution of their dispute.<sup>115</sup> This argument is especially persuasive in the case of Venezuela because it has not yet ratified UNCLOS.<sup>116</sup> This demonstrates that Venezuela does not intend to be bound by UNCLOS' arbitral provisions in its international disputes.<sup>117</sup> As such, compulsory arbitration would violate the sovereign right of both Venezuela and Dominica to consent to the resolution of their dispute over Aves Island.<sup>118</sup>

### 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.<sup>119</sup> This sovereign right to self-determination encompasses political and economic independence.<sup>120</sup> Compulsory arbitration, however, undermines the political and economic independence<sup>121</sup> of Venezuela and Dominica by denying them the ability to reject consent to dispute resolution.<sup>122</sup> Compulsory arbitration, in effect, denies Venezuela and Dominica the right to elect a course of

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115. See Vidmar, *supra* note 5, at 99 (asserting compulsory arbitration should be subject to procedural review by the I.C.J. due to the "limited" legal principles involved in boundary disputes).

116. See *2005 Report on Oceans and Law of the Sea*, *supra* note 42 (reporting that Venezuela has not yet submitted to the compulsory provisions of UNCLOS, but it may choose to ratify the Convention in the future, which would then make the provisions of the Convention applicable to Venezuela).

117. Cf. UNCLOS, *supra* note 28, art. 287, para. 1 (declaring that 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).

118. See *id.* (empowering states such as Venezuela and Dominica with the sovereign right to choose to accept the compulsory jurisdiction provisions of UNCLOS); see also I.C.J. Statute, *supra* note 74, art. 36 (granting states a sovereign right to consent to the I.C.J.'s compulsory jurisdiction).

119. U.N. Charter art. 55 (indicating that state relations are based on respect for peoples' self-determination and implying that peoples' self-determination is based in the self-determination of states).

120. See Diane F. Orentlicher, *Separation Anxiety: International Responses to Ethno-Separatist Claims*, 23 YALE J. INT'L L. 1, 23 (1998) (suggesting that states' sovereign right to self-determination includes absolute independence of action; *id.* at 30-31 (implying that national self-determination, the "right of . . . nations to decide their own destinies," fosters international peace and security).

121. See U.N. Charter art. 55 (highlighting that the right to self-determination applies to "conditions of economic and social progress and development").

122. Cf. Orentlicher, *supra* note 120, at 37 (equating external interference with states' sovereign actions concerning their territory with an "unequivocal denial of a general right of national self-determination").

action which could better protect the stability of their economic interstate relations, and respective state interests.<sup>123</sup>

Applying Article 55 of the U.N. Charter to the Aves Island dispute, Venezuela and Dominica may justifiably seek to exercise their sovereign right to self-determination<sup>124</sup> when resolving this dispute.<sup>125</sup> Self-determination is important for both States because Aves Island may stimulate economic development and provide Venezuela or Dominica with significant additional income from tourism activities.<sup>126</sup> Self-determination becomes even more critical where control of Aves Island's surrounding maritime territory and natural resources are at stake.<sup>127</sup> If Venezuela were to ratify UNCLOS, then both Venezuela and Dominica might validly claim the exclusive rights to explore and exploit the vast natural gas reserves located within the EEZ and continental shelf surrounding the Island.<sup>128</sup> Dominica, in particular, has a strong claim to the sovereignty of Aves Island and its available natural resources because should Aves Island be deemed a sandbar, it

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123. See U.N. Charter art. 2, para. 4 (Article 2 of the U.N. Charter requires U.N. Member States to refrain from using force "against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the [U.N.]").

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

125. Read broadly, Article 2 of the U.N. Charter protects against the interference of states with the economic and political interests and autonomy of other Member States. *Id.* art. 2.

126. See Alexander C. O'Neill, Note, *What Globalization Means for Ecotourism: Managing Globalization's Impacts on Ecotourism in Developing Countries*, 9 *IND. J. GLOBAL LEGAL STUD.* 501, 527 (2002) (discussing tourism's stimulation of states' economic development); see also Vaughan A. Lewis, *The Interests of the Caribbean Countries and the Law of the Sea Negotiations*, in *MARITIME ISSUES IN THE CARIBBEAN* 1, 6 (Farrokh Jhabvala ed., 1983) (indicating that the Caribbean Sea bordering the Venezuelan coastline has significant economic implications for Venezuela as Venezuela's industrial centers of Caracas and Maracaibo (located on the coastline facing the Caribbean Sea) serve as key export centers for oil and natural gas products).

127. See UNCLOS, *supra* note 28, arts. 3, 57, 76 (providing that that sovereignty of maritime territory would result in Member States' effective control of the territory's seabed and subsoil located in its territorial sea, EEZ, and continental shelf).

128. See *id.* art. 56, para. 1 ("In the exclusive economic zone, the coastal State has . . . sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds. . . ."); *id.* art. 77, para. 1 (the coastal state exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources); see also Maksoud, *supra* note 27 (indicating that access to Caribbean maritime territory would result in rights to explore and exploit approximately seventy t.c.f. of natural gas).



would be located within Dominica's EEZ under UNCLOS Article 57.<sup>129</sup> Furthermore, Venezuela's claim of sovereignty over Aves Island may compromise Dominica's self-determination in political and economic relations with its neighboring Caribbean states as Venezuela's claim overlaps their EEZs as well.<sup>130</sup> Because both States have significant interests in Aves Island and the natural resources located in its surrounding maritime territory, compulsory arbitration would violate their sovereign right to resolve the dispute in a manner that best protects their state interests and those of their citizens.<sup>131</sup>

#### 4. Self-Determination Grants Venezuela and Dominica the Right to Elect an Acceptable Means of Dispute Settlement to Resolve the Aves Island Dispute

Venezuela and Dominica are entitled to self-determination under Article 55 of the U.N. Charter.<sup>132</sup> This entitlement encompasses the sovereign right to select an acceptable method of dispute resolution which best protects their state interests as enumerated in Article 33 of the U.N. Charter.<sup>133</sup> Applied to the Aves Island dispute, Venezuela may seek to engage in mediation with Dominica as the most effective method of dispute settlement to conserve its resources.<sup>134</sup> As a larger, more economically power-

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129. See UNCLOS, *supra* note 28, art. 57 (providing UNCLOS Member States with an EEZ of 200 nm from their coastal baselines). *But see Caribbean Community to Hold Talks*, *supra* note 7 (reporting that if Aves Island is determined to be a separate island or rock capable of habitation, rather than a sandbar, the Island would be entitled to an EEZ under UNCLOS); *id.* art. 121 (noting an Island's surrounding maritime territory is delimited similar to the territorial sea, EEZ, and continental shelf of other land territory). "Rocks which cannot sustain human habitation or economic life of their own[,] shall have no exclusive economic zone or continental shelf." *Id.*

130. See Toothaker, *supra* note 6 (implying that Venezuela's claim of sovereignty would not just encompass the Caribbean nations of Montserrat and Grenada, but their territorial waters, exclusive economic zones, and continental shelves as well).

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

132. See U.N. Charter art. 55 (vesting states with the right to self-determination, "[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations").

133. See discussion *supra* Part II.A.3 (arguing that self-determination vests U.N. Member States with the right to independently elect a political or economic course of action); see also U.N. Charter art. 33, para. 1 (granting U.N. Member States the "choice" to select and employ a means of dispute resolution from those enumerated within the U.N. Charter); Vidmar, *supra* note 5, at 101 (conceding that party autonomy and flexibility are integral to effective dispute settlement).

134. See U.N. Charter art. 33, para. 1 (enumerating mediation as an acceptable

ful state,<sup>135</sup> Venezuela might apply political and economic pressure to Dominica during bilateral negotiations where Venezuela could not in the more formalized procedures of arbitration or adjudication.<sup>136</sup> This, in turn, may coerce Dominica to premature or unnecessary compromise,<sup>137</sup> thereby saving Venezuela the burden and additional costs of formal arbitration or adjudication.<sup>138</sup>

Dominica, in contrast, may prefer formal arbitration or adjudication to protect its interests in Aves Island and the natural resources located in its surrounding maritime territory.<sup>139</sup> Such formal procedures may provide Dominica greater impartiality and equality during dispute resolution.<sup>140</sup> In addition, because Dominica is not as economically developed, it may want to stipulate specific conditions and procedures of settlement, which compulsory arbitration may preclude.<sup>141</sup> Compulsory arbitration thus denies Venezuela and Dominica an opportunity to select applicable settlement procedures, which undermines dispute resolution's intended flexibility and autonomy and violates their established right to self-determination under Article 55 of the U.N. Charter.<sup>142</sup>

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means of dispute resolution from which U.N. Member States may choose to employ when resolving their disputes).

135. Compare THE WORLD ALMANAC AND BOOK OF FACTS 848 (William A. McGeeveran, Jr. et al. eds., 130th ed. 2006) [hereinafter WORLD ALMANAC] (reporting that in 2004, Venezuela had a gross domestic product of \$145.2 billion, which had grown 16.8% from 2003), with *id.* at 773 (reporting that Dominica's GDP, last estimated in 2003, was only approximately \$384 million, a decrease of 1% from the previous year).

136. See Vidmar, *supra* note 5, at 99 (stating 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).

137. See *id.* (suggesting that such "extra-legal, political and economic pressures" would undermine the equality of the disputing states in the dispute resolution process).

138. See De Vera, *supra* note 60, at 155 (associating formal adjudication or arbitration with higher costs than those incurred during less formal means of dispute resolution such as mediation); see also Peter, *supra* note 23, at 99-100 (emphasizing that formal arbitration is "time-consuming and cost-intensive"); *id.* at 86-87 (attributing the costly procedures of international arbitration to the arbitral bodies' required opinion).

139. See Vidmar, *supra* note 5, at 99 (noting "weaker" states are more likely to obtain equality during dispute resolution in formal dispute resolution mechanisms).

140. See Peter, *supra* note 23, at 87 (conveying that impartial procedures and arbiter neutrality are two main advantages of arbitration).

141. See *id.* at 84 (noting autonomy and flexibility of procedures are two main advantages of mediation).

142. Compare U.N. Charter art. 33, para. 1 (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 that U.N. Member States have the right to consent to dispute resolution).

*B. Compulsory Arbitration Subject to I.C.J. Review is Unlikely to Effectively Resolve the Aves Island Dispute Because the I.C.J. is Unable to Enforce Decisions Against Non-Consenting States*

A U.N. requirement that all states engage in compulsory, standardized arbitration subject to I.C.J. review is unlikely to effectively resolve the Aves Island dispute for two reasons.<sup>143</sup> 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.<sup>144</sup> Second, although Article 94 of the U.N. Charter affords Member States an opportunity to seek enforcement through the U.N. Security Council,<sup>145</sup> I.C.J. decisions are effectively unenforceable unless disputes rise to a level that endangers international peace and security.<sup>146</sup>

1. Compulsory Arbitration Reduces the Likelihood for Compliance with an Arbitral Award if Either Venezuela or Dominica Withhold Consent to the Settlement of the Aves Island Dispute

Effective resolution of international boundary disputes requires states such as Venezuela and Dominica to cooperate during settlement.<sup>147</sup> Articles 2 and 33 of the U.N. Charter obligate U.N. Member States to attempt peaceful resolution of their disputes in good faith.<sup>148</sup> The cooperation of Venezuela and Dominica is especially important in resolving this dispute because it affects

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143. See discussion *infra* Part II.B (arguing that compulsory arbitration will not effectively resolve the dispute over Aves Island because it will encourage noncompliance and result in an unenforceable award).

144. See discussion *infra* Part II.B.1 (discussing why "losing" states are unlikely to implement unfavorable judgments).

145. See U.N. Charter art. 94, para. 2 (providing that where "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, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give to the judgment").

146. See *id.* art. 39 (indicating that the U.N. Security Council will only make recommendations as to potential courses of action where disputes threaten international peace and security or constitute an act of aggression).

147. See Peters, *supra* note 11, at 2 (claiming the "Friendly Relations Doctrine" imparts a general duty for all states to cooperate in their interstate relations).

148. Compare U.N. Charter art. 2, para. 2 (explaining the duty of U.N. Member States to comply with the provisions of the U.N. Charter in good faith), with *id.* art. 33, para. 1 (emphasizing U.N. Member States should attempt to engage in peaceful dispute resolution through means enumerated in the U.N. Charter), and arts. 55-56

the allocation of vast amounts of natural resources located in the maritime territory within the Caribbean Sea.<sup>149</sup> Subjecting the dispute to compulsory arbitration, however, incorrectly assumes that Venezuela and Dominica will both consent to and cooperate during dispute settlement, and then recognize and comply with any resulting arbitral award.<sup>150</sup>

In *Cameroon v. Nigeria*, Nigeria did not initially comply with the I.C.J.'s award of the Bakassi Peninsula to Cameroon because Nigeria considered the decision of the I.C.J. invalid where Nigeria withheld its consent to dispute settlement.<sup>151</sup> While Nigeria recently agreed to withdraw its troops from the disputed Bakassi Peninsula, the U.N. has not enforced compliance with its resolution.<sup>152</sup> Similarly, Venezuela or Dominica may withhold consent to the settlement of this dispute.<sup>153</sup> For example, Venezuela demonstrated its lack of consent to be bound by compulsory dispute settlement when it refused to ratify UNCLOS.<sup>154</sup> Should the I.C.J. decide against Venezuela, it may oblige Venezuela to implement

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(providing that states should attempt to maintain friendly relations with other states as well).

149. See Energy Information Administration, *supra* note 27 (reporting that natural gas reserves in Central and South America, estimated at 3.8 t.c.f. in 2003, are projected to rise to 10.8 t.c.f. by 2030, and suggesting that control of such a natural gas supply would grant both Venezuela or Dominica significant economic benefits as "natural gas is the fastest growing fuel source" in the region); see also Olson, *supra* note 8 (referencing "Guyana's mineral-rich Essequibo region and the northern Gulf of Venezuela," bordering the maritime territory in dispute, as the main sources of such potential revenue).

150. See Peters, *supra* note 11, at 7 (conveying that state cooperation stems from initial consent to dispute resolution).

151. See Nejib Jebril, *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, 650-51 (attributing Nigeria's noncompliance with the I.C.J.'s grant of Bakassi Peninsula to Cameroon to Nigeria's objection that it had not consented to the jurisdiction of the I.C.J.); *cf. id.* at 636, 645 (suggesting that this case exemplifies the I.C.J.'s inability to enforce decisions).

152. See Burkhardt, *supra* note 36 (stating that although its 2002 award of Bakassi to Cameroon had "binding" effect, the U.N. has not taken measures to recommend or enforce compliance with the award).

153. See Vidmar, *supra* note 5, at 99 (remarking that no method of dispute resolution may prove effective where states are disinclined to cooperate); *cf. Burkhardt, supra* note 36 (noting that if it took the U.N. approximately four years after issuing its 2002 "binding" award to compel Nigeria to withdraw its troops from the disputed Bakassi Peninsula, then it is unlikely the U.N. would apply similar pressure to the "losing state" in the Aves Island dispute because neither Venezuela nor Dominica has taken military action with regard to the dispute or posed a similar threat to international peace and security).

154. See *2005 Report on Oceans and Law of the Sea, supra* note 42 (stating that Venezuela has not signed, ratified, or acceded to the compulsory provisions of UNCLOS).

an unfavorable judgment similar to Nigeria in *Cameroon v. Nigeria*.<sup>155</sup> Venezuela is unlikely to comply with an unfavorable decision where it specifically has not consented to dispute settlement and therefore considers any resulting award illegitimate.<sup>156</sup> Compulsory arbitration is therefore unlikely to resolve Venezuela's dispute with Dominica over Aves Island because either state may withhold consent to dispute resolution and then ultimately fail to comply with any arbitral award.<sup>157</sup> In turn, as it did in the dispute over Bakassi Peninsula, the U.N. may fail to enforce compliance with a judgment where either Venezuela or Dominica fail to comply with an unfavorable award.

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

Compulsory arbitration subject to I.C.J. review is unlikely to resolve the Aves Island dispute because the I.C.J. lacks enforcement capability over Venezuela and Dominica.<sup>158</sup> *Cameroon v. Nigeria* demonstrates that the I.C.J. is unable to enforce decisions where states fail to comply with and recognize the legitimacy of I.C.J. awards.<sup>159</sup> Unlike *Cameroon v. Nigeria*, in which both states previously accepted the compulsory jurisdiction of the I.C.J., Ven-

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155. See Land and Mar. Boundary Between Cameroon and Nigeria (*Cameroon v. Nig.*), 2002 I.C.J. 94, paras. 37-38 (Oct. 10) (granting sovereignty of the Bakassi Peninsula to Cameroon); see also Jibril, *supra* note 151, at 635 (“[Nigeria] greeted the [I.C.J.’s] ruling that the Bakassi Peninsula belonged to Cameroon with anger and contempt.”).

156. Compare Land and Mar. Boundary Between Cameroon and Nigeria (*Cameroon v. Nig.*), 1998 I.C.J. 94, para. 22 (June 11) (Preliminary Objections) (suggesting that although Nigeria acknowledged that it had accepted the compulsory jurisdiction of the I.C.J. under Article 36, Nigeria contended Cameroon failed to act in good faith by “disregard[ing] the condition of reciprocity” under Article 36), and Jibril, *supra* note 151, at 651 (“Nigeria called attention to the fact that it had objected to the jurisdiction of the Court and had never agreed to be bound by the Court’s decision.”), with Burkhardt, *supra* note 36 (reporting that Nigeria did not agree to comply with the I.C.J.’s award of sovereignty of the Bakassi Peninsula to Cameroon until four years after the I.C.J.’s award).

157. Cf. Robert P. Burns, Symposium on Critical Issues in Mediation Legislation, *The Enforceability of Mediated Agreements: An Essay on Legitimation and Process Integrity*, 2 OHIO ST. J. ON DISP. RESOL. 93, 114-15 (1986) (suggesting that parties are more likely to comply with awards where they previously agree to the enforceability of the awards).

158. Cf. Jibril, *supra* note 151, at 650-51 (commenting on international bodies’ lack of enforcement capability where states draft weak arbitration agreements).

159. See *id.* at 650-51 (emphasizing that the I.C.J. may not be able to enforce decisions where disputing states claim the I.C.J. lacks original jurisdiction over the dispute).

ezuela and Dominica have not consented to the I.C.J.'s compulsory jurisdiction.<sup>160</sup> Because the I.C.J. may only entertain disputes where the states consent to its jurisdiction,<sup>161</sup> compulsory arbitration will result in an award that lacks binding force on Venezuela and Dominica.<sup>162</sup> On the other hand, if both Venezuela and Dominica accept the I.C.J.'s jurisdiction, then either State may seek judicial enforcement of an arbitral decision under Article 94 of the U.N. Charter.<sup>163</sup> However, enforcement appeals under Article 94 have shown to be futile. This is apparent in *Cameroon v. Nigeria*, in which disputing states did not comply with the I.C.J. award, but eventually established a bilateral settlement commission to resolve their dispute.<sup>164</sup>

Furthermore, although Article 94 of the U.N. Charter empowers the U.N. Security Council to intervene and enforce I.C.J. decisions through economic and political sanctions,<sup>165</sup> the Security Council is unlikely to intervene in the Aves Island dispute unless the conflict rises to a level that endangers international peace and security.<sup>166</sup> Even if the Security Council intervenes, Venezuela

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160. See International Court of Justice, *Declarations Recognizing as Compulsory the Jurisdiction of the Court* (Nov. 14, 2006) [hereinafter I.C.J. Declarations], <http://www.icj-cij.org/icjwww/basicdocuments/basictext/basicdeclarations.htm> (reporting that Venezuela and Dominica have not yet accepted the compulsory jurisdiction of the I.C.J.).

161. See I.C.J. Statute, *supra* note 74, art. 36 (providing methods through which the I.C.J. may exercise jurisdiction over Member States); *id.* para. 1 (asserting that states may accept the jurisdiction of the I.C.J. on an ad hoc basis through a bilateral or multilateral treaty); *id.* para. 2 (providing that states may further accept the compulsory jurisdiction of the I.C.J. for all disputes).

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

163. See U.N. Charter art. 94, para. 2 (“[I]f 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 . . .”).

164. See Burkhardt, *supra* note 36 (reporting that Cameroon and Nigeria have finally agreed to resolve their dispute bilaterally and have also recently set up “an international follow-up committee to monitor implementation made up of representatives from Nigeria and Cameroon, as well as the U.S., Germany, France and Britain”); see also *id.* (stating that a “[U.N.] entity known as the Cameroon-Nigeria Mixed Commission” will monitor implementation and compliance by Cameroon and Nigeria).

165. 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). In addition, Article 94 expressly empowers the Security Council to recommend action to resolve disputes. *Id.*

166. See U.N. Charter art. 1, para. 1 (stating that a fundamental purpose of the U.N. is to identify threats to international peace and security and take effective measures to prevent and/or remove such threats). *But see* Jibril, *supra* note 151, at

may withstand economic and political pressure because of its status as an economically powerful state.<sup>167</sup> Although intervention by the Security Council might affect Dominica should it be rendered an unfavorable judgment, Dominica may also withstand economic pressure by relying on resources from other states within the Caribbean community.<sup>168</sup> Because the U.N. Security Council's enforcement capability will likely have limited effect on the Aves Island dispute, compulsory arbitration is thus unlikely to effectively resolve the dispute between Venezuela and Dominica.<sup>169</sup>

*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 subject to I.C.J. review is an inefficient process of dispute resolution.<sup>170</sup> 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.<sup>171</sup> Second, *Cameroon v. Nigeria* demonstrates that compulsory arbitration deprives disputing states such as Venezuela and Dominica the efficiencies of engaging in bilateral negotiations or regional dispute settlement mechanisms.<sup>172</sup>

659 (discussing the U.N. Security Council's hesitancy to intervene in disputes between Member States).

167. See WORLD ALMANAC, *supra* note 135, at 140 (conveying that Venezuela alone maintained crude oil and natural gas reserves of approximately six and two percent, respectively, of world totals in 2004); see also *id.* (stating that Venezuela's 2004 crude oil reserves were approximately four times that of entire Western Europe, while its natural gas reserves were equated to those of Western Europe less reserves from the United Kingdom).

168. Cf. Myrtle D. Bishop and Samuel J. Chandler, *Caribbean Perspective: Opportunities and Challenges: The Caribbean Involvement in the Free Trade Area of the Americas*, 27 *FORDHAM INT'L L.J.* 909, 911-16 (2004) (emphasizing a major goal of the Caribbean Single Market Economy is to increase intra-regional movement of resources between Caribbean states).

169. See 2005 *Report on Oceans and Law of the Sea*, *supra* note 42, at 1-2 (presenting Venezuela's desire not to be bound by I.C.J. awards where it has not consented to the jurisdiction of the I.C.J.).

170. See discussion *infra* Part II.C (arguing that compulsory arbitration creates inefficiencies for both international dispute resolution bodies and disputing states such as Venezuela and Dominica).

171. See discussion *infra* Part II.C.1 (claiming that mandatory arbitration will create inefficiency in the hierarchy of acceptable dispute resolution mechanisms because it bypasses preliminary diplomatic dispute settlement procedures enumerated in the U.N. Charter).

172. See discussion *infra* Part II.C.2 (discussing how compulsory arbitration denies Venezuela and Dominica the benefits of local expertise, predictable and expedient

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

Mandatory arbitration subject to I.C.J. review, though proposed to make international dispute resolution more efficient, may in fact decrease the efficiency of dispute settlement.<sup>173</sup> In Article 33 of the U.N. Charter, the U.N. sets forth a hierarchy of settlement methods from which states may choose to employ in resolving their disputes.<sup>174</sup> Initially setting forth negotiation, mediation, and conciliation as acceptable means of dispute settlement in Article 33, the U.N. Charter indicates that U.N. Member States engaging in such preliminary bilateral procedures add to the administrative efficiency of international dispute resolution.<sup>175</sup>

I.C.J. review of compulsory arbitration, for instance, eliminates the opportunity for Venezuela and Dominica to negotiate bilaterally by mandating review of the Aves Island dispute before the I.C.J.<sup>176</sup> 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 or other arbitral tribunals with jurisdiction under Article 286 of UNCLOS.<sup>177</sup> By eliminating these opportunities, compulsory arbi-

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dispute resolution, and lower costs, all of which are available through bilateral or other regional dispute settlement mechanisms).

173. See U.N. Charter art. 33, para. 1 (implying resolution of disputes through bilateral negotiations or regional settlement increases administrative efficiency by reducing the number of disputes that U.N. Member States submit to the I.C.J. for review).

174. See *id.* (suggesting that states should only resort to I.C.J. adjudication where bilateral dispute resolution fails to resolve disputes).

175. See *id.* (noting that states may seek to resolve disputes through "regional agencies or arrangements" as an acceptable means of dispute resolution as well); *cf.* Land and Mar. Boundary Between Cameroon and Nigeria (Cameroon v. Nig.), 1998 I.C.J. 94, paras. 66-67 (June 11) (Preliminary Objections) (discussing how dispute resolution through regional mechanisms such as the Lake Chad Commission may increase dispute resolution's efficacy and efficiency where disputes involve facts specific to certain regions).

176. See Vidmar, *supra* note 5, at 99 (suggesting states should be required to bypass bilateral or regional settlement because territorial disputes are "governed only by a few basic legal principles").

177. See Charter of the Organization of American States, 119 U.N.T.S. 3 (entered into force Dec. 13, 1951), amended by Protocol of Buenos Aires, 721 U.N.T.S. 324 (entered into force Feb. 27, 1970), available at <http://www.oas.org/juridico/english/charter.html> ("[The Permanent Council] shall assist the parties and recommend the procedures it considers suitable for peaceful settlement of the dispute."); see also UNCLOS, *supra* note 28, art. 286 (granting states party to UNCLOS the right to



tration decreases the efficiency of the dispute resolution hierarchy embodied in Article 33 by requiring all disputes be reviewed before the I.C.J.<sup>178</sup>

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

While decreasing the administrative efficiency of international dispute resolution, compulsory, standardized arbitration deprives disputing states such as Venezuela and Dominica the efficiencies of bilateral settlement procedures as well.<sup>179</sup> Article 52 of the U.N. Charter encourages disputing states to engage first in dispute settlement at regional levels because the U.N. recognizes that certain disputes are most appropriately, and efficiently, resolved in regional mechanisms.<sup>180</sup> Additionally, in *Cameroon v. Nigeria*, the I.C.J. noted that a regional agency, geared towards the resolution of geographically specific disputes, is often the appropriate settlement mechanism for territorial boundary disputes.<sup>181</sup> This emphasizes that regional settlement mechanisms may offer Venezuela and Dominica efficiencies that standardized adjudication or arbitration may lack.<sup>182</sup>

For instance, regional settlement mechanisms may grant Venezuela and Dominica access to the benefits of local expertise with regard to regional law, customs, and agreements.<sup>183</sup> In addi-

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submit their disputes for resolution to “[a]n arbitral tribunal constituted in accordance with Annex VII [or VIII] of the Convention”).

178. See Vidmar, *supra* note 5, at 99 (assuming 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).

179. See generally U.N. Charter arts. 52-54 (providing U.N. Member States the opportunity to engage in dispute resolution within regional bodies).

180. See *id.*, 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).

181. See Land and Mar. Boundary Between Cameroon and Nigeria (Cameroon v. Nig.), 1998 I.C.J. 94, paras. 66-67 (June 11) (Preliminary Objections) (noting the Lake Chad Commission, a regional settlement body, appropriately hears and decides issues of international peace and security specific to its region).

182. See U.N. Charter art. 52, para. 2 (emphasizing that certain disputes between U.N. Member States are best resolved through regional mechanisms); *id.* para. 3 (noting the U.N. actually encourages dispute resolution through regional, or local, settlement bodies).

183. See Raj Bhala & Lucienne Attard, *Austin’s Ghost and DSU Reform*, 37 INT’L LAW. 651, 656 (2003) (observing that disputing parties are often more comfortable

tion, Venezuela and Dominica may elect to resolve their dispute through a regional and permanent dispute settlement body<sup>184</sup> in order to add consistency and predictability to their award.<sup>185</sup> Consequently, mandatory arbitration will not only deprive Venezuela and Dominica of the efficiencies of regional experts, consistent and predictable awards, and potentially lower settlement costs, all of which are available in regional mechanisms, but it will also discourage compliance with awards where the I.C.J. lacks the local expertise and credibility of regional settlement bodies.<sup>186</sup>

#### IV. RECOMMENDATIONS

The U.N. may foster a more effective and efficient means of dispute resolution than that offered by compulsory, standardized arbitration by providing a forum for states to engage in Med-Arb when resolving their disputes.<sup>187</sup> 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.<sup>188</sup> In addition, Med-Arb adds efficiency to the dispute resolution process by providing states such as Venezuela and Dominica with the advan-

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engaging in regional dispute settlement because regional mechanisms have panels which "share a similar racial or ethnic lineage, historical experience, religious tradition, legal culture, and/or language"). Arbitral panels with such similarities may add efficiency to the dispute settlement process where they apply a "like-mindedness" in resolving disputes. *Id.*

184. Cf. Laurence R. Helfer & Anne-Marie Slaughter, *Why States Create International Tribunals: A Response to Professors Posner and Yoo*, 93 CALIF. L. REV. 899, 924 (2005) (pointing out that the Inter-American Court of Human Rights has heard thousands of cases and is experiencing successful compliance rates with its awards). The Court is a permanent "quasi-judicial tribunal that reviews petitions, interprets the human rights obligations of OAS Member States, issues recommendations to those states, and submits cases to the court for a legally binding ruling." *Id.*

185. See Bhala & Attard, *supra* note 183, at 658-59 (discussing how the application of *stare decisis* by permanent dispute resolution bodies may increase the efficiency of dispute resolution by expediting and adding predictability to the settlement process).

186. See *id.* at 656 (acknowledging that "regional adjudicating authority's decisions are more likely to be well-received and accepted than the decisions of some central 'global' authority sitting in New York or Geneva, which has no connection or proximity to the hotbed of the dispute").

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

188. 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 recognize and comply with a mutually beneficial agreement).

tages of both mediation and arbitration in their dispute settlement.<sup>189</sup>

A. *Venezuela and Dominica Should Engage in Med-Arb Because it Will Make Their Dispute Resolution Process More Effective*

By engaging in Med-Arb, Venezuela and Dominica will add efficacy to their dispute resolution process and increase the likelihood of settlement compliance.<sup>190</sup> First by providing for the sovereign right of Venezuela and Dominica to consent to resolution of their dispute, Med-Arb will make the dispute resolution process more effective by encouraging both states to cooperate and attempt resolution of the Aves Island dispute in good faith.<sup>191</sup> Second, because Med-Arb increases the likelihood that states will reach a settlement, it will add efficacy to the resolution of the Aves Island dispute by encouraging settlement compliance and curing any potential enforcement issues with the resulting award.<sup>192</sup>

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 may increase the efficacy of dispute resolution process by employing Med-Arb in their settlement.<sup>193</sup> Med-Arb, unlike compulsory arbitration, is based upon the consent of disputing parties to resolve their dispute.<sup>194</sup> The parties in

189. See discussion *infra* Part III.B (proposing that Venezuela and Dominica may capitalize on the flexibility and resource conservation offered by Med-Arb).

190. See David Freestone & John Pethick, *Sea Level Rise and Maritime Boundaries*, in 5 *WORLD BOUNDARIES* 73 (Gerald H. Blake ed., 1994) (implying that because agreements between disputing states which demark their maritime boundaries are not subject to subsequent territorial changes, such agreements are more likely to encourage effective dispute resolution); *cf.* *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).

191. See U.N. Charter art. 2, para. 1 (obliging U.N. Member States to attempt to resolve their international disputes in good faith).

192. See De Vera, *supra* note 60, at 152 (implying disputing parties that reach agreement through mediation are more likely to definitively resolve their dispute and comply with the agreement).

193. *Cf.* Peter, *supra* note 23, at 106-14 (discussing how China, Germany, and Switzerland have used Med-Arb to effectively resolve their international disputes).

194. See De Vera, *supra* note 60, at 153 (observing the arbitration phase of Med-Arb requires state consent for dispute settlement).

*I.B.M. v. Fujitsu*, for example, established consent to the processes of Med-Arb during their initial meetings.<sup>195</sup> This consensus allowed the parties to establish a framework agreement that encompassed the development of settlement processes and party obligations before, during, and after settlement.<sup>196</sup>

Venezuela and Dominica should similarly engage in Med-Arb when resolving the dispute over Aves Island.<sup>197</sup> Establishing a framework agreement that defines the development of a settlement and its processes will offer clarity and guidance to both Venezuela and Dominica with regard to their agreed obligations during settlement and enforcement.<sup>198</sup> More importantly, Venezuela and Dominica are more likely to cooperate with procedures and honor obligations that they initially agree upon in such a framework agreement.<sup>199</sup>

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

Med-Arb may also add efficacy to the settlement of the Aves Island dispute because it encourages compliance with awards.<sup>200</sup> As demonstrated by *I.B.M. v. Fujitsu*, 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.<sup>201</sup> If Venezuela and Dominica agree to engage in Med-Arb to settle their dispute over Aves Island, then they are also likely to recognize any resulting award because their initial consent would legitimize the Med-Arb procedures and award.<sup>202</sup>

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195. See Peter, *supra* note 23, at 103 (recalling 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).

196. 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).

197. Cf. *id.* (noting that Med-Arb facilitated various agreements which made the parties' successive dispute resolution process more effective).

198. See De Vera, *supra* note 60, at 156 (adding that even partial agreements are beneficial because they allow the parties to resolve certain factual issues).

199. See Peters, *supra* note 11, at 26-27 (emphasizing that cooperation is integral to the effective enforcement of decisions).

200. See Peter, *supra* note 23, at 105 (suggesting that Med-Arb allows disputing states to establish a relationship for future cooperation which, in turn, increases the likelihood for compliance and definitive resolution of the dispute).

201. 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 the dispute).

202. See Peters, *supra* note 11, at 6-7 (theorizing that methods of dispute resolution which avoid a "winner-takes-all solution" but rather reach a consensual agreement

*I.B.M. v. Fujitsu* also illustrates that Med-Arb encourages mutually favorable agreements by allowing disputing parties to autonomously select resolution procedures.<sup>203</sup> If Venezuela and Dominica autonomously set Med-Arb procedures and guidelines, they are more likely to comply with an award.<sup>204</sup> Even if Venezuela and Dominica fail to reach a complete agreement during the initial mediation phase, they may agree to a binding award issued during Med-Arb's arbitration phase.<sup>205</sup> This process will allow Venezuela and Dominica to draft enforcement clauses which offer the parties various forums in which to seek enforcement of the award.<sup>206</sup> Thus, because this approach offers more autonomy and flexibility during Med-Arb's processes, Venezuela and Dominica are more likely to recognize a Med-Arb award as legitimate and binding than an award that results from compulsory arbitration.<sup>207</sup>

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

Med-Arb may also increase the procedural efficiency of Venezuela and Dominica's dispute settlement by allowing both states to capitalize on the advantages and efficiencies of both mediation and arbitration in resolving their dispute.<sup>208</sup> In *I.B.M. v. Fujitsu*,

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are more effective and likely to encourage compliance). Because Med-Arb is consistent with the sovereignty of Venezuela and Dominica and will foster a mutually beneficial agreement, Venezuela and Dominica will likely comply with any resulting award. *Id.*

203. 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).

204. Cf. *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 the dispute resolution process and compliance therewith more effective. *Id.*

205. See De Vera, *supra* note 60, at 161 (indicating that Med-Arb awards vest "the settlement agreement 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.*

206. See New York Convention, *supra* note 92, 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.

207. See Katz, *supra* note 59, at 111 (stating that international dispute resolution encourages effective settlement and compliance because it causes parties to trust the impartiality of its awards).

208. See Peter, *supra* note 23, at 105 (emphasizing that the mediator's ability to tailor Med-Arb's subsequent arbitration phase is one of Med-Arb's major procedural

the arbiters were initially unsuccessful in their attempt to resolve a dispute through engaging in various unstructured processes.<sup>209</sup> Ultimately, the arbiters streamlined the dispute resolution process by employing a formal two-step Med-Arb process, which conserved significant resources.<sup>210</sup>

Likewise, Venezuela and Dominica will profit procedurally by engaging in Med-Arb and conserving resources.<sup>211</sup> For example, if Venezuela and Dominica reach an agreement during the initial mediation phase, the arbiters may save resources typically required to determine allocations of fault in the dispute.<sup>212</sup> Med-Arb also allows disputing states such as Venezuela and Dominica to resolve preliminary issues in the mediation phase and thus reduce the number of outstanding issues subject to arbitration in Med-Arb's subsequent arbitration phase.<sup>213</sup> Even if Venezuela and Dominica fail to reach a complete agreement in the initial mediation phase of Med-Arb, a third-party mediator will transition into the role of a third-party arbiter equipped with standard arbiter duties and enforcement capabilities.<sup>214</sup>

As illustrated in *I.B.M. v. Fujitsu*, this role change will add efficiency to the resolution of the Aves Island dispute because such arbiters may focus on the core interests and settlement goals of Venezuela and Dominica, instead of determining their rights as sovereign states.<sup>215</sup> In addition, third-party arbiters may eliminate fact-intensive discovery in disputes such as that over Aves Island where they are already familiar with the dispute and its

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advantages in terms of efficiency); see also De Vera, *supra* note 60, at 155 ("[T]he Med-Arb process is intended to allow the parties to profit from the advantages of both dispute settlement procedures"). But see *id.* (considering that cultural differences may undermine the efficiency of Med-Arb).

209. See Int'l Bus. Mach., Corp. v. Fujitsu, Ltd., 4 Am. Arb. Ass'n No. 13T-117-0636-85 (1987) (Jones & Mnookin, Arbs.).

210. See Peter, *supra* note 23, at 104 (indicating that Med-Arb allowed I.B.M. and Fujitsu to conserve time and money in their settlement procedures).

211. See *id.*

212. See *id.* at 106 (implying that the time necessary to allocate the fault of disputing parties decreases the efficiency of dispute resolution).

213. See De Vera, *supra* note 60, at 156-57 (averring that disputing parties that reach agreement during Med-Arb's initial phase significantly increase the efficiency of the subsequent arbitration phase by resolving preliminary, factual issues).

214. See Peter, *supra* note 23, at 98 (discussing the opportunity for parties to engage in a modified version of Med-Arb where they question the mediator's validity as an arbiter).

215. See *id.* at 105-06 (discussing how the third-party mediator's transition into an arbiter role increases Med-Arb's efficiency by allowing the arbiter to focus on the goals of settlement rather than the parties' entitlements).

facts.<sup>216</sup> This allows the arbiters to save time and discovery expenses, thereby promoting procedural efficiencies which compulsory arbitration may lack.<sup>217</sup>

## V. CONCLUSION

States contribute to international peace and security by resolving disputes through accepted means of dispute resolution.<sup>218</sup> U.N. Member States are entitled to select from a myriad of acceptable dispute settlement mechanisms in resolving their disputes.<sup>219</sup> Compulsory, standardized arbitration is unlikely to effectively resolve the Aves Island dispute, however, because it undermines state sovereignty by dispensing with Venezuela's and Dominica's right to consent to dispute resolution and deprives them of their right to self-determination.<sup>220</sup>

If the U.N. subjects the Aves Island dispute to compulsory arbitration, it will encourage settlement noncompliance, expose the U.N. Security Council's inability to enforce noncompliance, and foster inefficiencies in the resolution of their dispute.<sup>221</sup> Instead, the U.N. should provide a forum in which Venezuela and Dominica may engage in Med-Arb to maximize the efficacy and efficiency of their dispute resolution process.<sup>222</sup> By engaging in Med-Arb, Venezuela and Dominica may reach a mutually beneficial agreement, foster settlement compliance, further interna-

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216. 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 a broader comprehension of the dispute).

217. See De Vera, *supra* note 60, at 156-57 (suggesting the time and discovery expenses which the third-party facilitator saves during Med-Arb directly translates into a more efficient dispute settlement process for the parties employing Med-Arb).

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

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

220. See *supra* Part II.A (arguing that 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).

221. See *supra* Parts II.B, II.C (claiming a requirement that Venezuela and Dominica engage in compulsory arbitration may lead to noncompliance, unenforceable awards, and inefficiencies in their dispute resolution process).

222. See *supra* Parts III.A, III.B (predicting that Med-Arb will make resolution of Venezuela's and Dominica's dispute 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 the I.C.J. must review).

tional peace and security for all states affected, and set a precedent for diplomatic resolution of disputes in the future.<sup>223</sup>

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223. See Paulsson, *supra* note 1, at 122, 125 (noting dispute resolution is effective if it prevents states from resorting to force to resolve disputes, thereby contributing to international peace and security).