GOOD OFFICES: A VERITABLE ALTERNATIVE DISPUTE RESOLUTION TOOL FOR PEACE AND NATION BUILDING

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Abstract

Disputes are a part of life for living creatures, from insects to human beings. While insects or animals may fight for space, territory and dominance, human beings and countries fight each other for territory and may engage in war. Throughout history, differences resulting in conflict were resolved, are still being resolved and will continue to be resolved. The traditional societies settled and still settle family disputes without interference from and invitation to the third parties who are not members of that family.

The dominance of the British through colonization introduced cultures hitherto unknown into many societies. This also included a justice system foreign to the people. Litigation was one of such. The taking of a dispute out of the family or community jurisdiction, to a court that is set up by the state was introduced and adopted. Litigation was adopted as a process with its advantages and disadvantages. The disadvantages and the problems in litigation brought about a search for an alternative. These alternatives are not totally free of problems but are more acceptable in respect to certain types of cases, than litigation. It is therefore an alternative to litigation.

People who have a common identity tend to stay together to build unified societies and nations. However, there are situations that may make it difficult or impossible for people to stay together. In such situations, if actions are not promptly taken to resolve the issues, there may be conflict.

This paper looks at the concepts of conflict and conflict resolution, peace in the midst of conflict and the efforts that are made at nation building. The paper, through the use of case studies to support a preposition, suggests that the use of alternatives dispute resolution (ADR) methods in some cases, through the establishment of a grounded ADR structure in place, to resolve conflict rather than the use of litigation may be a solution to nation building.

Key Words: Good Offices; ADR Tool; Peace; Nation Building

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Nations and Nation Building

Going back into history, there was no concept of nations but of kingdoms and empires. The kingdoms and empires are replaced by nations in modern society of today. According to Carolyn, "a nation is a group or race or people who share history, tradition and culture, sometimes religion and usually language". It is therefore, a group of people who share a common national identity.[1] Stalins says a nation is a historically constituted community of people that is not tribal or racial.[2] The making of a nation is not casual, neither is it an ephemeral conglomeration. It is a stable community of people.[3] Nations do not happen by accident. This fact was reiterated by Gambari, when he said nations "just don't happen by historical accident; rather they are built by men and women with vision and resolve".[4] Nations are thereby bounded within a given territory, for a time, with an internal economic bond.

This brings us to the issue of nation building. Harris Mylonas says that nation building is the process through which the boundaries of the modern state and those of the national community become congruent.[5] Adigun defines nation building as the systematic process of making a people who hitherto are from different cultural, ethnic, religious, racial and national background feel they belong together under a nation.[6] Nation building is often rife with tension and at times conflict, therefore it does not come easy and it is said to be a gruesome undertaking.[7]

From the South African perspective, nation building is the process whereby a society of people with diverse origins, histories, languages, cultures and religions come together within the

[1] Carolyn Stephen. 2005 "Nation Building" in *Beyond Intractability* in http://www.beyondintractabilty.org/essay/nation-building Accessed on 17 November, 2018

[2] Stalins, J. (1972) "What is a Nation" Pakistan Forum Vol 2 No 12 September 1972 pp. 4-5

[3] Stalins J. V. supra

[4] Gambari A. I. (2008) "The Challenges of Nations: A Case of Nigeria". A Lecture Delivered at The First Year Anniversary of Mustapha Akanbi Foundation at Sheraton Hotel, Abuja on 7 February 2008. Retrieved form www.mafng.org/anniversary/challenges_nation_building_nigeria.htm

[5] Mylonas Harris (2013). The Politics of Nation Building: Making Co-Nationals, Refugees and Minorities (Problems of International Politics pp. ix-X) Cambridge: Cambridge University Press. Retrieved in https://www.researchgate.net/profil/Harris_Mylonas/publication/264489425_The_Politics_of_nation_building_making_co-nationals_Refugees_and_minorities/links/53e108270cf2

[6] The Eagle Online Segun Adebowale. May 16, 2015. Nation Building in Nigerian by Olalekan Adigun. https://theeagleonline.com.ng/nation-building-in-Nigeria-by-olalekan-adigun

[7] Aguwa Jude C. (1997) Religious Conflict in Nigeria: Impact on Nation Building. *Dialectical Anthropology* Vol. 22 No 3/ 4. Nigeria Thirty Years after the Civil War (December 1997 pp. 335-351). Accessed in https://www.jstor.org/stable/2990463

boundaries of a sovereign state with a unified constitution and legal dispensation. It includes a national public education system, an integrated national economy, shared symbols and values as equals, to work towards eradicating the division and injustice of the past, to foster unity and promote a countrywide conscious sense of being proudly South African, committed to the country and open to the continent and the world.[8] The African nation in particular is faced with this hardship in nation building because of "the arbitrary determination of boundaries of African states by the colonial government for their convenience in the exploitation of different areas in Africa Nigeria as a nation is one of such examples of this gruesome hardship as she has one of the highest ethnic nationalities to be found in one single nation in the world.[9] It has precluded the emergence of the national identity. The nation was referred to as "no more than a geographical expression"[10] and another referred to Nigeria as "the mistake of 1914".[11] The different groups with their own different political systems, social and religious values distinct from each other were lumped together out of the selfish motive, economic exploitation and administrative convenience of the colonial administration. This created, and nurtured, deep distrust, suspicion and cleavages that have resulted into diverse conflicts.

Concept of Peace

The concept of peace can be discussed from different perspectives. It has been defined as a dynamic social process in which justice, equity and respect for basic human rights are maximized and violence, both physical and structural, is minimized.[12] It has also been described as a condition of social harmony in which there is no social antagonism. While peace has been described as absence of war, this has been subject to many debates as it is argued that peace is more than that. Ibeanu posits that there can be peace in war, where for instance warring parties agree to some

[8] www.dac.gov.za/content/5-what-nation-building

[9] Mgbachu B. & Onwuliri J. O. (2014). Religious Violence: Implication for Nation Building. *Journal of Religion and Human Relation* Vol. 1 No 6 2014. Accessed in https://www.ajol.info.index.php/jrhr/article/view/111526

[10] Duke M. "Jos Crisis: The Anatomy of an Apartheid State"

[11] Akinrinade S. (2000). Ethnic and Religious Conflict in Nigeria: What Lessons for South Africa? Retrieved from https://www.questia.com/library/IGI-82011534/ethnic-and-religious-conflict-in-nigeria-what-lesson Retrieved in https://www.jstor.org/stable/23414701?read

[12] Bacani B. R. (2004). Bridging Theory and Practice on Peace Education: The Doune University Peace Education Experience. *Conflict Resolution Quarterly* 21 (4) 1-15.

conditions in the war zone.[13] Martin Luther King also argues that peace is not only about an unhappy situation in the society. He states that peace must include justice in the society. To him, peace is not just about the absence of tension, but the presence of justice.[14]

The desire for peace is of global concern. In 1992, the then United Nations Secretary-General, Boutros-Ghali, presented an Agenda for Peace with the optimism of the possibility for a lasting peace. This was after several wars around the world had affected lives and economies of nations.[15] Decades after the Agenda for Peace, the world has not witnessed the deserved peace. Wars and rumors of war and disputes have not abated. As one dispute or war is resolved, another one is starting. Efforts are still ongoing in pursuing the Peace Agenda. In 2005, there was the reinforcement of the Peace Agenda with the Responsibility to Protect Project known as R2P. This project came about as a result of the genocide in Rwanda in 1994 and the disaster of the World Trade Centre in the United States of America in 2001.[16] The R2P is a global commitment endorsed by all member states of the United Nations, in order to address some concerns which, include genocide, war crimes, ethnic cleansing and crimes against humanity. It was alleged that the world "watched without interference"[17] while the horror in Rwanda went on for about hundred days between April 7 – mid July 1994. To the Rwandans, it was as if "no one cared"[18] and it is said that international inertia created an "enabling environment for the genocidaires".[19] The basis for the R2P is that all humans have the right to be protected against all the above listed atrocities and if their own government fails them, the international community is obliged to act. Therefore, the international community is mandated to interfere first through diplomatic and peaceful means.

[13] Ibeanu O. (2006). Conceptualizing Peace in S. G. Best (Ed) Introduction to Peace and Conflict Studies in West Africa. Ibadan, Nigeria: Spectrum Books Limited. Pp. 3 – 14.
[14] Coretta Scott King (2008). The Words of Martin Luther King Jr. New Market Press 008 P.83
[15] Grotenhuis Rene (2016) "Peacemaking as a Preliminary Step towards Nation-Building and State Building" In *Nation Building as Necessary Effort in Fragile States.* Amsterdam: Amsterdam University Press. Accessed In https://www.jstor.org/stable/j.cit/9r7d8r9 pp. 93-100.
[16] Ibid.
[17] Ibid.
[18] Simon Adams (2012). Rwanda, Syria and the Responsibility to Protect. HuffPost April 4, 2012. Accessed in https://www.huffingpost.com/simon-adams/syria-united-nations-b-1403686.html
[19] Supra.

However, if this does not work, there may be a resort to collective use of force through the Security Council of the United Nations.[20]

From the above, the growth and development of any nation depends on a good and peaceful legal system. For nation building and development, a state or nation must be free from conflict that can derail national development, and as much as possible, conflict should be avoided. However, conflict need not be avoided at all cost. Where it is inevitable, it should be managed with a view to achieving societal goals. Any effective resolution process that can effectively put an end to conflict should be embraced as this is a prerequisite to nation building.

Conflicts, Peace and Nation Building

In this paper, the words conflict and dispute are used interchangeably. The causes of disputes or conflicts are many and the consequences innumerable. The consequences include displacement, irreplaceable damage, mass destruction of lives and properties,[21]like it is being experienced in Ukraine and Russia; generational scars like it happened in the case of genocide in Rwanda and introduction of foreign culture not known before, as in the introduction of gun culture in Bougainville and disruption of economic activities thereby reducing the per capita taxable capacity of the economy as business may wind up and investors take their businesses outside the country.[22] In Nigeria, the opportunities forgone, as a result of conflicts is unquantifiable.

Throughout history, there have always been conflicts between persons, kingdoms and nations. This has in some cases resulted into war while others were resolved and some were never resolved. The World War I started in 1914 and ended in November 1918. The result was unprecedented destruction, loss of millions of people and a collapse of economies of many nations. The peace that had existed between some nations collapsed and the result was World War I. The effects of the war were numerous. The end result of the World War I was the Paris Peace Conference in January 1919, where Allied Leaders met to start a long-complicated negotiation that officially marked the end of the World War 1. This was the Treaty of Versailles signed after several

[20] Gothenhuis Rene (2016) supra.
[21] The State v. Jimmy Kend (No 2) 2007 N3131. Accessed in https://www.sr.org/accord.article/origin/conflict
[22] Joseph Pugma v. Alphonse Niggints (2010) N3978 Accessed in https://www.sr.org/accord.article/origin/conflict

negotiations on the 28 day of June, 1919. The negotiation that resulted in the Treaty of Versailles was written with no participation from a major player which was Germany. The Treaty stripped Germany of many of her properties, rights, placed sanctions on the country, made restrictions to Germany, made her to accept the liability for the losses of World War I and in addition, imposed obligations on Germany. This was not without frustrations, disillusions, forfeiture of territory, war guilt and feeling of betrayal, payment and compromise. This Treaty signed by Germany under protest, led to resentment and anger especially by Germany, who was considered as the major loser of the war. A decade after Hitler denounced the Treaty in 1935.[23] This resulted in another conflict which led to the World War II in 1939. The instability created by the World War I in Europe was the cause of World War II which was more devastating than the first. The war started in September 1939 and it is said to be the most devastating international conflict in history. The Geneva Convention of 1952 is one of the gains of World War I as it restricted the use of chemical and biological agents in warfare. Though, this restriction is still in effect, with the conflict happenings around the world, the effectiveness of this agreement is in doubt.

Apart from the international wars between nations, there were religious conflicts which were primarily caused by differences in religion and ethnic conflicts between two or more contending ethnic groups caused by political factors like non-representation in public or political institutions, tribalism, resource control, marginalization and dispute over ownership of land. The Nigerian civil war[24] from July 1967 to January 1970 was between the government of Nigeria and the State of Biafra and The South African conflict between the Zulus and Xhosas, are examples. All these conflicts, to a great extent, impede rather than enhance nation building.

A step that has always yielded results in resolution of conflict is dialogue. This is where the disputing or conflicting parties are brought together for reconciliation through processes such as negotiation and mediation. These are dispute resolution mechanisms, as opposed to parties filing actions in regular courts. There have been changes in the way nations settle their disputes, especially with the involvement of international institutions in peace-making and resolution of

[23] World War II. History.com October 29, 2009. A & E Television Network https://www.history.com/topics/world-war-ii/world-war-ii-history

[24] Ibid. pp. 104-106.

disputes between nations. The issue of peaceful settlement among nations is a great development and it is a very significant aspect of international law. It is found in the United Nations Charter, signed on 26 June 1945 in San Francisco USA, and came into force on 24 October 1945 and entrenched in Chapter VI, Article 33, as the Pacific Settlement of Disputes. The United Nations, was founded in 1945 at the time when World War II had just ended and nations were in ruins and there was need for peace. The United Nations is made up of one hundred- and ninety-three-member states and two countries that are non-member observer states.[25] Article 2 of the Charter provides as follows:

> "*All members shall settle their international dispute by peaceful means in such a manner that international peace and security and justice are not endangered*."

Article 33 of the Charter, in particular, provides for a peaceful settlement of disputes and states thus:

1. "*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, mediation, conciliation, arbitration, judicial settlement, resort to a regional agency or arrangement* ***or other peaceful means of their choice;***
2. *The Security Council shall when it deems necessary, call upon the parties to settle their disputes by such means"*

The Charter expressly states the preferred means of resolving disputes but further provides that parties may resort to a regional agency or arrangement **"*or other peaceful means of their choice*"** The phrase - ***or other peaceful means of their choice*"** is not addressed in any part of the Charter. It can therefore be interpreted that the phrase **"or other peaceful means**" connotes that different peaceful solutions, apart from those mentioned exist. It is the position in this paper, that there are **"other means,"** in resolving disputes involving nations. These "other means" are growing trend which has gained popularity and are yielding result. One of these **"other means"** of resolving disputes, is the process of good offices.

[25] United Nations: About the U.N. Accessed in www.un.org/en/about-un

Dispute Resolution Mechanisms

Medieval to Modern Time

The methods adopted through history in resolving conflict arising between parties starting from medieval times to the modern day vary. The method of trial by battle was used in medieval times, traditional institutions in the traditional societies and the process of litigation in the colonial dispensation, up till the modern times. In the litigation process, parties to a dispute, file their cases before a court established by law, present their cases through independent advocates selected and paid for by the different parties. The decision of the case is left to a judicial officer who should in all cases, base the judgment on rules and regulations laid down by the state. The outcome of the judgment is a winner-loser structure. The litigation setting is adversarial, expensive, inflexible, slow, non-confidential, affects and destroys relationships and imposes a solution which may not be totally acceptable to the parties.

The Emergence of Alternative Dispute Resolution Processes

Alternative Dispute Resolution hereinafter referred to as ADR, can be said to be a collective description of processes or mechanisms, that parties to a dispute can use to resolve disputes rather than filing a claim in a formal court of law. It is therefore an alternative to litigation.

The ADR process as it exists today, suggests that there was in existence, a certain or certain mechanism(s) of dispute resolution. However, the dispute resolution mechanism, must have had some perceived problems or disadvantages, which then gave rise to alternative mechanisms of resolving disputes. These are what are now termed the Alternative Dispute Resolution Mechanisms. Mediation, arbitration, negotiation and conciliation are most commonly used processes of ADR. However, other specific ADR processes, like the process of Good Offices are available and very useful in nation building.

For comparison purposes, the mediation process will be briefly addressed, with a case study used to explain the process.

The Mediation Process

Mediation is a settlement of a conflict by setting up an independent person between two contending parties in order to assist them in the settlement of their disagreement. **The Bougainville, Papua New Guinea Mining Conflict** will be used as a case study to explain the process. Bougainville is an autonomous region of Papua New Guinea in the Southern Pacific previously known as the North Solomon Province. The country has its own history but a conflict erupted as a result of copper mining in the early 1970s. The cooper mine had environmental impact on the country, brought economic benefits and social change, but on the other hand, was the cause of a conflict which lasted for about ten years from 1988 to 1998,[26] and escalated into a bloody civil war that was reported to have claimed between 15,000 – 20,000 lives out of the 45,000 indigenous inhabitants,[27]an estimate of one-eighth of the population. A peace agreement was finally signed in 1998. Before the conflict that led to a serious war, the indigenous inhabitants had lived peacefully with other foreigners and non-indigenes. The Europeans who came to the country brought about a lot of differences in lifestyle, culture, structure of the community and most especially change in the use of the land through mining operations. The community that operated a monarchical structure complained that, with the operation of the mining company, there would be nothing to pass on to the next generation.[28] The argument of the indigenes was that the mining company must pay compensation, not only to the present generation of indigenes, but also for those yet unborn. The foreign miners on the other hand, resisted and used deceit, threat, policies and judicial threat to scare the indigenes. The indigenes reacted with armed resistance and their reasons were that they wanted to protect their national identity, save themselves from foreign exploiters; their

[26] Ibid.
[27] Ibid. pg. 10
[28] Ibid. pp8

environment from chemicals used on the mines and also from the economic apartheid by the payment of low wages.[29] The conflict that erupted and the war that resulted were resolved through mediation and negotiation. A professor, an expert in mediation from Uppsala University, Sweden was contacted through a London based non-governmental organization as a neutral third party who met with both sides and facilitated face to face meeting which led to the cease fire[30] and in 2001, through the innovative mediation, a peace agreement was signed. It is important to note that after this, the ADR mechanism of good offices was used.

This ADR mechanism of mediation was later incorporated in the Constitutions of Bougainville and Papua New Guinea.[31] Bougainville is a nation that is rapidly recovering from the effects of war and also developing with a strong base.

Good Offices – An ADR Tool in Nation Building

Chapter VI of the United Nations Charter, especially Article 33, provides, that dispute resolution could be done by "**other peaceful means**." This is where Good Offices as an ADR process could presumably be introduced as one of the "other peaceful means" and it is a very important process in nation building. Good offices is a process whereby a third state or party, either on its own initiative or upon request, seeks through diplomatic means to bring the parties in a dispute to a conference table in order that they may resume direct negotiation or to agree on a method of settlement with a view to bringing an end to the existing conflict.[32] The third party providing good offices may offer extensive facilities and services to the parties in the dispute but must have limited involvement in the negotiation process.

Simply put, it is any third-party assistance, given to conflicting parties in order to help find a solution to their problems.

The Features of Good Offices- An ADR Tool

[29] Ibid pp. 99.
[30] Andy Carl & S. R. Loraine Garasu. Weaving Consensus: The Papua New Guinea – Bougainville Peace Process. Conciliation Resources in Collaboration with BICWF. London 2002. Accessed in https://www.s-r.orgdownloads/12_papaunewguina.pdf pp19
[31] Section 15 (1 Constitution) and 15(2) Bougainville
[32] Sucharitkul pp346

There are distinguishing features of the good offices' mechanism. There is no doubt that the specific and unique features, make the process receptive to disputing nations. Some of these features are discussed below:

Consensus based: This is the willingness of disputing parties to consent to the person(s) or institution(s) **offering or extending** good offices to do so.

Less Imposing: The process of good offices is less imposing and there is the absence of compulsion and the presence of gentle persuasion unlike the ADR process of arbitration or the litigation process.

Dialogue: This is deployed during the good offices process and it is based on employment of facts and not usually law.

Non-Interest in the dispute in issue by the third party or institution: The party or institution offering good services must not have any interest in the dispute

Credibility of third party/institution: In all cases where the good offices mechanism was adopted and there was a successful resolution of the disputes, one apparent feature was the credibility of the persons or institutions that extended Good Offices and also the great respect the parties to the dispute had for the persons and institutions.

Win-win status: A feature of good offices, especially in highly political cases, is the win-win status of the nations in disputes. This is a very important feature, where acceptance of the good offices mechanisms is not taken as a sign of weakness but as compromise on the part of both nations. The process of good offices therefore carries prestige.

Skills, expertise and patience: Person(s) or institution(s) extending good offices usually deploy skills and expertise and it involves a lot of patience. This is because it is not remunerated

financially like other methods, although the other benefits of improvement and enhancement of status cannot be overemphasized

Various degrees of pro-activeness: The services that may be rendered by institutions or states offering good offices vary. They include, facilitating contact between the disputing parties, advising the parties, providing facilities and services and providing specialized expertise to discussion.[33]

Issue of jurisdiction: This does **NOT** arise in the process of good offices. The jurisdiction from which the person extending good offices is from, or where the institution is based or where the negotiation will take place or the agreement is signed, does not matter in the process.

Suffice to say that the main difference between the **process of mediation** and **process of good offices** is that in mediation, the parties in conflict, submit their dispute to a third party, who facilitates negotiation, actively participates in it and is paid for the services rendered. On the other hand, in the process of good offices, the third party, brings the conflicting parties together, may provide facilities and services to enhance the dialogue, but does not participate in the negotiation. In some countries, there were some disputes which would have led to war and would have affected nation building and peace, and others that in fact resulted in war and affected nation building and peace. Some of these disputes, where the ADR process of Good Offices was adopted are discussed below.

Case Studies on Good Offices – An ADR Tool

Sierra Leone

Sierra Leone, a nation that had been seriously affected by war and torn apart, such that the country suffered setback in nation building, benefited from the good offices process in the resolution of an intra-war. The intra war broke out between the Government and the Revolution United Force (RUF) in 1997. Through the active involvement of the United States envoy, Jesse Jackson and

[33] Tamrat Samuel (2015) Good Offices Mean Taking Risk. Global Peace Operating Review. Accessed in https://peaceoperationsreview.org/interviews/good-offices-means-taking-risks

President Eyadema of Togo and the United Nations Observer Mission in Sierra Leone (UNOMSIL) using the process of good offices, that supported the meeting of the two parties to the dispute, there was negotiation and compromise that led to the signing of the Lomé Peace Agreement in July 7, 1999, and it was so named, because the negotiation and signing of the agreement took place in Lomé, Togo.

Democratic Republic of Congo

In 2008, there was an intra-conflict between the Congolese forces and the CNDP rebel group[34]in the Democratic Republic of Congo. ADR mechanism of good offices was deployed through the concerted effort and the involvement of Chief Olusegun Obasanjo, former Head of State in Nigeria, and a United Nations envoy, the conflict was resolved.

The above case studies are examples of where the ADR process of Good Offices was used to resolve conflicts that would have affected nation building. The countries in the case studies, were nations that had been affected by crisis and were just recovering and any other conflict, would have done more serious damage to the recovering economy.

Cameroon – Nigeria Maritime Boundary Dispute

The dispute arising from this conflict, first went through a long litigation process and an initial attempt at the process of good offices failed. However, at the end of a very long litigation period, the good offices process was reintroduced and was successfully used. The negative resultant effect of adopting the process of litigation in a dispute between nations was clearly shown in this case study, as the dispute was in court between 1994 and 2002.

In March 1994, Cameroon filed an application at the International Court of Justice (ICJ) instituting proceedings against Nigeria with respect to the sovereignty over the Bakassi Peninsula and requested the court to determine the course of the maritime frontier boundary between the two nations. Four years later, in March 1998, Nigeria filed preliminary objection on the jurisdiction of the ICJ. In June 1998, the ICJ gave judgment that it had jurisdiction and Nigeria then filed

[34] Adam Day and Alexandra Fong.

counterclaims. All the court processes extended till 2001. The matter was in court for eight years and at the end of the litigation process, on October 10, 2002, the court ruled that Bakassi belong to Cameroon. The aftermath of the decision of the ICJ would have ended up in war between the two countries, but for the use of the mechanism of good offices to resolve the conflict. In 2002, Equatorial Guinea, a country situated in Central West Africa, having Cameroon as one of her neighbours and sharing maritime borders with Nigeria, made an application to the ICJ to intervene in the crisis.[35] This ordinarily would have amounted to extending Good Offices to resolve the dispute. However, the reason Equatorial Guinea decided to intervene was to protect her own territory, so that she will not be affected in the dispute between Nigeria and Cameroon. This application to intervene failed because Equatorial Guinea was only trying to protect her own interest and her territory and was not trying to resolve the Cameroon – Nigeria dispute. The fact of being an interested party did not make the effort of Equatorial Guinea "to intervene" to be regarded as extending good offices. The features of good offices and the advantages, were distinctively brought out in this case study.

After the judgment was delivered by ICJ in the dispute between Nigeria and Cameroon, there were arguments that evolved among scholars. Nigeria also expressed dissatisfaction on the judgment. Suffice to say, that all the above issues arising from the case before the ICJ, would not have arisen, had it been that the dispute was initially settled, using the good offices mechanism.

However, after the judgment by ICJ, the Presidents of Nigeria and Cameroon met on November 15, 2002 in Geneva, and they requested that the UN Secretary General, who extended good offices and arranged the meeting between the two countries, should assist in constituting a commission made up of representatives of the two nations to successfully implement the decision of the ICJ. In addition, they requested the UN to assist in formulating recommendations that will foster confidence, build measures, promote joint economic ventures, cross border cooperative and oversee the removal of the troops at the border.[36] The Commission which was constituted produced the Green Tree Agreement, which was signed by the two nations. Nigeria officially ceded Bakassi

[35] Case Concerning The Land And Maritime Boundary Between Cameroon And Nigeria (Cameroon V Nigeria) (Equatorial Guinea Intervening). Accessed in https://www.icj-cij.org/file/case-related/94/8610.pdf

[36] Peter H. F. Bekker supra

to Cameroon with the signing of the agreement. The constituted commission, the production of an agreement and the signing thereof, averted a war that, would have destroyed the relationship between the government and people of the two countries.

The above ADR process of good offices no doubt accounts for the present cordial relationship between Nigeria and Cameroon. It should be noted that some nationals of Nigeria, whose identity are with their original tribes in Nigeria are now by the ICJ decision, Cameroonians by nationality, but Nigerian in identity. It is therefore important that there must be continued cordial relationship between the two nations for nation building and peace.

Good offices in the Bougainville Papua New Guinea Copper Mining Dispute

Revisiting the Bougainville Papua New Guinea copper mining dispute, discussed earlier in the paper, apart from the ADR process of mediation which later became a provision in that country's constitution; the good offices mechanism was also adopted and it proved to work effectively alongside the mediation process. Shortly before the cease fire in 1998, while the war was ongoing, the government of New Zealand offered good offices and came in to play a third-party role in 1997.

The government of New Zealand facilitated the talk between the two parties on a naval ship anchored in one of the provinces. Canada and Great Britain also offered good offices to the warring parties. Both parties agreed to the countries' extensions of good offices. New Zealand supplied transport for the parties to the venue, provided the venue on a naval ship, accommodated the representatives of the parties, provided meals and provided for group meetings. The role of the government of New Zealand was limited to facilitating the meeting but the warring parties organized their meeting and held their discussions which later resulted in the party's decision to put an end to the bloodshed of ten years and the two countries moved on, adopting other ADR mechanics to start negotiation.

Good Office in the Pakistan – India - Indus Water Treaty (IWT) Dispute [37]

India and Pakistan are two nations located in the South Western part of Asia. They were one nation before each got independence in 1947. The cause of the dispute which later resulted into a conflict was the Indus River. The Indus river flows from India, through a region called Kashir (which is a subject of dispute between the two nations) and also through Pakistan and finally into the Arabian Sea. The river system has been used for irrigation since historical times. With independence, the original one nation, split into India and Pakistan, the irrigation system split into two different countries. The headwork started in India and the canals ran through Pakistan. By 1948, India started withholding the water running into the canals going to Pakistan which was against an interim agreement between the two countries and this led to a breakdown of negotiation and all effort to resolve the conflict failed. In 1954, the World Bank, intervened using its good offices at the initiative of its former President, Eugene Black. After six years of talks, with the World Bank facilitating a resolution, the Indus Water Treaty (IWT) was signed by the two countries on September 19, 1960, and it provided for building of dams and other structures and many countries offered good services by financing the projects. The IWT is considered to be one of the most useful international treaties which has survived tension, conflicts and has subsisted for over six decades and has helped India and Pakistan in their irrigation and hydropower programmes.

In 2016, fifty-six years later, after the signing of IWT, another dispute started between the two countries on the same subject matter – the Indus Water System. The ADR process of good offices came into play again as the two countries sought the assistance of the World Bank to extend her good offices. The steps taken by the two countries highlight one of the features of the process of good offices which is that it carries prestige and does not depict any step of pursuing peace by a country as a sign of weakness.

ADR tool of Good Offices in The Malaysia – Indonesia Dispute 1963 – 1966

[37] Fact sheet: The Indus Water Treaty 1960 And The Role Of The World Bank 2018 – The World Bank. June 11, 2018. Accessed in www.worldbank.org/en/region/sa-/brief/fact-sheet-the-indus-water-treaty-1960-and-the-world-bank

The conflict between the nations of Malaysia and Indonesia started in 1963 because Indonesia opposed the formation of the Federation of Malaysia, consisting of some other nations such as Singapore. Indonesia resorted to using armed troops, carried out acts of subversion and sabotage to destabilize the new nation of Malaysia. It was reported that the conflict "was a costly venture for both countries". The economic link between both countries was severed and concentration on defence equipment strained the economies.[38] During the period of conflict, Japan, Thailand and Philippines tried to extend good offices to broker peace and arranged a conference for the two countries. The peace meeting, which held at Bangkok, Thailand in 1964 was one of the attempts.[39] In April 1966, there was another attempt to broker peace by Thailand who extended good offices by, facilitating the coming together of the two nations to a peace agreement, providing facilities for meetings, guest houses for the representatives of the parties, meeting rooms for dialogue sessions and secretarial services; visit of the Thai foreign minister to Malaysia and Indonesia to speak to the representatives of the two countries, private talks between the Thai foreign minister and both the foreign ministers of Indonesia and Malaysia and ensuring that the terms of the interim agreement were carried out. It was reported that both Malaysia and Indonesia had great respect for Thailand. Thailand also had close and cordial relationship with Indonesia. This fact brought out the importance of credibility of third party in the ADR process of good offices and the need for consensus. Thailand, is a member and at that time, the chair of Association of South East Asian Nations (ASEAN), an Association which the three disputing countries were also members of. The dispute between the two countries went on for three years from 1963 – 1966. However, the peace talk started in May 1966, a month after Thailand extended good offices to Malaysia and Indonesia. In June 1966, a month later, both nations had agreed by principle to a peace agreement. This agreement was ratified about three months later in August 1966, thereby resolving the three-year devastating conflict within three months and the agreement, was the foundation for the formation of the Association of South East Asian Nations (ASEAN) in August 1967.

[38] The Strait Times 12 august 1966. P. 1

[39] 18 Strong Teams for Bangkok (1964) the Strait Times. 4 February 1964, p. 1. Accessed in eresourcs.nlb.gov.sq/newspaper/digitised/article/straitstimes-19640204-1.2.5

The above case study is another illustration to show that ADR mechanism is very useful in nation building. The leaders of the two nations in dispute "sincerely sought agreement and found it".[40] Various statements made by the leaders of the two countries in the course of dialogue and negotiation during the good process, corroborate the nexus between the process and nation building.

The Prime Minister of Malaysia was quoted as saying "Malaysia was willing and prepared to talk peace with Indonesia".[41] He also said "confrontation has not done anybody any good".[42] The Prime Minister of Malaysia was right in making that statement. During the time of the conflict, some countries like Philippines that had economic ties with Malaysia, had severed such ties, which had negatively affected the country. In a related report,[43] it was said that, if not for the good offices provided by Thailand for the agreement of peace, it was highly impossible for the conflict between the two countries to end, neither would it have been possible for them to resume diplomatic ties. This statement was made because of the complex nature of the dispute between Malaysia and Indonesia.

The representatives of the two nations were reported to have come out of the peace meeting, happy and ready to resume diplomatic ties. The head of the Malaysian delegation was quoted as saying "Malaysia now looks forward to an era of peace and friendly relations with Indonesia."[44] At one of the preparatory meetings to the peace talks, the foreign minister of Indonesia was quoted thus "the door is open for a peaceful settlement".[45] In another statement, he said "my personal opinion is that you cannot use force to settle a dispute".[46] The two statements are confirmation of the fact that in the resolution of disputes, the parties must be willing to settle and gentle persuasion and not compulsion, which are the features of the process of good offices are essential.

[40] "A Peace Pact (1966) The Straits Times 2 June 1966 p. 8. Accessed in eresources.nlb.gov.sg/newspaper/digitised/article/straitstimes/19660501-1.2.2

[41] Willing to Talk Peace – If They Want To (1966). The Straits Times 1 May, 1966. P.1. accessed in eresources.alb.gov.sg/newspaper/digitised/article/straitstimes19660501-1.2.2

[42] Ibid.

[43] A Peace Pact 1966 Supra.

[44] A Peace pact 1966. The straits times

[45] The first step to a settlement 1966. The strait times. 1 May 1966. P. 1. Accessed in eresources.alb.gov.sg/newspaper/digitised/article/straitstimes/19660501-1.2.3

[46] Supra.

The Indonesian foreign minister further said "there is no need for preconditions to peace talk, given honest and genuine desire to settle the dispute on both sides".[47] He added that "in fact, you only need honesty and a genuine desire to come to a conference table".[48] The different statements made by the heads of Malaysia and Indonesia in the above case study, provide a blue print for resolution of disputes. It is submitted that these statements are a confirmation that, nation building and peace can be achieved through ADR mechanisms of good offices. According to reports, at the end of the signing of the peace agreement between the two countries, some significant events happened, which should be mentioned in this discourse. The foreign minister of Malaysia and Indonesia got into the vehicle of the Indonesian prime minister, which had the flag of Indonesia and drove to the residence of the prime minister of Thailand who was the person that facilitated the peace agreement. The visit was to "thank" him for extending his "good offices" and the "peace effort".[49] It was further reported that they had a "good luck drink" together[50] and they drove back to their respective guest houses where they had been lodged, courtesy of Thailand. The Thailand prime minister was reported to have said "it is nice to see my friends shaking hands again."[51] It is submitted that the actions of the two leaders as reported above, could not have taken place if they had gone through the litigation process. Hence the popular saying that two people do not return from the court and still be friends. It is further submitted that the process of good offices adopted in resolving the dispute, resulted in a win-win situation which enhance relationship and ties necessary for nation building.

It is vital in this paper to know how these countries have been faring. There has been "knotty issues" between the two countries especially with regard to maritime boundary issues. These issues are being resolved through consultation and dialogue. [52] Both countries have learnt that

[47] Malik : the first step to a settlement 1966 (supra)
[48] Malik : the first step to a settlement
[49] Abisheganaden Felix (1966). "It's Peace: Pact Signed" The Straits Times2 June 1966 p. 1. Accessed in eresources.alb.gov.sg/newspaper/digitised/article/straitstimes/19660602-1.2.4
[50] Ibid.
[51] Ibid.
[52] Prashanth Parameswaran (2016) Indonesia, Malaysia Pledge to Solve Maritime Dispute (Again). The Diplomat August 03, 2016. Accessed In https://thediplomat.com/2016/08/indonesia-malaysia-pledge-to-solve-maritime-dispute-again/

"confrontation has not done anybody any good".[53] The fact that there are still knotty issues between the countries buttresses the fact earlier alluded to in this paper that conflicts are inevitable. It is submitted that it is the way it is handled that matters. Reports still show that between Malaysia and Indonesia, "despite some disagreements and disputes, they continue to manage".[54]

Conclusion

The discussion in this paper should not be construed only from a myopic context of the scope of its application, but should be seen to apply to a wider perspective and to everyday realities. The field of ADR is not limited to the known processes of arbitration, mediation and negotiation; neither do the good offices mechanism, discussed in this paper say it all. The field of ADR will keep on expanding and lawyers, who are known to be change agents, should be stimulated and innovative enough, to apply existing techniques to all issues, be it domestic, national, personal or professional. More so, new techniques should be created to deal with disputes.

The role of lawyers in the Good Offices process is not by any means restricted to only the disputes at the international level or involving multinational companies. It is submitted that it can be creatively adopted and applied in many types of disputes or cases handled on regular basis.

Nation building is a very important project that requires the services of many actors to achieve. These actors, perform different roles and carry out different actions. The actors must pursue vigorously and work towards achieving and actualizing the project. Nation building includes so many elements including the rule of law, which is very significant. This is where the members of the legal profession especially, and different stakeholders, as actors in nation building, must all rise up, and adopt and embrace alternative dispute resolution mechanisms, where parties can reach a consensus in resolving their disputes before it escalates. This is important because nation building after conflict, remains the most complex undertakings that can be embarked upon. It is therefore important to resolve conflict as amicably as possible to reduce to the barest minimum (as much as possible) the devastating consequences.

[53] Willing to Talk Peace – If they want to. (1996). The Straits Times supra.
[54] Prashanth Parameswaran (2018) Malaysia- Indonesia Relations in Spotlight with Bilateral Meetings. The Diplomat. July 27, 2018. https://thediplomat.com/2018/07-malaysia-indonesia-relations-in-the-spotlight-with-bilateral-meeting/

Papua New Guinea is an example cited by the World Bank, where the ADR mechanism adopted by the government was of great significance in nation building. The World Bank in a report, had once ranked the country as one of the less attractive places in the world to do business. However, in the year 2000, the judiciary of the country introduced the use of ADR in the legal system, with emphasis on mediation, to address the unattractive business prospect in the country and this was also targeted at helping businesses resolve their disputes speedily.[55] The effect has been tremendous on the country and has greatly improved investment, which has impacted on employment, standard of living and nation building. The appreciable improvement in the ranking of Papua New Guinea by the World Bank, after the introduction of the ADR mechanisms, is evidence that ADR is a tool for nation building.

There is no doubt that there are other determinants to successful nation building. However, peaceful settlement in form of ADR, in dealing with disputes, can contribute to nation building.

[55] Ibid.