An analysis on compliance of the International Court of Justice’s (ICJ) judgements in contentious cases and recommendations to increase state compliance

Abstract:
The International Court of Justice (ICJ) often gets criticised due to its ineffectiveness as it has no means to enforce its judgements due to a lack of an executive body assisting the Court. Nevertheless, by analysing the judgements issued by the ICJ, the different cases settled by the Court, and the current docket of cases, it would be ill-advised to indicate that the Court is ineffective. Despite this, the Court does face many restrictions and challenges such as political and economic factors that may restrict its powers and resources under the UN Charter and the ICJ Statute. This article acknowledges these challenges and draws recommendations after analysing the reasons behind why some states complied with judgements while others do not. The current case docket of the Court substantiates that the Court is the main interpreter and developer of international law and certain factors could increase state compliance with its judgements in the long run.

Key words: International Court of Justice, state compliance, enforcement, recommendations, ICJ, court judgements.

I. Introduction

This journal article discusses and analyses the factors why some states comply with ICJ judgements while other states do not. These factors could include international or domestic pressure, traditional and cultural norms, existence of special agreements, or to uphold a state’s territorial integrity. In some cases, it is not clear whether a state did comply with a judgement or not. After analysing the factors behind compliance and non-compliance of some verdicts, this article then draws points of recommendations that intend to increase the percentage of compliance to ICJ judgements while simultaneously acknowledging the challenges of sovereign autonomy against international court supremacy. This article does not analyse the reasons leading to the ICJ decision but rather focuses on the judgement that was issued by the Court and whether the losing party complied with and enforced it in accordance with its obligations under the UN Charter.

II. The law that grants the ICJ powers to enforce a verdict

The UN Charter and the ICJ Statute is the legal authority that gives the ICJ jurisdiction to enforce and implement its judgements. Article 60 indicates that the “judgement is final and without appeal.” Under Article 61 of the Statute, the judgement can only be revisited if new decisive facts appear that were previously not known to the Court or to the party requesting a revision of the judgement. Finally, Article 94(1) of the UN Charter ensures that each member state to the Charter “undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.” Furthermore, Article 94(2) indicates that if a party...
“fails to perform its obligations” under an ICJ judgement, then “the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.”

Compliance for the purposes of this article means state compliance with the final judgements issued by the ICJ which ensures acceptance of the judgement as final and binding; therefore, reasonably performing the judgement in good faith.¹

III. A) Case law that was not complied with

Despite the laws that ensure enforceability of judgements issued by the ICJ, there have been instances where states have not complied with the ICJ’s judgement. Certain scholars are sceptic as to the ability of the ICJ to function as a true world court when it is unable to ensure that its verdicts are being enforced.² These critics refer to the Court as a “toothless bulldog”³ with no true powers when it comes to ensuring compliance with its verdicts.⁴ Furthermore, it is often hard to determine whether there has been compliance to an ICJ judgement due to a shift in the legal or political situation of a case.⁵ Another reason would be that states may comply with a judgement years after it has been delivered.⁶ Below is an analysis of the verdicts that were not complied with or took too long to be enforced.

1- Mexico v. United States (The Avena case of 2001)

Before discussing the Avena case, it is important to briefly introduce the LaGrand Case⁷ for analysis and recommendation purposes in below sections. In 1999, the Federal Republic of Germany instituted proceedings before the ICJ alleging that the US violated the Vienna Convention on Consular Relations (VCCR) by trying and sentencing two German nationals to death without informing them of their rights as per the VCCR.⁸ The Court issued a provisional measure ordering the US to “take all measures at its disposal to ensure that Walter LaGrand was not executed pending the final decision” in the case.⁹ The US defied the order and executed LaGrand, which enacted the ICJ, for the first time, to declare that the Court’s orders for provisional measures are binding.¹⁰

³ Ajibola B, “Compliance with Judgments of the International Court of Justice”, in M. Butlaman and M. Kuijer (eds), Compliance with Judgments of International Courts (1996), at 11
⁴ Ibid.
⁶ Ibid.
⁷ LaGrand (Germany v. United States of America), Judgement of 27 June 2001 found at https://www.icj-cij.org/sites/default/files/case-related/104/104-20010627-JUD-01-00-EN.pdf
⁸ Ibid. p.8
⁹ Ibid. p.54
¹⁰ Ibid. and see Llamzon A, “Jurisdiction and Compliance in Recent Decisions of the International Court of Justice” (2008) 18 European Journal of International Law 815 and see Cassel D,
In the Avena Case of 2003, Mexico brought a case before the ICJ against the US claiming that the US violated Articles 5 and 36 of the VCCR by sentencing 54 Mexican nationals to death in different states across the US. In order to ensure that none of the nationals were executed, Mexico requested the Court to order the US to not execute any of the nationals. In February of 2003, the Court issued an order for provisional measures granting that request and, unlike in the LaGrand case, the US complied with the order. The Court issued its final verdict that the US violated its obligations under Article 36 of the VCCR by not providing consular information to the detainees nor permitting Mexican consular officers to communicate, visit, or arrange legal representation of their nationals. The US therefore ordered the US to provide “review and reconsideration of the convictions and sentences of the Mexican nationals.”

After LaGrand, the US government initiated programs to ensure compliance by developing understanding and ensuring proper observance of the VCCR, as US officials feared the other countries would apply the principal of proportionality and violate the consular rights of detained US citizens abroad. In the Avena judgement, the ICJ approved of the adequacy of the programs initiated by the US. In February of 2005, the then president of the US, George W. Bush, wrote a memorandum to the Attorney General to inform him of the executive branch’s decision to ensure that the US will discharge its obligations under international law and that domestic courts should abide by the decision in the Avena case. Although the president’s memorandum initially had a positive impact on the US Supreme Court (SCOTUS), a change in the judicial bench of the SCOTUS challenged the interpretation of the Avena case. In the Sanchez-Llamas case, the SCOTUS rejected the ICJ’s view that defendants in criminal cases can, under the VCCR, suppress evidence brought against them in trial or challenge them post-conviction. Although the dissenting opinion acknowledged that ICJ opinions should be considered by the court, it indicated that such decisions merely act as a persuasive precedent rather than a binding one. This substantiates that since the ICJ judgements have no binding precedent on US courts, the courts can reject the ICJ’s

13 Request for the Indication of Provisional Measures, Order of 5 February 2003
15 Judgement of 31 March 2004 p.63-65
16 Ibid.
18 Para 150
21 Ibid.
23 Ibid.
24 Ibid.
interpretation on a point of law if it opposes the US courts’ legal stance.\textsuperscript{25} In addition to this, the Texas Court of Appeal did not abide by President Bush’s memorandum in the Medellin case and refused reconsideration proceedings.\textsuperscript{26} Due to this, the Bush administration joined the case on behalf of the defendant, Mr Jose Ernesto Medellin, and pleaded to the Court of Appeal that if the decision is not reversed, it “will place the United States in breach of its international law obligation”.\textsuperscript{27} The Court of Appeal rejected the administration’s claims and ruled in favour of Texas.\textsuperscript{28} Upon appeal, SCOTUS delivered a verdict upholding the lower court’s decision by finding that the ICJ’s verdict is not binding on US courts.\textsuperscript{29} The SCOTUS upheld the principal that the treaty needs to be implemented by laws issued by Congress or be self-executing in order for it to be biding rather than being unilaterally enforced by the President.\textsuperscript{30}

Moreover, the US has also officially withdrawn from the Optional Protocol to the VCCR concerning the Compulsory Settlement of Disputes, in March of 2005\textsuperscript{31} and have still not rejoined.\textsuperscript{32}

The act of withdrawing from the Optional Protocol substantiates a shift in the policy of the US as the US was a strong supporter of the compulsory dispute settlement proponent in violations of the VCCR.\textsuperscript{33} By withdrawing, the US is seen as taking a unilateral approach against international law as a reaction to the ICJ verdict in the Avena and LaGrand cases.\textsuperscript{34} US State Department Spokesperson Darla Jordan explained that the ICJ interpreted the VCCR “in ways that we had not anticipated that involved state criminal prosecutions and the death penalty, effectively asking the court to supervise our domestic criminal system” and withdrawal from the Protocol was to protect the US “against future International Court of Justice judgments that might similarly interpret the consular convention or disrupt our domestic criminal system in ways we did not anticipate when we joined the convention”\textsuperscript{35} hence protection from future consular lawsuits.\textsuperscript{36} The case resulted in a clash between the US and the World Court on a point of law, and showed that US domestic courts will not abide by

\textsuperscript{26} Medellín v. Texas, 552 U.S. 491 (2008)
\textsuperscript{27} Greenhouse L of the New York Times “Supreme Court to Hear Appeal of Mexican Death Row Inmate” on 1 May 2007 found at https://www.nytimes.com/2007/05/01/washington/01court.html
\textsuperscript{28} Medellín v. Texas, 552 U.S. 491 (2008)
\textsuperscript{29} Ibid.
\textsuperscript{30} Ibid.
\textsuperscript{33} Quigley J, “The United States’ withdrawal from International Court of Justice Jurisdiction in Consular Cases: Reasons and Consequences” (2009) 19 Duke Journal of International and Comparative Law 263
\textsuperscript{34} Ibid.
\textsuperscript{35} Charles Lane of NBC News “U.S. quits pact used in capital cases” on 10 March 2005 found at https://www.nbcnews.com/id/wbna7145218
\textsuperscript{36} Quigley J, “The United States’ withdrawal from International Court of Justice Jurisdiction in Consular Cases: Reasons and Consequences” (2009) 19 Duke Journal of International and Comparative Law 263
the ICJ’s interpretations if it differs from the interpretation of the domestic courts, despite the executive branch’s support of the ICJ’s decision.

2- **Australia v. Japan (Whaling in the Antarctic case of 2014)**

In 2010, Australia filed a claim against Japan before the ICJ claiming that Japan is pursuing a large-scale whaling program under the Second Phase of its Japanese Whale Research Program under Special Permit in the Antarctic (JARPA) II, which breaches Japan’s obligations under the International Convention for the Regulation of Whaling (ICRW). The Court found that it had compulsory jurisdiction over the dispute despite Japan contesting it. The ICRW permits member states to grant permits that allows a member state to kill and take whales for the purposes of scientific research. The Court decided, based on the evidence presented, that Japan did not substantiate that the permits to kill and take whales were for “purposes of scientific research”. The Court then ordered Japan to revoke any grants or permits that permits the killing or taking of whales, and to refrain from granting any permits under Article 8 of the ICRW.

The Court in this case used the standard of reasonableness approach that examines the rationality and justifiability of a decision, in an attempt to protect the marine environment by limiting and controlling the environmental damage caused by humans. Despite this, soon after the verdict, Japan proposed a New Scientific Whale Research Program in the Antarctic Ocean (NEWREP-A) that targets the lethal sampling of whales. NEWREP-A is a similar program to JARPA II as Japan planned to hunt 333 Menke whales annually under the NEWREP-A 2015. This potentially violates Japan’s obligations under the judgement of the ICJ as the proposed research program similar problems to JARPA II which the Court intended to stop. Following the Courts decision, the International Whaling Commission (IWC) announced that its Scientific Committee would review proposals for scientific research to ensure compliance with the Court’s verdict. Therefore, the Scientific Committee found that

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38 Ibid. p-17-24

39 Article 8 of the ICRW, found at [https://archive.iwc.int/pages/download.php?direct=1&noattach=true&ref=3607&ext=pdf&amp;K=](https://archive.iwc.int/pages/download.php?direct=1&noattach=true&ref=3607&ext=pdf&amp;K=)

40 Judgement of 31 March 2014, p.76-78

41 Ibid.


45 Ibid. at p.18

46 Ibid.


Electronic copy available at: https://ssrn.com/abstract=4778823
Japan did not substantiate the need for lethal sampling of whales under NEWREP-A.\(^ {48} \) Despite the Committee’s findings, Japan still proceeded with NEWREP-A in the Southern Ocean.\(^ {49} \) In 2018, the Committee reviewed the merits of the program and determined that lethal sampling did not reach the threshold of “sufficient scientific evidence” and requested Japan to take remedial action.\(^ {50} \) In the same year, Japan withdrew from the IWC, defying a court’s judgement, international shaming, and unyielding pressure.\(^ {51} \) Despite Japan’s respect to internationally legally binding rules, it remained in the IWC after 1986 in order to revoke a moratorium on commercial whaling.\(^ {52} \) The ICJ decision made it clear, in Japan’s perspective, that the IWC would not lift the moratorium; hence, the decision was made to leave when the Japanese government were confident that the Trump administration would not impose sanctions as a result of leaving an international organisation.\(^ {53} \) In 2019, Japan resumed commercial whaling\(^ {54} \) as whaling in Japanese water is historically, traditionally, and economically significant to the local population and local fishermen.\(^ {55} \) Similar to the US in the Avalon case, Japan withdrew from an international agreement, as the Court’s interpretation of the treaty did not align with Japan’s interpretations and customary traditions of commercial whaling.

3. **India v. Pakistan (The Jadhav case of 2019)**

In 2017, India instituted proceedings against Pakistan before the ICJ disputing that Pakistan violated the rights of Mr. Kulbhushan Jadhav, an Indian national, found in the Vienna Convention on Consular Relations (VCCR).\(^ {56} \) India claimed that Pakistan detained, tried, and sentenced Mr. Jadhav to death without informing him of his rights, notifying the Indian Consulate, or allowing the Consulate to provide him with legal representation.\(^ {57} \) India therefore requested that the conviction be quashed and that Mr. Jadhav be returned to India.\(^ {58} \) Pakistan argued that Mr. Jadhav was accused of terrorism and espionage, and Pakistan did not notify the Indian Consulate three weeks after his arrest.\(^ {59} \) The Court found that Pakistan were


\(^{49}\) Ibid.

\(^{50}\) Ibid.


\(^{53}\) Ibid. p.17-19


\(^{56}\) Judgement of 17 July 2019 found at https://icj-cij.org/sites/default/files/case-related/168/168-20190717-IUD-01-00-EN.pdf

\(^{57}\) Ibid. at p.35

\(^{58}\) Ibid. at p.38

\(^{59}\) Ibid. at p.22-28
obliged to notify the Indian Consulate “without delay”; thus, violating its obligations under Article 36 of the VCCR.\textsuperscript{60} The Court then ordered Pakistan to “provide (…) effective review and reconsideration of the conviction and sentence” of Mr Jadhav.\textsuperscript{61} 

Unlike the US in LaGrand, Pakistan abided by the provisional measure to not execute Mr Jadhav before a final verdict in the case is issued.\textsuperscript{62} After the final verdict was delivered, both countries hailed the judgement as a victory.\textsuperscript{63} 

To know whether Pakistan has complied with the verdict or not depends on whether the source is Pakistani or Indian affiliated.\textsuperscript{64} Pakistani News claim that Pakistan provided Mr Jadhav with the consular access in accordance with international law, and allowed family visits.\textsuperscript{65} On the other hand, India requested to meet Mr Jadhav with “unimpeded” access without the fear of “intimidation and reprisals” or fear that their private conversation could be recorded via electronic surveillance.\textsuperscript{66} Furthermore in November 2021, Pakistan passed a bill\textsuperscript{67} to give effect to the ICJ judgement which allows foreign nationals the right to appeal to Pakistani High Courts.\textsuperscript{68} Nevertheless, India believes the bill is not enough as a Pakistani municipal court does not have the professional intuition to determine whether a state has abided by its international obligations, and this would appear as a review of the ICJ’s judgement.\textsuperscript{69} At the time of writing,\textsuperscript{70} Mr Jadhav is still alive, and Indian outlets have indicated that Pakistani officials are insinuating that the bill that was passed does not apply to Mr Jadhav.\textsuperscript{71}
4- Somalia v. Kenya (Maritime Delimitation in the Indian Ocean case of 2021)

In 2014, Somalia filed a claim against Kenya before the ICJ regarding a maritime delimitation dispute to divide the maritime areas between them in the Indian Ocean.\(^{72}\) Kenya disputed the jurisdiction of the Court and did not attend the hearings on the merits of the case.\(^{73}\) The Court delivered its verdict that it had jurisdiction and there was no “agreed maritime boundary” between Kenya and Somalia.\(^{74}\) The Court thus established the starting point of the boundary and from the median line of the starting point, it established the territorial sea, Exclusive Economic Zone (EEZ), and continental shelf.\(^{75}\) As a reaction to the Judgement, the Kenyan president announced that Kenya rejects the ICJ’s decision and does not recognise it as binding.\(^{76}\) Kenya indicated that it will protect its territorial integrity as it will not abide by the ICJ decision, which transcends the consent and sovereignty of Kenya.\(^{77}\)

Although the Judgement is in alignment with previous international precedents, it could be seen as based on outdated statistics, surveys, and nautical charts rather than a reflection of the physical reality.\(^{78}\) With Kenya’s explicit disapproval and the ICJ’s inability to enforce the decision, further disagreements would arise between the two countries,\(^{79}\) especially that the Judgement poses regional and international implications and challenges.\(^{80}\) Such challenges include the straining of diplomatic relations between Kenya and Somalia, security problems arising from Al Shabab’s group rising presence, and economic implications due to the natural resources in the disputed area.\(^{81}\)

5- DRC v. Uganda (Armed Activities in Congo of 2022)

In 1999, the Democratic Republic of the Congo (DRC) initiated proceedings against Uganda for armed aggression committed in violation of the UN Charter of the Organization of African Unity.\(^{82}\) After 21 years of failed negotiations, arranging expert opinions, and hearings, the Court issued its judgement ordering Uganda to pay US$325,000,000 for

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\(^{73}\) *Ibid.* p.11-13

\(^{74}\) *Ibid.* p.81

\(^{75}\) *Ibid.* p.82

\(^{76}\) The Maritime Executive “Standoff as Kenya Rejects ICJ Ruling on Maritime Dispute” on 14 October 2021 found at https://maritime-executive.com/article/standoff-as-kenya-rejects-icj-ruling-on-maritime-dispute

\(^{77}\) *Ibid.*


\(^{79}\) *Ibid.*


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Electronic copy available at: https://ssrn.com/abstract=4778823
damages to persons, property, and natural resources.\textsuperscript{83} The Court decided that the amount is to be paid in five annual instalments starting on 01 September 2022.\textsuperscript{84} In the Judgement, the ICJ encouraged the funds to be distributed to victims in the DRC and to adopt measures that will benefit the community.\textsuperscript{85}

Although Uganda stated that the verdict was “wrong and unfair” when it was issued,\textsuperscript{86} it still paid the first instalment of US$65,000,000 in September 2022, which the DRC confirmed receipt of.\textsuperscript{87} Nevertheless for the second instalment, the World Bank has announced sanctions against Uganda which would hinder the ability to pay their dues.\textsuperscript{88} As a potential alternative to paying the annual instalments, Uganda is repairing roads and infrastructure in the DRC which would help in the fight against rebel groups.\textsuperscript{89} Whether this complies with the ICJ decision cannot be easily determined as it is unclear whether the DRC government will essentially use the funds for victims and the community as a whole, or other purposes\textsuperscript{90} as it will not be clear if the victims are being or will be satisfactorily compensated.\textsuperscript{91}

6- \textbf{Cameroon v. Nigeria (Land and Maritime Boundary case of 2002)}

This case is on the middle ground between the cases that were complied with and those that were not, as it started as a non-compliance case, but Nigeria later complied. In the Land and Maritime Boundary (Cameroon v. Nigeria: Equatorial Guinea intervening), there was a dispute concerning control of the Bakassi Peninsula and Lake Chad Basin.\textsuperscript{92} After failed attempts of negotiations, Cameroon filed the case with the ICJ in 1994.\textsuperscript{93} Nevertheless, armed conflict between the two countries continued after the case was filed.\textsuperscript{94} The ICJ delivered its verdict awarding the Lake Chad boundary, the Bakassi Peninsula, and most of the boundary between Lake Chad and Bakassi to Cameroon.\textsuperscript{95} The Court also requested both countries to

\begin{itemize}
\item \textsuperscript{83} \textit{Ibid.} p.128-130
\item \textsuperscript{84} \textit{Ibid.} p.129
\item \textsuperscript{85} \textit{Ibid.} p.128
\item \textsuperscript{86} Elias Biryabarema of Reuters “Uganda says ICJ ruling awarding DR Congo reparations is unfair” on 10 February 2022 found at https://www.reuters.com/world/africa/uganda-says-icj-ruling-awarding-dr-congo-325-mln-reparations-unfair-wrong-2022-02-10/
\item \textsuperscript{87} Reuters “Uganda says paid first instalment in Congo war reparations” on 12 September 2022 found at https://www.reuters.com/world/africa/uganda-says-paid-first-instalment-congo-war-reparations-2022-09-12/
\item \textsuperscript{88} Alliance for Finance Monitoring “Payment of reparations to DRC falls due amid World Bank sanctions” on 17 August 2023 found at https://acfin.org/7373-2/
\item \textsuperscript{89} Dhaka Tribune “Congo and Uganda: Will new roads serve as war compensation?” on 04 September 2023 found at https://www.dhakatribune.com/world/africa/324427/congo-and-uganda-will-new-roads-serve-as-war
\item \textsuperscript{90} Alliance for Finance Monitoring “Payment of reparations to DRC falls due amid World Bank sanctions” on 17 August 2023 found at https://acfin.org/7373-2/
\item \textsuperscript{91} Karimi S, “Reparation of Moral Damages in International Law with Emphasis on ICJ’s Judgment in Congo v. Uganda Case (2022)” (2023) 40 International Law Review 117
\item \textsuperscript{92} ICJ Judgement of 10 October 2002, p.17-20 found at https://www.icj-cij.org/sites/default/files/case-related/94/094-20020100-JUD-01-00-EN.pdf
\item \textsuperscript{93} Application Instituting Proceedings filed on 29 March 1994 found at https://www.icj-cij.org/sites/default/files/case-related/94/7201.pdf
\item \textsuperscript{94} Oral Proceedings, Verbatim Record 1996/2 of 5 March 1996 on p.34 and p.89 found at https://www.icj-cij.org/sites/default/files/case-related/94/094-19960305-ORA-01-00-BI.pdf
\item \textsuperscript{95} ICJ Judgement of 10 October 2002, p.155-159 found at https://www.icj-cij.org/sites/default/files/case-related/94/094-20021010-JUD-01-00-EN.pdf and Paulson C,
withdraw their police, military, and administration “expeditiously and without condition” from the disputed areas. In response to the ICJ verdict, Nigeria issued a statement in 2002 indicating that the “Government wishes to assure Nigerians of its constitutional commitment to protect its citizenry. On no account will Nigeria abandon her people and their interests. For Nigeria, it is not a matter of oil or natural resources on land or in coastal waters; it is a matter of the welfare and well-being of her people on their land. We assure the people of Bakassi and all other communities similarly affected by the judgement of the International Court of Justice on the support and solidarity of all other Nigerians. Nigeria will do everything possible to maintain peace in Bakassi or any other part of the border with Cameroon and will continue to avail itself of the good office of the Secretary-General of the United Nation and other well meaning leaders of the International community to achieve peace and to maintain harmony and good neighborliness.”

Despite this statement, relations between the two countries have improved since the verdict and Cameroon gained control of the areas around Lake Chad as Nigeria started withdrawing its troops from the area. This has mainly been due to interventions by Britain and the UN. In 2012, Nigeria indicated that it will not appeal the ICJ judgement, but it is still determined to protect the interests of its citizens in the Bakassi peninsula including further negotiations to buying the territory.

Close analysis of the case and actions of the two countries show that Nigeria initially refused to comply with the ICJ judgement. Nonetheless, the UN Secretary-General engaged with both countries in 2002 in Paris to ensure that Nigeria and Cameroon comply with the judgement. Further, the UN Secretary General engaged with President Paul Biya of Cameroon and President Olusegun Obasanjo of Nigeria in Geneva to ensure that both parties respect their international obligations under the UN Charter. The Secretary-General further met with representatives of the two countries to identify measures, actions, and issues that need to be addressed to ensure both parties respect the ICJ judgement. The Secretary-General then announced that a Mixed Commission of both countries will be chaired by a Special Envoy to follow implementation of the ICJ verdict and its recommendations. It was announced that the “mixed commission will consider all the implications of the decision.”

This analysis shows that, in this case, the UN had to intervene as a third party and use its

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96 Ibid. at p.7
97 Ariye E, “Nigeria, Cameroon and the Bakassi Territorial Dispute Settlement: The Triumph of Bilateralism” Journal of Advance Public Policy and International Affairs
99 Ariye E, “Nigeria, Cameroon and the Bakassi Territorial Dispute Settlement: The Triumph of Bilateralism” Journal of Advance Public Policy and International Affairs
100 Ibid.
101 Dr Austin Ejaife, ‘Bakassi Gone to Cameroon: We won’t appeal ICJ’s Judgement (9 Oct 2012) found at https://ejaife.wordpress.com/2012/10/09/bakassi-gone-to-cameroon-we-wont-appeal-icjs-judgment-fg/
103 Ibid at p.41
104 Ibid.
106 Ibid.
good offices to ensure mutual respect of the ICJ decision. Employing diplomatic mechanisms eventually ensured that Nigeria, which formally announced its decision to not abide by the ICJ judgement, eventually abided by the recommendations and orders of the ICJ.

III. B) Compliance Cases:

7- Canada v. United States (Gulf of Maine case of 1984)

On 25 November 1981, Canada and the US referred to the Court the question of delimitation of a maritime boundary in the Gulf of Maine area. Negotiation did not settle the dispute between both countries as the method of delimitation each country intended to apply would not have provided an equitable solution to the two parties. The parties proposed a delimitation line based on a special agreement between the two countries. The Court rejected the proposals suggested by the parties and instead applied an equitable criteria and used geometrical method for the seabed delimitation and superjacent waters. Therefore, the ICJ delivered an equitable approach to both parties by establishing combined methods that addressed adjacent and opposite situations in bay and gulf areas. The decision resulted in the boundary in the Gulf of Maine to be fixed. Although the judgement left unanswered questions related to the development of international law, the parties complied with the verdict as “the result is equitable.”

In addition to it being an equitable judgement that resulted in shared economic and renewable living resources, the US and Canada have agreed, beforehand, that they will abide by the verdict regardless of its outcome. Article 7 of the Special Agreement indicates that “the decision of the Chamber shall be final and binding upon the Parties.” Hence, a pre-existing agreement between the parties of a contentious case at the ICJ will likely ensure that the parties to the case will comply with the outcome reached by the Court and its judgement.

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107 Ariye E, “Nigeria, Cameroon and the Bakassi Territorial Dispute Settlement: The Triumph of Bilateralism” Journal of Advance Public Policy and International Affairs
110 Ibid. p.10-13
112 Judgement, p.84-87
113 Ibid.
115 Ibid.
118 Ibid.
8- **Qatar v. Bahrain (Maritime Delimitation and Territorial Questions of 2001)**

In 1991, Qatar filed a claim against Bahrain before the ICJ disputing sovereignty over the shoals of Dibal and Qit’at Jaradah, and the Hawar Island after negotiations were unsuccessful. Bahrain contested the ICJ’s jurisdiction and preferred that the matter be solved via regional mediation. The ICJ delivered its verdict awarding Bahrain the Hawar Island while awarding Qatar a fair share of the maritime portion of the dispute. Both countries celebrated the judgement as fair, and agreed to abide by it as they started reallocating gas and oil rights in alignment with the judgement.

Nevertheless, closer analysis of the judgement shows that the ICJ derailed from the rule applied to previous territorial sea delimitation cases that used the "median/equidistance line", which was only departed from in uncustomary circumstances and applied the rule more commonly used in previous cases involving issues related to the continental shelf and the EEZ, which is that of the "equidistance/special circumstances" rule. The Court explained that the most logical and widely practised approach is first to draw provisionally an equidistance line and then to consider whether that line must be adjusted in the light of the existence of special circumstances. The Court neglected the less important physical characterisations of the geographical situation and focused on settling the mineral resources and oil that was at stake for both countries. This equitable approach, which defers from previous precedents, is welcomed in the circumstances where an equitable result needs to be achieved. This is true especially when the historical attachment to the territory is non-existent, but the economic loss would be detrimental to either party.

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120 Maritime Delimitation and Territorial Questions between Qatar and Bahrain, ICJ Judgement of 16 March 2001, p.8-12 found at [https://www.icj-cij.org/sites/default/files/case-related/87/087-20010316-JUD-01-00-EN.pdf](https://www.icj-cij.org/sites/default/files/case-related/87/087-20010316-JUD-01-00-EN.pdf)


122 Maritime Delimitation and Territorial Questions between Qatar and Bahrain, ICJ Judgement on Jurisdiction and Admissibility of 01 July 1994, p.7-9 found at [https://www.icj-cij.org/sites/default/files/case-related/87/087-19940701-JUD-01-00-EN.pdf](https://www.icj-cij.org/sites/default/files/case-related/87/087-19940701-JUD-01-00-EN.pdf)

123 Judgement of 16 March 2001, p.60

124 Ibid.


126 Swiss Info “ICJ Judgement: Qatar and Bahrain” on 17 March 2001 found at [SWI swissinfo.ch](https://www.swissinfo.ch)


129 Ibid.

130 Judgement of 16 March 2001, p.58 para.176

131 Evans M, “Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain)” (2002) 51 The International and Comparative Law Quarterly 709

132 Tanaka Y, “Reflections on Maritime Delimitation in the Qatar/Bahrain Case” (2003) 52 The International and Comparative Law Quarterly 53

133 Wiegand K, “Bahrain, Qatar, and the Hawar Islands: Resolution of a Gulf Territorial Dispute” (2012) 66 Middle East Journal 79
The result is that Bahrain accepted and complied with the decision, despite formerly expressing its intention that it will not comply with it as the Court’s decision infringes Bahrain’s constitutional rights. This could be seen as an implicit reiteration of the advice of Sir Robert Jennings who indicated that the Court could give “less emphasis to the law-developing function of the Court and rather more to its task of the effective and correct disposal of the particular case before it.”


On 11 April 2000, Belgium issued an arrest warrant for the Congolese minister of foreign affairs, Abdoulaye Ndombasi, for war crimes and “serious violations of international humanitarian law.” On 17 October 2000, the Democratic Republic of Congo (DRC) filed a case at the ICJ claiming that the arrest warrant violated customary international law as foreign ministers enjoy absolute immunity against criminal proceedings. Belgium disputed the jurisdiction of the ICJ, argued against admissibility of the case, and requested its dismissal on the merits. Nevertheless, the Court issued its verdict that the Minister did in fact enjoy immunity from criminal prosecution due to his position in the government as minister of foreign affairs. The Court found that Belgium violated its rights owed towards the DRC and requested that Belgium “must (…) cancel the arrest warrant” and inform other states’ authorities about its cancellation. Belgium complied with the ruling and did not arrest nor prosecute Ndombasi.

Closer analysis of the case shows that at the time, Belgium had initiated criminal proceedings, under the principle of universal jurisdiction, against four other heads of states including that of the Ivory Coast, Cuba, Palestine, and Iraq. The ruling of the Court was a conservative one as it was protecting the sovereign right of states under international law. The Court endeavoured to prevent states from arbitrarily exercising universal criminal jurisdiction on crimes against humanity as there is no “sufficient clarity” in private international law that address these grave violations, therefore being a politically

134 Swiss Info news “ICJ Judgement: Qatar and Bahrain” on 17 March 2001 found at SWI swissinfo.ch
135 Albayyan news “The merits of the international rule of justice in the dispute between Qatar and Bahrain, historical sovereignty and confessions of the population settled (dialogue) for Bahrain” on 18 March 2001 found at https://www.albayan.ae/one-world/2001-03-18-1.1171656
138 Ibid. p.9
139 Ibid.
140 Ibid. p.33-34
141 Ibid.
142 BBC news “Belgium bars Sharon war crimes trial” on 26 June 2002 found at http://news.bbc.co.uk/2/hi/europe/2066808.stm
143 Ibid.
145 Ibid. p.68
understandable judgement.\textsuperscript{147} Finally, it is highly evident that states, including Belgium, are reluctant to try alleged violators of international criminal law due to the principal of proportionality, which would ultimately lead to other countries abusing the doctrine of universal jurisdiction as a means of reciprocity.\textsuperscript{148} Therefore, Belgium complied with the ICJ verdict due to political pressure arising from the need for a “smooth and unimpaired conduct of foreign relations”,\textsuperscript{149} which is a significant factor in state conduct.\textsuperscript{150}

10- Indonesia v. Malaysia (Island Sovereignty of 2002)

In the Sovereignty over Pulau Ligitan and Pulau Sipadan case,\textsuperscript{151} Malaysia referred a case to the Court to settle a dispute about two islands off the northeast coast of Borneo.\textsuperscript{152} Ligitan was an uninhabited island whereas Sipadan was developed by Malaysia as a scuba diving tourist resort in the 1980’s.\textsuperscript{153} The Court delivered a judgement holding that the two islands belong to Malaysia.\textsuperscript{154} Similar to the Gulf of Maine case\textsuperscript{155} discussed above, there was also a special agreement between Malaysia and Indonesia which stated that the “{p}arties agree to accept the Judgment of the Court given pursuant to this Special Agreement as final and binding upon them,”\textsuperscript{156} Nevertheless, unlike the Judgement in the Gulf of Maine case,\textsuperscript{157} the judgement did not result in a share of the disputed territory, but rather awarded the disputed territory to one country.\textsuperscript{158} This caused internal problems in Indonesia as the Indonesian Parliament summoned the then president of Indonesia to explain the loss of the two islands.\textsuperscript{159} Despite this, the government of Indonesia announced that it would respect the judgement of the ICJ as the islands are not an Indonesian territory,\textsuperscript{160} and the use of the islands were by the people of Malaysia.\textsuperscript{161} Furthermore, an important aspect in solving the dispute is that both countries were willing to cooperate, thus willing to refer the case to a

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{149} Cassese A, “When may senior state officials be tried for international crimes? Some remarks on the Congo v. Belgium case” (2002) 13 European Journal of International Law 853
\item \textsuperscript{150} Ibid.
\item \textsuperscript{151} Judgement of 17 December 2002, found at https://www.icj-cij.org/sites/default/files/case-related/102/102-20021217-JUD-01-00-EN.pdf
\item \textsuperscript{152} Ibid. at p.13
\item \textsuperscript{153} Ibid. at p.58
\item \textsuperscript{154} Ibid. at p.65
\item \textsuperscript{155} Gulf of Maine case, found at https://www.icj-cij.org/sites/default/files/case-related/67/067-19841012-JUD-01-00-EN.pdf
\item \textsuperscript{156} Article 5 of the Agreement, found at https://www.icj-cij.org/sites/default/files/case-related/102/7177.pdf
\item \textsuperscript{157} Gulf of Maine case, found at https://www.icj-cij.org/sites/default/files/case-related/67/067-19841012-JUD-01-00-EN.pdf
\item \textsuperscript{158} Ligitan and Sipadan case, found at https://www.icj-cij.org/sites/default/files/case-related/102/102-20021217-JUD-01-00-EN.pdf
\item \textsuperscript{159} Malaysiakini “Megawati to explain to her lawmakers the loss of ‘Sipadan, Ligitan’” on 25 June 2003 found at https://Malaysiakini.com/news/16070
\item \textsuperscript{160} Berita Satu news “Always blamed, this is Megawati’s clarification about the Sipadan-Ligitan and Nipah Island Case” on 25 May 2016 found at https://www.beritasatu.com/news/366647/selalu-disalahkan-ini-klarifikasi-megawati-soal-kasus-sipadan-ligitan-dan-pulau-nipah/amp
\item \textsuperscript{161} Colson D, “Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)” (2003) 97 Cambridge University Press 398
\end{itemize}
\end{footnotesize}
court that has profound knowledge in international law. Hence, an existence of a special agreement that binds both parties of the ICJ decision would increase the percentage of compliance with the verdict.

11- **Costa Rica v. Nicaragua (Activities carried out by Nicaragua in the Border Area of 2015)**

In 2010, Costa Rica filed a claim against Nicaragua before the ICJ alleging that the Nicaraguan army occupied and used the territory of Costa Rica, thus using force and breaching its territorial integrity. In December of 2011, Nicaragua filed a case against Costa Rica for violating its sovereignty and for environmental damages. The Court joined both cases and found that Costa Rica violated its international obligations by not carrying an environmental impact assessment. The Court also held that Nicaragua had an obligation to compensate Costa Rica for material damages caused by Nicaragua’s unlawful activities on Costa Rican territory. The amount to be paid was calculated at US$378,890.59, to be paid by 2 April 2018. In a letter dated 22 March 2018, Nicaragua informed the ICJ that it had paid the amount set in the judgement. This case substantiates that the World Court can play a vital role in settling disputes and establishing enforcement of judgements related to environmental impact assessments.

**IV. Analysis on compliance and non-compliance of cases**

To facilitate with analysis of the above cases, this table was inserted as a reference guide.

<table>
<thead>
<tr>
<th>Cases</th>
<th>Compliance level</th>
<th>Jurisdiction contested</th>
<th>Importance of verdict</th>
<th>Prior negotiation</th>
<th>Historical dispute between countries</th>
<th>Pressure to comply: Int’l/Domestic</th>
<th>Special Agreement</th>
</tr>
</thead>
</table>

163 Ibid. p.13
164 Ibid. p.80
165 Ibid. p.79
166 Ibid. p.13
167 Ibid. p.80
168 Ibid. p.79
169 Ibid. p.13
170 This table was inspired by Paulson C, “Compliance with Final Judgments of the International Court of Justice Since 1987” (2004) 98 American Journal of International Law 434, 458
As can be seen from the table above, there is not a single criterion that could ensure whether a state would comply with an ICJ judgement or not. Nevertheless, there are a few characteristics that do affect the likelihood of state compliance:

**Public dismay against a verdict:** Out of the eleven cases, five countries (Japan, Kenya, Nigeria, Bahrain, and Belgium) publicly expressed dismay at the verdict. Nevertheless, only two of those countries (Nigeria and Kenya) publicly declared that they will not be complying.
with the verdict. Only Kenya eventually did not comply. Nevertheless, Kenya has still endeavoured to negotiate with Somalia to find an equitable solution for both countries.

Special Agreement: Although having a special agreement does not guarantee that a state will in fact comply with a verdict, it does increase the likelihood of state compliance.\textsuperscript{171}

Domestic pressure: Domestic pressure to comply or not with an ICJ verdict is an important factor. On the one hand, although there was numerous public and parliamentary pressure in Indonesia to not comply with the verdict in the Indonesian/Malaysia island case, the president of Indonesia still complied with the ICJ verdict as she believed the judgement was fair and the islands do not belong to Indonesia. On the other hand, Japan had internal support to not comply with the ICJ verdict and the government ensured that the public’s wishes are met due to the historical and cultural significance of the whale fishing industry.

International and diplomatic pressure: Furthermore, international and diplomatic pressure could be a significant factor in ensuring compliance with a verdict as was the case with Nigeria. Nevertheless, although there was international pressure in the Avena case, the Whaling case, and the Kenya/Somalia case; there was no true diplomatic engagement to ensure compliance by an international country or an international organisation. In Nigeria/Cameroon case, there was significant intervention from the UN and the UK, which was a decisive factor in negotiations and compliance.

Therefore, compliance with the ICJ judgements relates to several factors including impact of the judgement on the community, economic and political factors, the current administration of a state, and international or domestic opinion. Therefore, having a strong legislative framework and development of legal norms are significant to ensure and increase state compliance with ICJ decisions.\textsuperscript{172}

Under the current docket of the ICJ, the Court is adjudicating high-profile cases that would test the limits of state compliance due to the gravity of the alleged violations and parties involved. In Ukraine v. Russian Federation,\textsuperscript{173} Ukraine is alleging that Russia is committing genocide in Donetsk and Luhansk and requests the Court to order Russia to suspend all military operations in that region.\textsuperscript{174} The Court thus provisionally ordered Russia to suspend its operations.\textsuperscript{175} Nevertheless, with Russia as a permanent member of the UN Security Council, it would be difficult to ensure compliance under Article 94, if a verdict against Russia is rendered.

Moreover, The Gambia has instituted proceedings against Myanmar for criminal violations against the Rohingya group.\textsuperscript{176} Provisionally, the ICJ ordered Myanmar to take all measures

\textsuperscript{171} Paulson C, “Compliance with Final Judgments of the International Court of Justice Since 1987” (2004) 98 American Journal of International Law 434, 458
\textsuperscript{174} Request for the Indication of Provisional Measures, Order of 16 March 2022 found at https://www.icj-cij.org/sites/default/files/case-related/182/182-20220316-ord-01-00-en.pdf
\textsuperscript{175} Ibid. at p.23-24
\textsuperscript{176} Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Application Instituting Proceedings and Request for Provisional Measures on
to prevent the commission of crimes against the Rohingya.\textsuperscript{177} The ICJ judgement in this case would be detrimental to the lives of millions of people facing alleged genocide and crimes against humanity and an ICJ verdict could be the first step to remedy for the Rohingya population.\textsuperscript{178}

In June of 2023, Canada and The Netherlands instituted proceedings against Syria claiming that Syria has committed violations of torture and other cruel, inhumane, or degrading treatment (CIDT).\textsuperscript{179} The Court provisionally ordered Syria to take measures to prevent acts of torture and CIDT.\textsuperscript{180} The case proceedings would take several years; nonetheless, a rendered verdict by the ICJ against Syria would prove to be symbolic for the victims.\textsuperscript{181} Nevertheless with Russia as a permanent member, the Security Council might not be able to ensure compliance under its powers of Article 94 of the UN Charter as Russia might veto any Security Council resolution against Syria.\textsuperscript{182}

In December 2023, South Africa filed a claim against Israel arguing that the defendants violated the Genocide convention by committing atrocities in the Palestinian city of Gaza.\textsuperscript{183} In its order of provisional measures, the Court found that “the military operation conducted by Israel after 7 October 2023 has resulted, inter alia, in tens of thousands of deaths and injuries and the destruction of homes, schools, medical facilities and other vital infrastructure, as well as displacement on a massive scale” and ruled inter alia that “Israel shall take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip.”\textsuperscript{184} Since the Court did find that there could be evidence that substantiates the defendants have committed genocide against the Palestinians, Algeria attempted to pass a Security Council Resolution to order a ceasefire, but the US vetoed the draft resolution.\textsuperscript{185} This shows that despite the Court’s findings of potential evidence of genocide, the Security Council was not able to

\textsuperscript{177} Order of 23 January 2020, found at https://icj-cij.org/sites/default/files/case-related/178/178-20200123-ORD-01-00-EN.pdf
\textsuperscript{178} Abianza A, “The Limited Powers of International Law to Protect the Rohingya Minority in Myanmar” (2023) 6 ResPublica 8
\textsuperscript{179} Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic), Joint Application instituting proceedings of 08 June 2023, found at https://www.icj-cij.org/sites/default/files/case-related/188/188-20230608-APP-01-00-EN.pdf
\textsuperscript{180} Order of 16 November 2023, found at https://www.icj-cij.org/sites/default/files/case-related/188/188-20231116-ord-01-00-en.pdf
\textsuperscript{182} Michelle Nichols of Reuters “Russia blocks U.N. Security Council condemnation of Syria attack” on 13 April 2017 found at https://www.reuters.com/article/us-mideast-crisis-syria-un-vote-idUSKBN17E2LK/
\textsuperscript{184} Ibid., Order of Provisional Measure of 26 January 2024, found at https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf
\textsuperscript{185} UN News “US vetoes Algerian resolution demanding immediate ceasefire in Gaza” on 20 February 2024 found at https://news.un.org/en/story/2024/02/1146697
perform its duties under the UN Charter due to a permanent member’s vote. Hence, one of the aspects that could increase the percentage of state compliance would be to reform the Security Council, albeit a difficult feat.

V. **Recommendations:**

The ICJ’s role is to settle disputes between sovereign states and assist in navigating through the complexities of international law, thereby developing it.\(^{186}\) The Court’s adjudication influences state behaviour, which gets projected unto states’ decision-making bodies and domestic courts. \(^{187}\) The ICJ’s enforcement body is the Security Council, therefore, the ICJ’s role ends once it interprets and settles a dispute of international law. \(^{188}\) The Court’s compliance record is good, but it could be improved, \(^{189}\) in light of the World Court’s importance as shown by its current docket of cases, \(^{190}\) using the recommendations outlined below:

1- **Creation of a new enforcement mechanism:**

The main issue with enforcing ICJ judgements is that the Court’s role ends once a dispute is settled unless a party requests interpretation of the verdict. \(^{191}\) The ICJ is not, resource-wise, able to monitor nor ensure state compliance post-judgement nor does it have the power or right to do so. \(^{192}\) Information regarding compliance is incomplete as the Court does not receive any official information from the parties on enforcement and compliance of the verdict. \(^{193}\) As a result, the UN could initiate a monitoring body, whether commission or special rapporteur, to ensure an independent analysis of state actions post the ICJ judgement. This body would also report back to the ICJ in the event that there is doubt as to whether a state did comply with the decision or not. In the case of Jadhav, there is no means to identify whether India provided Mr Jadhav with his consular rights under the VCCR. Therefore, the monitoring body could perform an independent study and analyse whether India’s actions are indeed in line with the ICJ judgement and in accordance with the VCCR. The introduction of such body could initially be discussed and developed at the annual meeting of the Sixth Committee of the UN General Assembly during the annual report by the ICJ president to the General Assembly. \(^{194}\) Furthermore, this mechanism would also produce periodical or annual


\(^{187}\) Ibid.

\(^{188}\) Ibid.

\(^{189}\) Ibid.


\(^{190}\) See [https://www.icj-cij.org/pending-cases](https://www.icj-cij.org/pending-cases)


\(^{192}\) Ibid.

\(^{193}\) Philippe Couvreur, *The International Court of Justice and the Effectiveness of International Law* (Brill 2017)

reports that identify whether a reparation, order, or judgement was complied with and provide recommendations.\textsuperscript{195}

2- **Special Agreements:**

The table above shows that only three of the cases, discussed in this article, had a special agreement prior to the Court’s decision and each of those cases had a high compliance rate. In 2005, a study conducted showed that cases instituted by a special agreement did have a higher compliance rate of 85.7 percent, compared to 60 percent by those with treaty clauses, and 40 percent for optional clause jurisdiction.\textsuperscript{196} According to the ICJ’s website, only the following four cases after 2005 have been submitted on the basis of a special agreement: Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore); Frontier Dispute (Burkina Faso/Niger); Guatemala’s Territorial, Insular and Maritime Claim (Guatemala/Belize); and Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea).\textsuperscript{197} Out of those cases, Malaysia and Singapore agreed to discontinue the proceedings,\textsuperscript{198} and in Burkina Faso and Niger, the Court appointed three experts to assist in the demarcation of the frontier in the disputed area as per their Special Agreement.\textsuperscript{199} Furthermore, the cases of Gabon and Equatorial Guinea, and Guatemala and Belize are still pending in the current docket of the Court.\textsuperscript{200} As a result, cases involving a special agreement are more likely to be settled as the special agreement provides a basis for amicable and good faith negotiations.\textsuperscript{201}

3- **Negotiated settlements facilitated by ICJ decisions and the use of Good Offices**

Even though states might not potentially comply with ICJ decisions, instituting a claim before the ICJ has positive effects on initiating settlement negotiations that would ultimately lead to solving the dispute.\textsuperscript{202} Merely appearing before the ICJ leads to clarification of a point of international law and this could lead to the peaceful negotiated settlement of disputes.\textsuperscript{203} The act of going through ICJ procedures has a pacifying effect on states and to the restoration of peace between them.\textsuperscript{204} As was the case with Nigeria and Cameroon, both countries were engaged in a competitive and forceful war over the disputed territory of Bakassi with no progress.\textsuperscript{205} Furthermore, Nigeria initially disputed the ICJ jurisdiction once the claim was


\textsuperscript{196} Posner E and Yoo J, “Judicial Independence in International Tribunals” (2005) 93 California Law Review 1

\textsuperscript{197} See https://www.icj-cij.org/basis-of-jurisdiction

\textsuperscript{198} See https://www.icj-cij.org/case/170

\textsuperscript{199} See https://www.icj-cij.org/case/149

\textsuperscript{200} See https://www.icj-cij.org/pending-cases

\textsuperscript{201} Posner E and Yoo J, “Judicial Independence in International Tribunals” (2005) 93 California Law Review 1

\textsuperscript{202} Llamzon A, “Jurisdiction and Compliance in Recent Decisions of the International Court of Justice” (2008) 18 European Journal of International Law 815


\textsuperscript{204} Llamzon A, “Jurisdiction and Compliance in Recent Decisions of the International Court of Justice” (2008) 18 European Journal of International Law 815

\textsuperscript{205} Ibid.
initiated and rejected the ICJ’s decision but eventually submitted to the judgement in light of the binding nature of the ICJ decision and the international pressure that resulted. In such cases, the state governments would be insulated from internal criticism by blaming an international institution, which they never consented to.\textsuperscript{206} Therefore, ICJ decisions could be a great starting point to facilitating a diplomatic, political, and negotiable solution without facing internal pressure of incompetency and lack of sovereignty.\textsuperscript{207} Furthermore, as was the case with Nigeria and Cameroon, the use of Good Offices by the UN and other organisations has also been successful in settling disputes among countries.\textsuperscript{208} A repetition of Nigeria’s dissidence could be seen in Kenya in its 2021 case with Somalia as Kenya has rejected the ICJ decision and does not consider it as binding.\textsuperscript{209} Nevertheless, this could potentially be a starting point for negotiations and result in future settlement of the dispute as Kenya is ready to engage in diplomatic solutions as an alternative to the ICJ decision\textsuperscript{210}.

\textbf{4- Increasing the use of the Security Council powers under Article 94 of the Charter}

Under Article 94(2) of the UN Charter, the UN Security Council has the power to “decide upon measures to be taken to give effect to the judgment” if a party does not fulfil its obligations under an ICJ judgement. Therefore, the ICJ’s executing and enforcement body is the Security Council, not an internal department in the Court.\textsuperscript{211} Nevertheless, this can show that compliance is a political and security issue rather than a legal one,\textsuperscript{212} as the Security Council has rarely used its powers under Article 94 due to the power of the veto by a permanent member, who might be the losing party of an ICJ judgement or an ally of a losing party.\textsuperscript{213} This was the case with Nicaragua and the US where the US vetoed two draft resolutions by Nicaragua calling for compliance by the US as per the ICJ’s judgement.\textsuperscript{214} This could be a problem in the cases involving one of the permanent five or their allies\textsuperscript{215} as was shown in the US’s initial veto against Algeria’s draft resolution to implement a ceasefire in accordance with the ICJ order of provisional measures in the South Africa case against

\begin{itemize}
  \item \textsuperscript{206} Ibid.
  \item \textsuperscript{207} Ibid.
  \item \textsuperscript{208} Day A, "Politics in the driving seat: Good offices, UN peace operations, and modern conflict." (2019) United Nations peace operations in a changing global order 67
  \item \textsuperscript{210} Ibid.
  \item \textsuperscript{211} Donoghue J, “The Effectiveness of the International Court of Justice” (2014) 108 Proceedings of the Annual Meeting (American Society of International Law) 114
  \item \textsuperscript{212} Llamzon A, “Jurisdiction and Compliance in Recent Decisions of the International Court of Justice” (2008) 18 European Journal of International Law 815
  \item \textsuperscript{213} Akande D, “The International Court of Justice and the Security Council: Is There Room for Judicial Control of Decisions of the Political Organs of the United Nations?” (1997) 46 The International and Comparative Law Quarterly 309
  \item \textsuperscript{214} Ibid.
\end{itemize}
Nevertheless, a resolution did eventually pass on 25 March 2024 demanding “an immediate ceasefire for the month of Ramadan respected by all parties.”

As one of the results of the foreseen use of the veto, claimants in an ICJ case rarely trigger Article 94, despite continued instances of non-compliance. The reason could be the fact that the Security Council has discretionary powers to find whether a state complied with a verdict or did not. On the one hand, such ambiguity might serve as a deterrent to states willing to use Article 94. On the other hand, the fact that a party might use Article 94 against another party does persuade states to comply with the ICJ judgement. For example, in the Land, Island and Maritime Frontier Dispute, the ICJ issued a judgement delimiting the disputed territory, yet El Salvador did not comply with the verdict. Honduras then sent a letter to the Secretary-General about the matter and this caused El Salvador to speed its compliance with the ICJ judgement and engage in a more amicable negotiation with Honduras.

5- **Factors that need to be taken into account**

Understanding the political reasons behind a country’s decision to comply or not comply with an international judgement would be key to increasing the compliance percentage. The states in dispute might agree to appear before the ICJ to advance their interests with an international law judgement; nevertheless, a judgement in many cases would not meet one of the state’s goals or requests. Moreover, governments generally tend to have a moral obligation that internally binds them to international norms. National actors tend to cooperate with one another to ensure compliance and engage in international relations with international bodies. This “impetus of compliance” is not due to fear of sanctions but rather loss of status and reputation in the international world, and fear of general hostility from the international community due to violations of internationally accepted and respected norms.

6- **Increasing the number of seats in the annual ICJ fellowship**

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219 Ibid.

220 Ibid.

221 Ibid.


226 Ibid.

227 Ibid.
Increasing the number of fellows admitted to the ICJ fellowship could potentially result in an increase in state compliance in the future. The current admitted number of fellows is at 15/16 annually, with each fellow working with one of the judges at the ICJ.\textsuperscript{228} Despite the fact that the Court’s docket has increased, the number of admitted fellows annually has remained the same for over nine years.\textsuperscript{229} These fellows eventually end up working at domestic or international law firms, the executive, legislative, or judicial branches of their states, permanent missions to international organizations, international courts, NGOs, and IGOs.\textsuperscript{230} The knowledge garnered by the ICJ fellows would ultimately lead them to exponentially develop international law in their respective countries and fields and ensure that it is in accordance to the law developed by the ICJ. Therefore, increasing the fellowship number from 15 admitted students to 20 or even 30 could improve state compliance on the long run and encourage state participation in international settlement forums such as the ICJ. Additionally, the ICJ would not bear any costs with the increase of the fellowship number as one of the conditions of the fellowship is that the sending university bears all costs of the fellowship.\textsuperscript{231} Moreover, the UN General Assembly has established a trust fund to allow fellows from certain countries to join the ICJ\textsuperscript{232} therefore ensuring that the ICJ does not bear any monetary costs.

VI. Conclusion:

Although the Court’s compliance record is not perfect, it is still good. As was indicated, the ICJ is the judicial branch of the UN, and the Security Council is the enforcement body, and both branches need to work together to ensure full state compliance. A fine equilibrium needs to be drawn to ensure that the sovereignty of countries is respected while simultaneously maintaining the development and advancement of international law. The cases of Avena and the Whaling in the Antarctic show that states cannot be forced to comply with a decision that contradicts with a nation’s tradition, culture, or domestic courts. Nevertheless, as was the case with Nigeria and Indonesia, the use of Good Offices and diplomatic channels could ensure adherence to an international judgement issued by the ICJ, despite states’ initial intention to not adhere to the judgement.

The current docket of the ICJ includes cases involving the most serious violations of international law and involving the permanent members of the Security Council or their close allies. Despite this, the ICJ should not demur from its role in interpreting the law and settling disputes as mandated by the UN Charter and in accordance to its Statute and rules of procedures. Nevertheless, this continues to be an issue so long as the Court relies on parties, especially the losing one, to comply with and enforce an international judgement.\textsuperscript{233} Nonetheless, by creating a new enforcement mechanism, encouraging the use of special agreements, further employing the use of Good Offices and diplomatic channels, increasing the use of the Security Council under Article 94(2), and expanding the fellowship numbers to represent every region will, in the long run, assist in promoting international cooperation.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{228} See \url{https://icj-cij.org/judicial-fellows-program}
\item \textsuperscript{229} See \url{https://icj-cij.org/judicial-fellows-alumni}
\item \textsuperscript{230} Ibid. Searching alumna shows their previous and current work and positions.
\item \textsuperscript{231} See \url{https://icj-cij.org/judicial-fellows-program}
\item \textsuperscript{232} See A/RES/75/129, found at \url{https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/363/68/pdf/N2036368.pdf?OpenElement}
\item \textsuperscript{233} Paulson C, “Compliance with Final Judgments of the International Court of Justice Since 1987” (2004) 98 American Journal of International Law 434
\end{itemize}
\end{footnotesize}
developing international law, and ensuring that each nation is represented at the international level. This will thus result in an increase in participation in ICJ cases and in the percentage of compliance cases. This is especially true as states will likely participate more in ICJ proceedings and dispute settlement if they profoundly believe that the ICJ does in fact represent all nations.\textsuperscript{234}

\textsuperscript{234} Llamzon A, “Jurisdiction and Compliance in Recent Decisions of the International Court of Justice” (2008) 18 European Journal of International Law 815