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DIPLOMATIC METHODS OF CONFLICT RESOLUTION (A CASE STUDY OF ECOWAS)

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ABSTRACT: *The work examines Economic Community of West African States (ECOWAS) Diplomatic methods of conflict resolution in West Africa. The objectives is to ascertain how effective these methods have been utilized in resolving conflicts in West Africa with a view of making appropriate recommendations based on research findings on how best to employ these methods by the community. The work adopted the doctrinal methodology of research, mainly primary and secondary sources such as: textbooks, official documents from ECOWAS, periodicals and internet resources. The work observed that these methods were successfully used to restore peace in Sierra Leone, Liberia, Togo, Cote d'ivoire, Guinea Bissau, Senegal and Gambia. Thus, the methods are useful in settlement of disputes and should be encouraged because the decision is reached by the parties themselves and enforcement of such agreement may be easier. The current use of council of elders on ad-hoc basis for peaceful resolution of conflicts is not sufficient. The ECOWAS should establish Commission of Mediation, Conciliation and Arbitration as it will serve as a reminder to disputants that there is still the last opportunity to resolve their differences. Those to be appointed mediators should have good track records in terms of high level work experience and character; be endowed with negotiating skills and able to bring about peace and reconciliations that can be employed in potential conflict situations.*

KEYWORD: Diplomatic Methods, Conflict Resolution, ECOWAS

INTRODUCTION

The emergence of ECOWAS has been influenced by global trends. The birth of ECOWAS was in itself a response of member countries to the challenges of globalization. On 28th May, 1975 when ECOWAS emerged in Lagos with the signing of the ECOWAS Treaty, the world was going through a crisis in international economic relations, manifested in the following key areas; falling living standards in developing countries; over-dependence of the region on the advanced economies especially the metropolis; the limited space for maneuverability by the individual developing countries on the international scene; a global system distorted by the bi-polarity divide, into which developing countries were caught; a cherished and yet abused principle of national sovereignty and its linkage with national security and the inviolability of domestic jurisdiction; an accompanying paradox of sovereign equality of states and inequality in the ability to act; the realization by developing countries, especially of Africa, of the need for collective self-reliance in order to at least survive in the system and engage in it meaningfully. It is against this background that with the assistance of the UN, especially the United Nations Economic Commission for Africa (UNECA) in Addis-Ababa, a rational framework was agreed i.e. the creation of regional economic communities as a means of collective self-reliance for sustainable socio-economic development, and as building blocs of an African Economic Community.[1] Thus, the vision of the founding

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fathers of ECOWAS was to create a single regional economic space as a prelude to the continental one, through integration and collective self-reliance; an economic space with a single market and single currency capable of generating accelerated socio-economic development and competing more meaningfully in the global market of large trade blocks and uneven patterns of trade between the industrialized North and raw material-based economies of the South. However, it did not take long before the ECOWAS leaders realized that economic development cannot be separated from security matters. Accordingly, protocols on Non-Aggression and Mutual Assistance in Defense were adopted by ECOWAS leaders in 1978 and 1981 respectively. These legal instruments were primarily designed to deal with threats emanating from outside the territorial boundaries of states, rather than from within.[2]

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1. Chambas, M.I, The ECOWAS Agenda: Promoting Good Governance, Peace, Stability and Sustainable Development, NIIA Lecture Series No. 86, 2005, pp 10-11.
2. See Articles 1-4 of the Protocol Relating to Non-Aggression, 1978 and article 4(b) of the Protocol Relating to Mutual Assistance on Defense, 1981.

Barely a decade after the creation of ECOWAS, conflicts emerged in Liberia and Sierra Leone as a phenomenon not confined to the borders of individual nation states, but with serious regional implications, both in their causes and effects. ECOWAS intervened in these conflicts adopting ad-hoc conflict management mechanisms. The new and evolving conflict dynamics in the sub-region, coupled with field experience persuaded ECOWAS leaders to re-think the relationship between security and development and consequently to prioritize conflict prevention in the same way as economic development and integration. Accordingly, the ECOWAS Treaty of 1975 was revised in 1993 to re-energize the integration process, factor in the peace and security sector which was previously downplayed. Thus, member states of the community undertook to co-operate with the community in establishing and strengthening appropriate mechanisms for the timely prevention and resolution of intra-state and inter-state conflicts.[3] In compliance with the provision of the treaty, ECOWAS leaders adopted the protocol relating to the mechanism for conflict prevention, management, resolution, peace-keeping and security in 1999 to give effect to security provisions of the Treaty. Its additional protocol on Democracy and Good Governance of 2001 makes provision for election monitoring and observation in member states. These instruments have guided ECOWAS in resolving inter-state and intra-state conflicts.

This work therefore examines various diplomatic methods employed by the ECOWAS in resolving and managing conflicts in West Africa. However, reference will be made to other jurisdictions where necessary.

ECOWAS Diplomatic Methods of Conflict Resolution.

Article 58(2)(e) of the ECOWAS Revised Treaty (as amended) urges members to “employ where appropriate, good offices, conciliation, mediation and other methods of peaceful settlement of disputes.” Similarly, Article 33(1) of the United Nations Charter also provides:
The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall first of all, seek a solution by negotiation, enquiry,

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mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or, other peaceful means of their choice.

3. See Article 58(2) of ECOWAS Revised Treaty (as amended) 2007

GOOD OFFICES

This is one of the diplomatic methods of depute settlement. The use of the procedure of good offices involves the employment of a third party, whether an individual, a state or group of states or an international organization, to encourage the contending parties to come to settlement. This process aims at persuading the parties to a dispute to reach satisfactory terms for its termination by themselves. Good offices are used mainly in instances where disputes have broken diplomatic relations. The good office terminates as soon as the disputants have been persuaded to resume negotiations. The method was employed in 1906 by the US President in concluding the Russian-Japanese war, [4] or the function performed by the USSR in assisting in the peaceful settlement of the India-Pakistan dispute in 1965.[5]

The President of ECOWAS Commission is enjoined to compile annually, a list of eminent personalities who, on behalf of ECOWAS, can use their good offices and experience to play the role of mediation, conciliation and facilitators.[6] This method was employed by the ECOWAS Commission in resolving Sierra Leone crisis when the Commission set-up committee of five to dialogue with the Sierra Leone Junta to convince them to accept the terms of ECOWAS peace plan which stipulated among other things, the re-instatement of the democratically elected President by April 22, 1998, the extension of the power base and a general amnesty for all persons involved in the coup d'etat of May 25, 1997.[7] It was also successfully employed by ECOWAS in Liberia crisis when General Abdulsalam Abubakar, Nigeria former Head of State was sent to complete its transformation to a democratic state. [8] This mechanism was equally employed in Togo political crisis after the death of the former President Eyadema. The mediation efforts of the Commission led to the resignation of Faure Gnassingbe and elections held on April, 2005. The Commission strongly condemned the violence that took place after the election and launched an appeal to all parties concerned to restore calm and refrain from any statement inciting the use of violence.[9]

4. Malcolm N.S., International Law, 5th edition, Cambridge University Press, United Kingdom, 1998, P. 922.
5. Ibid.
6. See Article 20(1) of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security.
7. See Meeting of Ministers of Foreign Affairs, Abuja, 26-27 October, 1998
8. See New Nigerian Newspapers, 23/11/05, P.38
9. See Meeting of Ministers of Foreign Affairs, Niamey, 9th January, 2006

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Neither the ECOWAS amended Treaty nor the mechanism has provisions regarding the rules of Good Offices. However, the Hague conventions of 1899 and 1907 laid down many of the rules governing the process (good offices). It stipulated that the signatories to the treaties had a right to offer good offices, even during hostilities, and the exercise of the right was never to be regarded by either of the contending sides as an unfriendly act. It also explained that such procedures were not binding. The convention laid down a duty upon the parties to a serious dispute or conflict to resort to good offices or mediation as far as circumstances allow, before having recourse to arms.[10]

This mechanism can only be exercised when the offer is accepted by the parties involved in the dispute. This process usually ends as soon as the parties have been brought together and have resumed direct negotiation. The parties may if they so desire invite the third party to be present during negotiations.

CONCILIATION

The University of Peace defines conciliation in the following ways:[11]
The voluntary referral of a conflict to a neutral external party (in the form of an unofficial commission) which either suggests a non-binding settlement or conducts explorations to facilitate more structures or techniques of conflict resolution. The latter, can include confidential discussions with the disputant or assistance during a pre-negotiation phase.

It is also the bringing together of disputants in the endeavour to settle their differences. Conciliation is an informal process in which the third party tries to bring the parties to an agreement by lowering tensions, improving communication, interpreting issues, providing technical assistance, exploring potential solutions and bringing about negotiated settlement, either informally or in subsequent steps, through formal mediation.[12]

10. See Article 2 of Hague Convention No. 1, 1899 and Convention No. 1, 1907.

11. Miller, C. A; A Glossary of Terms and Concept in Peace and Conflict Studies, University for Peace, Geneva, 2003. PP.29-30

12. Leo K.: Cases and Materials on Alternative Dispute Resolution, American Casebook Series, West Publishing Co. St. Paul Min. 1995. P.36

The functions of a Conciliator are multifaceted and have been aptly described by Professor Phelps Brown as follows:[13]
The conciliator has several functions, of which the common element is that he helps the parties to communicate with each other effectively. He can keep the temperature of the discussion down by confining it to the points at issue and stating them in unemotive terms. When the parties lose their tempers with one another too easily to be able to talk face to face, he can go backwards and forward between them. He may be able to devise proposal new in form or substance, provide a rough compromise, and make it easier to give ground without losing face. He can save one side from trying to call the others bluff when in fact it is not bluffing. Especially when both sides have stuck fast thinking it a sign of weakness to be the first climb down, he can get them to make concessions, because he can tell each what the other will do in return, and can make what is given up appear as a favour to him rather than a concession to the other side.

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The rules dealing with conciliation were elaborated in the 1928 General Act on the Pacific Settlement of International Disputes. The functions of the Commissions were defined to include inquiries and mediation techniques. Such Commissions were also to be composed of five persons, one appointed by each opposing side and the other three to be appointed by agreement from amongst the citizens of third states. The proceedings were to be concluded within six months and were not to be held in public. The conciliation procedure was intended to deal with mixed legal-factual situations and to operate quickly and informally.[14]

The process of conciliation involves a third party investigation of the basis of the dispute and the submission of a report embodying suggestions for a settlement. Conciliation reports are only proposals and do not constitute binding decisions. It is extremely flexible and by clarifying the facts and discussing proposals may stimulate negotiations between parties. The main aim of conciliation is to reduce tensions between parties in a conflict situation.

13. Phelps, B. The Growth of British Industrial Relations, Butterwort & Co., London, 1960, P. 127.
14. See Article 15 (1) of the Geneva General Act (as Amended)

This mechanism was adopted in Cote d'Ivoire crisis when the International working Group during its 10th meeting on September 8, 2006 in Abidjin, assessed the peace process in Cote d'Ivoire. On September 20, 2006 the United Nations Secretary General held Consultations with a number of Africa Heads of State and Government in New York in the periphery of the United Nations General Assembly.[15] It was agreed that ECOWAS and the African Union should meet to review the situation in Cote d'Ivoire and make proposals to the United Nations Security Council on the way forward. The ECOWAS summit adopted recommendations which were endorsed by the peace and Security Council of Africa Union meeting of October 17, in Addis Ababa, and which were also forwarded to the United Nations Security Council. Subsequently, the United Nations Security Council adopted the resolution on November 1, 2006 which set up a new and final transition period not to exceed 12 months, which was acceptable by the parties and President Laurent Gbagbo to remain the Head of State during the period and the mandate of Mr. Charles Konan Banny as Prime Minister was also extended till October 31, 2007.[16]

Conciliation is a useful method of peaceful settlement of deputes and as such should be encouraged because the decision is reached by the parties themselves and enforcement of such agreement is likely to be a lot easier. Moreover, disputing parties are most likely to preserve the good business relationship that exists between them. The community should establish a permanent commission for conciliation like the African Union's Commission of Mediation, Conciliation and Arbitration. This will aid an early and equitable solution to conflicts in the community state. It will also facilitate the establishment of a permanent conciliation procedure which will help prevent conflicts among member state.

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MEDIATION

According to Moore, mediation is the intervention in a negotiation or conflict of an acceptable third party who has limited or no authoritative decision making power but who assists the involved parties in voluntarily reaching a mutually, acceptable settlement of issues in dispute.[17]

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15. ECOWAS Annual Report, 2006, P. 109
16. Ibid, P. 109
17. Moore, C.W. The mediation Process: Practical Strategies for Conflict Management, Jossey Bass Publisher, San Francisco, Califonia, 1960. P.60

Similarly, the West Virginia, Supreme Court Order, Rule 2 defines mediation as follows:[18]
Mediation is an informal non-adversarial process whereby neutral third person, the mediator, assists parties to a dispute to resolve by agreement some or all of the differences between them. In mediation, decision-making authority remains with the parties, the mediator has no authority to render a judgment on any issue of the dispute. The role of the mediator is to encourage and assist the parties to reach their own mutually-acceptable settlement by facilitating communication, helping to clarify issues and interests; identifying what additional information should be collected or exchanged, fostering joint problem-solving, exploring settlement alternatives and other similar means. The procedures for mediation are extremely flexible, and may be tailored to fit the needs of the parties to a particular dispute.

The University for Peace Glossary of Terms describes mediation in the following words:[19]
The voluntary, informal, non-binding process undertaken by an external party that fosters the settlement of differences or demands between directly invested parties. Mediators generally have a vested interest in the resolution of a given conflict or dispute, but they are able to operate neutrally and objectively. Lacking the authority to coerce or impose judgments, conditions, or resolutions, facilitators aim to transform the dynamics of the conflict situation by introducing new relevant knowledge or information, especially regarding the negotiation process between the disputants, by revealing common interests and suggesting possible directions towards settlements. In acute situations, mediation acts as means of facilitating communication, commonly termed 'good offices', through the consent of vested parties that are unable to formulate mutually satisfactory resolutions on their own. The process is usually initiated by the intended external mediator, such

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18. Rules of Procedure for Court Annexture, Mediation in the Circuit Courts, West Virginia, Rule 2
19. Miller, C.A, op. cit. P.24

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as an international organization, a government, or non-governmental organizations or by the relatively weaker party of the conflict. The contending parties, nonetheless, maintain considerable control over the process and the outcome. Two theories dominate how mediation can be successful. The first focuses on the personal skills and characteristics of the mediator (s), and the other emphasizes the environmental and contextual factors relevant to the conflict in question.

Some common thread that is discernable from the definitions provided herein is that mediation involves the intervention of an acceptable third party when there is a conflict, in an attempt to help the contending parties craft for themselves best and lasting solutions to their problems. A mediator does not impose solutions on the parties; rather he acts as a facilitator, soothing the greasing free flow of communication between the contending parties.

However, there are situations in conflict where mediation is unsuitable. For instance, when a serious incident has just occurred and no useful conversation is obtainable from the parties because of panic, confusion and grief; when it is evident that the sincerity of one or more of the parties is in doubt or simply in contradiction of the aims of negotiations and settlement; where the incapability of a party to either listen or participate in any form of useful discussion and negotiation is beyond remedy; where the issue is non-negotiable in nature; where the balance of power between parties does not favour a fair agreement and where the issue in conflict deserves public knowledge rather than confidential negotiation under mediation.[20]

The functions of a mediator in a dispute are multidimensional. Essentially, he adds potential value to a negotiation. This is because by having no personal interest in the dispute, a mediator brings neutrality to detailed negotiations and debates, adds a fresh and independent mind to a review of the case, and otherwise, by his presence, changes the underlying dynamics of the negotiation process. The mediator should be able to assist contending parties to review their positions and discover possible settlement options.

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20. Sam G., Mediation and Mediation Process in Shedrack Gaya Best (ed) Introduction to Peace and Conflict Studies in West Africa. Ibadan: Spectrum Books, 2006 PP: 133-134.

The American Arbitration Association has aptly described the role of mediators in nine different ways:[21]

a. The opener of communication channels: They either initiate or facilitate a continuing discussion between disputants.

b. The legitimizer: The mediator legitimizes the rights and interests of all parties and helps to facilitate negotiations.

c. The process facilitator: The mediator provides a framework and procedure for discussion and negotiations, and should head the negotiation sessions.

d. The trainer: The mediator trains the unskilled and unprepared negotiator in the bargaining process.

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e. The resources expander: In the course of interaction and negotiation, the mediators link parties to lawyers, technical experts, decision makers, or additional goods for exchanges that may enable them to enlarge acceptable settlement options.
f. The problem explorer: The mediator assists people in defining basic issues and interests by analyzing each problem from a variety of ways with the aim of identifying mutually acceptable solution.
g. The agent of reality: The mediator realistically helps parties to change from extreme positions in order to achieve results from workable and acceptable options.
h. The scapegoat: Sometimes, mediators share in the blame for unpopular decisions (mostly in the short run), though such decisions may in the long run yield positive results. In such instances, parties use mediators as their scapegoats (face saving mechanisms) to achieve long-term gains.
i. The leader: In so many respects, the mediator is a leader that initiates procedural changes and suggests alternative ways or means of achieving results acceptable to all.

The most important functions of the third party are to restore communication between the disputants, impose cooling off periods, investigate conditions in the area of conflict and provide, if necessary, a variety of services to the parties in conflict. There are some basic principles that guide the conduct of the mediators. These principles include impartiality, confidentiality, self-determination, voluntaries, empowerment and education. The principle of impartiality seeks to promote the ideals of justice and fairness of the mediator on all issues brought to the negotiation table. Confidentiality aims at boosting the

21. Moore, C.W. The Mediation process: Strategies for Conflict Management, Jossey Bass Publisher, San Francisco, California, 1996. P.18

confidence of the parties to discuss freely and truthfully amongst themselves without any fear that their positions, claims, defences or remedies being sought would become known or available to other people who may not be directly involved in the conflict or at negotiations.[22]

The principle of self-determination permits disputants to either include or exclude any important issue(s) in the course of negotiation. In effect, they determine what is or what is not discussed. The principle of voluntariness gives disputants protection against compulsion by anyone in any stage of the process, they could even withdraw at whatever stage based on their judgments. In the principle of empowerment and education every mediation process should target the empowerment and education of disputants in such a way that they acquire an enhanced capacity to deal with their problems and can handle conflict.

Mediation as an instrument for conflict resolution has many benefits. For instance, it serves as a veritable forum for contending parties to present their positions and consider settlement options. Cost and expenses are minimized. It is quite productive and helpful in settling conflicts that would have otherwise escalated easily. From a bargaining point of view, third party intervention into conflict or crisis may provide a feasible avenue to retreat for governments that wish to withdraw gracefully without appearing to back down before threats from the main opponent. As in all conflict relationship, a compromise yielded to a third party may be easier to arrange than

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withdrawing in the face of adversary. However, for mediation to be useful and effective, the contending parties should desire a resolution in the first place. More so, it also demands that the parties are willing to come to the table in order to negotiate their needs, interests and differences. In addition, the ability of parties to clearly express the reasons and factors in the conflict is important. In the same vein, successful mediation depends, on the capability of the mediator to provide the necessary environment that is conducive for resolution of the conflict as well as the willingness of disputants to live up to their promises.

The employment of mediation procedure involves the use of third party to encourage the contending parties to a settlement. It also aims at persuading the parties to a conflict to reach satisfactory terms for its termination by themselves. The role of a mediator terminates when a settlement has been reached or when one of the parties discovers that the suggested solution is not acceptable. The mediator is not expected to make a report; the proceeding usually suggests a possible solution that parties can use.

22. Sam. G. Op. cit. P 134

This method was employed by the **ECOWAS** Commission in resolving Guinea Bissau conflict when the Commission sent delegates to Guinea-Bissau to meet with coup leader, General Verissimo Seabra Correia and the deposed President, Kumba Yola, to discuss ways of resolving the crisis. The delegates include the former President of ECOWAS Commission, Chambas Ibn Mohammed and the then Foreign ministers of Cape Verde, Gambia, Ghana, Guinea, Nigeria and Senegal.[23] The Commission also adopted this mechanism in the Liberia crisis. The mediation led to the restoration of peace in the country through Accra Comprehensive Peace Agreement. The final stage of the implementation of the peace Agreement for Liberia unfolded with the holding of general elections on 11th October, 2005, followed by the Presidential run-off election on 8th November, 2005. The ECOWAS observation mission and the team of ECOWAS special mediators, led by General Abdulsalami Abubakar, in the Liberia peace process observed the elections.[24]

Similarly, ECOWAS was deeply concerned about the situation in the Gambia following the attempted coup de'etat on March 22, 2006 by the Army Chief of Staff, Colonel Endures Cham. ECOWAS mediated in the crisis and confidence in the security situation was restored.[25] The ECOWAS also mediated in the Cote d'Ivoire crisis which led to President Laurent Gbagbo and Guillaume Soro, the leader of the Force Nouvelles, signing a peace agreement in Burkina Faso on March 4, 2007, under the auspices of President Blaise Compaore, former ECOWAS Chairman.[26] The mechanism was also applied by the Commission in Guinea crisis, which began in January, 2007. The crisis has been successfully resolved with the choice of Mr. Lansana Kouyate, former Executive Secretary of ECOWAS as the President. The resolution of the conflict was as a result of a mediation mission led by the former President of Federal Republic of Nigeria, General Ibrahim Badamasi Babangida and Dr. Mohammed Ibn Chambas, President of ECOWAS Commission.[27]

Mediation should be viewed as continuing processes and not something that ends with a comprehensive political agreement. It must be sustained both politically and financially for a significant period after a final peace agreement has been achieved. Future stability and development in the community states critically depends on the extent to which the sub-region

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would succeed in deepening and adhering to the culture of peaceful settlement of its conflict through mediation between and within their states.

23. See Meeting of Ministers of Foreign Affairs, Niamey, 9th January, 2006, P.4
24. Ibid
25. ECOWAS Annual Report, 2007, P.82
26. Ibid
27. Ibid P 83

Some factors should be taken into account in appointing a mediator such factors include, and he should be a National Government Official or representative of an International Organization. The mediator could be from a non-governmental or an inter-governmental organization. A mediator should be multi-disciplinary; state-persons, military experts, scholars, lawyers, religious leaders, and other professionals who have unique contributions to make.

NEGOTIATION

This consists basically of discussions between the interested parties with a view to reconciling divergent views or at least understanding the different positions maintained. The University for Peace defines negotiation as "communication, usually governed by pre-established procedures, between representatives of parties involved in a conflict or dispute.[28] Fisher sees negotiation as "including of all cases which two or more parties are communicating, each for the purpose of influencing the other's decision. Nothing seems to be gained by limiting the concept to formal negotiation taking place at a table and much to be gained by defining the subject broadly".[29] From the above definitions, it can be seen that communication is critical to the process of negotiation. Thus, it takes place only where there is communication between the contending parties. Negotiation usually takes place during the early stages of conflict when communication between parties is existent and good or at the de-escalation point when communication has been restored.

Negotiation can be positional or collaborative.[30] The positional negotiation is based on the aggressive pursuit of interest by parties and is typically adversarial and competitive. Parties make demands that serve their own interests and needs without considering the interests and needs of others and this makes it difficult for these interests to be satisfied. The intention is to win instead of working towards a mutually beneficial outcome. Thus, the demands of one party can be satisfied only to the detriment of the other.
This method takes a form of contest in which there will be a winner and a

28. Miller, CA. op. cit
29. Roger F., "Negotiation Power: Getting and Using influence" In J.W Breshlin (ed) negotiation Theory and Practice. The Program on Negotiation at Harvard Law School Cambridge, Nassachusetts, PP: 127 – 128.

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30. Best S.G. The Methods of Conflict Resolution a transformation in Shedrack Gaya Best (ed) op. cit. P. 106 loser. In order to win, a competitive bargainer tends to be tough, powerful and skillful in maximizing his principal's self-interest.[31]

The main feature of this method is that efforts are made to dominate the other party by means of pressure tactics, which include; demands that far exceed what is actually acceptable, commitment to "unalterable" positions, persuasive arguments aimed at convincing the other bargainer that concessions are in his or her own best interest; threats, for example, to withdraw from the negotiation or punish the other for failing to make concessions; demonstrations that there is more time pressure on the other than oneself; making few concessions and untroubled by the prospect of an impasse and focusing on manipulation rather than on trying to understand the issue sufficiently to find a mutually acceptable solution. This method tends towards a hostile and confrontational approach and response[32]. The tendency is tension, mistrust and eventually frustration. In addition, the contentious nature of positional bargaining often results in deadlock and a breakdown of negotiations with consequent delays, stress and additional cost of all kinds.[33] On the other hand, collaborative negotiation is a process where parties try to educate each other about their needs and concerns and both search for the best ways to solve their problems in the larger interests of the contending parties. The process is collaborative in principle and the emphasis is on mutual understanding and feeling which aimed at building a sustainable relationship.[34] To achieve this goal, contending parties to a dispute see themselves as collaborative problems solvers. They separate themselves from the problem to which they are seeking solution and thus endeavour to create as many options as possible for their mutual gains and benefits. This is achieved by focusing on their interests rather than their gains.

This process appears to be a much better method of resolving disputes. It is a joint problems solving approach in which the parties exchange accurate information about their underlying interests, collectively identify new issues in the light of available information, brain-storm to locate alternative ways of dealing with these issues and sometimes work together to evaluate their alternatives. Collaborative bargaining is an excellent way to locate mutually acceptable solutions and is often of great benefit to both parties. Apart from being an extremely active method of settlement itself, negotiation is normally the precursor to other settlement procedures as the parties decide amongst

31. Peters D. Alternative Dispute Resolution (ADR) in Nigeria: Principles and Practice. Dee – Sage Nigeria Limited Lagos (2004) P.77
32. Rall, S.: Process of Dispute Resolution: The Role of Lawyers Foundation Press (London) 1989 P.78
33. Ibid P. 80
34. Best S.G. op. cit, P. 106

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Themselves how best to resolve their differences. It is eminently suited to the clarification if not always resolution of complicated disagreements. Negotiations are the most satisfactory means of resolving disputes since the parties are directly engaged. Negotiations do not always succeed, since they do depend on a certain degree of mutual goodwill flexibility and sensitivity.

In certain circumstances, there may exist a duty to enter into negotiations arising out of particular bilateral or multilateral agreements. In addition, decisions of tribunal may direct the parties to engage in negotiations in good faith and may indicate the factors to be taken into consideration in the course of negotiations between the parties. Where there is an obligation to negotiate, this would imply also an obligation to pursue such negotiations as far as possible with a view to concluding agreements. Thus, in the case of the North Sea Continental Shelf, the court held that: [35]

The parties are under an obligation to enter into negotiations with a view to arrive at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition… they are under obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it.

The court in the German External Debts case did emphasize that although an agreement to negotiate did not necessarily imply an obligation to reach an agreement, it implies that serious effort towards that end will be made.[36] In the Lac Lannaux arbitration,[37] it was stated that "consultations and negotiations between the two states must be genuine, must comply with the rules of good faith and must not be mere formalities". Instances of infringement of the rules of good faith were held to include the unjustified breaking off of conversations, unusual delay and systematic refusal to give consideration to proposals or adverse interests. The point was also emphasized by the International Court in the Legality of the Threat or Use of Nuclear Weapons, where it noted the reference in Article vi of the Treaty on the Non-proliferation of Nuclear Weapons to pursue negotiations in good-faith on effective measures relating to cessation of the nuclear arms race at an

35. ICJ Reports, 1969, PP. 3,47.
36. 47, ILR, PP. 418,454.
37. 24 ILR, PP 101,119

early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control. The court declares that:[38]

The legal import of that obligation goes beyond that of mere obligations of conduct: the obligation involved here is an obligation to achieve a precise result-nuclear disarmament in all its aspects – by adopting a particular course of conduct namely: the pursuit of negotiations on the matter in good-faith.

This method was successfully applied to restore peace in Guinea-Bissau by ECOWAS through the former Nigeria President Olusegun Obasanjo. He had discussions with various Guinea-Bissau leaders in Dakar on October 21, 2005. Both sides agreed on the importance of the security sector

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reform for stability of Guinea-Bissau and were committed to supporting relevant efforts.[39] The Commission also adopted negotiation to restore peace and stability and ended the dispute between Senegal and The Gambia. The two sides welcomed the subsequent agreement between the two countries to improve bilateral cooperation.[40]

Negotiation is a key approach to the peaceful resolution of conflicts that may arise between parties. It is also within the reach and control of parties because there are no third parties involved.

ARBITRATION

This refers to the use and assistance of a neutral third party in conflicts, who hears the evidence from both sides, and thereafter renders a decision, known as an **award**, which is expected to be binding on the parties[41]. Similarly, Romilly M.R. in **Collins V Collins**,[42] defines arbitration as a reference to the decision of one or more persons either with or without an umpire, of a particular matter in difference between the parties. It is an agreement of the parties that dispute between them be settled by a tribunal of their choice.

38. ICJ Reports, 1996, PP. 226
39. ECOWAS Annual Report, 2007, P.82
40. Ibid
41. Best, S.G., Op. Cit, p.108
42. 28 LJCH 186

Halsbury's laws of England defined arbitration to mean the reference of a dispute or differences between not less than two parties for determination after hearing both sides in a judicial manner by a person or persons other than a court of competent jurisdiction.[43] From these definitions, it is clear that the decision must not be that of a court of competent jurisdiction but rather the decision of a person or persons appointed by the contending parties in a private arrangement. The parties to arbitration have a much greater of control over virtually all aspects of the proceedings. They can identify the issue, choose the arbitrators, select rules of procedure and decide where and when the hearings are to take place.

Under this procedure the disputants are free in their selection of an arbitrator. Arbitral procedure operates on the assumption that there is agreement on the part of both disputants to accept the awards of the arbitral tribunal. Before the procedure begins, it is stipulated whether the awards should be made on the basis of law or fact. If it is based on the former, then the decisions to come as close to legal principles as possible. If it is based on the latter then the decisions and settlements should be made on the basis of the available facts without reference to legal principles. This mechanism was adopted by the community in the border dispute along Makona-Moa River between Sierra Leone and Guinea which led to the signing of memorandum of understanding between the two countries. The memorandum stipulated that the village of Yenga belongs to the Republic of Sierra Leone and that the Makona-moa River belongs to the Republic of Guinea as contained in the Angola-French Treaty of 1912 and renewed by the 1974 Agreement between Sierra Leone and Guinea. To this end, the Commission further affirmed that the agreement reached

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between Guinea and Sierra Leone should be further concretized by the demarcation of the border areas and that this exercise should be carried out by experts from both countries with the aid of relevant documents. This was acceptable by the parties.[44]

The procedure was also successfully applied in the Alabama claims arbitration of 1872 between Britain and America, which resulted in the U.K[45] having to pay compensation for damages caused by a confederate warship built in the UK. This success stimulated further arbitrations, for example, the Behring Sea and British Guiana and Venezuela Boundary arbitrations at the end of the nineteenth century.[46]

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43. Halsbury's Laws of England 3rd Edition Vol. 2 Para 2.2
44. Meetings of Foreign Affairs, Niamey, 9th January, 2006
45. Moore, J.B International Arbitration, 1898, New York, Vol. 2, P. 495
46. Ibid, P.755

Arbitration is the most effective and equitable manner of dispute settlement where diplomacy has failed. This is because the Arbitrators are experienced in the field of dispute. It is quicker in resolving issues, it saves costs, and privacy is maintained and is convenient as parties are at liberty to fix their own time.The Arbitration Tribunals may be composed in different ways. There may be a single arbitrator or a collegiate body. In the latter case, each party will appoint an equal number of arbitrators with the Chairman or umpire being appointed by either the parties or the arbitrators already nominated. In some cases, a Head of State may be suggested as a single arbitrator and he will then nominate an expert in the field of international law or other relevant disciplines to act for him.[47]

States are not obliged to submit a dispute to the procedure of arbitration in the absence of their consent. This consent may be expressed in arbitration treaties, in which the contracting parties agree to submit certain kinds of dispute that may arise between them to arbitrator, or in specific provisions of general treaties, which provide for disputes with regard to the treaty itself to be submitted to arbitration.[48] The law to be applied in arbitration proceedings is international law, but the parties may agree upon certain principles to be taken into consideration by the tribunal and specify this in the compromise. For instance, on the British Guiana and Venezuela boundary dispute,[49] it was emphasized that occupation for fifty years should be accepted as constituting a prescriptive title to territory, and in the **Trial Smelter case,[50]** the law to be applied was declared to be US law and practice with regards to such questions as well as international law.

Agreements sometimes specify that the decisions should be reached in accordance with 'law and equity' and this means that the general principles of justice common to legal systems should be taken into account as well as the provisions of international law. Once an arbitral award has been made, it is final and binding upon the parties.[51]

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47. See Argentina – Chile Case, 38 ILR. P.O and the Beagle Channel Case, HMSO, 1977
48. See Arbitration and Security: the systematic Survey of the Arbitration conventions and Treaties of Mutual Security Deposited with the League of Nations, Genera, 1927, and Systematic

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Survey of Treaties for the Pacific Settlement of International Disputes 1928 – 1948, New York, 1949
49. 92 BFSP, P. 970
50. 3 RIAA, 1938 P. 1908
51. See Article 81 & 84, Hague Convention 1, 1907

However, under certain circumstances, the award itself may be regarded as a nullity, for instance, where there is disagreement amongst arbitrators, as to the grounds on which such a decisions may be taken or where a tribunal exceeds its powers under the compromise. Such excess of power may be involved where the tribunal decides a question not submitted to it, or applies rules it is not authorized to apply.

Arbitration as a method of dispute resolution should be encouraged because it allows the parties to a dispute select the arbiters they would wish to sit over their case. Arbitration seeks to be analytical, logical and administrative in its decisions about disputes. It is convenient and expeditious; it is cost effective, helps in building and maintaining relationship of the parties.

CONCLUSION

The provision of ECOWAS Treaty for peaceful resolution of conflicts in the community is commendable as ECOWAS has recorded measures of success in the area of conflict resolution. Unfortunately, the mechanism did not provide criteria for selecting the members of Council of Elders who usually mediate in conflicts. Article 20 of the mechanism only empowers the ECOWAS Commission to compile annually a list of eminent personalities who can use their good offices to play the role of mediators. In addition, the mediators are not formally trained in the process of negotiation, mediation or conciliation. It is therefore recommended that a workshop should be organized for the mediators on the art of mediation to equip them on how to go about it. The mediators should be impartial and independent while settling disputes so that the people will not resort to self-help in addressing their grievances. The composition, method of selection and appointment of members to the Council of Elders require further refinement and consideration. Those who should be appointed or selected as members of the Council should be people who are physically and mentally sound within the age of 50 – 70, of good track records in terms of high level work experience and character, be in a position of great influence and importance internationally and regionally; be endowed with negotiating skills; able to bring about peace and reconciliations that can be employed in potential conflict situations in member states. There is the need to establish a permanent Mediation Commission that should be charged with responsibility of mediating in disputes which parties have failed to resolve by other diplomatic means. The current use of Council of Elders on ad-hoc basis is not sufficient. The Community should emulate the African Union by establishing Commission of Mediation, Conciliation and Arbitration. A permanent Mediation Commission should assist to prevent conflicts among member states because the existence of such a Commission would serve as a constant reminder that there is still the last opportunity when all other procedures have proved abortive to resolve the conflicts. Furthermore, mediated agreements should aim to resolve the underlying causes of conflict and should not be

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designed to legitimize insurgencies, ECOWAS Heads of Government should be peer reviewed and those engaged in bad governance should be named and cautioned as a conflict preventive measure.

The Diplomatic method of conflict resolution should therefore be encouraged because the stability inherent in a successful mediated agreement results from shared pains and shared outcomes, where the arrogance and benefits of victory or the humiliation and losses of defeat are not carried into the post-conflict era. Thus, where mediation succeeds, all parties to the conflict at the end of it all, usually get together and "burry the hatchet" that lasting peace and stability become more assured.

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