Sacha Journal of Human Rights

SJHR Volume 5 Number 1 (2015) pp. 1-20
ISSN 2045-8398 (Print)
ISSN 2045-8517 (Online)
Publishers: Sacha & Diamond, England
www.sachajournals.com
Current Cumulative Impact Factor: 30.7

AN ANALYSIS OF THE ADVISORY AND SUPERVISORY ROLES OF THE JUDICIAL ORGANS OF THE INTERNATIONAL COURT OF JUSTICE AND THE AFRICAN COURT OF HUMAN RIGHTS

OGUNO, Paschal
Faculty of Law, Chukwuemeka Odumegwu Ojukwu University,
Igbariam Campus, Anambra State, Nigeria.

ABSTRACT

The goal of this paper is to conduct an analysis of the international judicial organs in their supervisory and advisory roles both at the international and regional levels. Identifiable attention is given to the International Court of Justice and African Court of Human Rights in their discharge of duties with regards to state parties to the Treaty establishing them. The paper further explored some of the challenges confronting the two international organisations with specific focus on how efficiency can be improved in the course of rendering equitable justice within international platforms.

Keywords: ICJ, International Justice, International Law.

1. INTRODUCTION

An international organization/institution is one that draws membership from at least three states, having activities in several states, and whose members are held together by a formal agreement.[1] They could be either international governmental organizations or non-governmental organizations.[2] They range in size from 3 members to 185 (for example, the United nations [UN]) and their geographical representation varies from one world region (e.g. African Union) to all regions (e.g. the World Bank). Some are developed for a singular purpose, (e.g., World Intellectual Property Organization [WIPO]), others for multiple tasks highly complex depending on their size and tasks.[3]

International Institutions play a number of roles one of which is to secure better and more seamless co-existence and tolerance between states and international organizations at global, regional and sub-regional levels. It is trite that at the international level, interactions are generally 'voluntary' being that the participants are usually sovereign states or international agencies and are guided by the treaties which regulate these relationships.

[1] Encyclopedia Britannica accessed September 26, 2014.
[2] The Union of International Associations, a coordinating body, differentiates between the more than 250 IGOs' established by intergovernmental agreements, whose members are states and approximately 6,000 NGOs' members are associations or individuals, Encyclopedia Britannica.
[3] Ibid.

2. UNIVERSAL JUDICIAL ORGANS

It is a principle of international law that states shall settle their international disputes by peaceful means[4] and not by resort to force. In international law, most disputes are settled through negotiation between the parties or by third-party assistance in the form of good offices, mediation, conciliation or the conduct of fact-finding inquiries.

As in municipal law, litigation international law is much a matter of last resort. There are international judicial institutions which function both in an advisory and adjudicatory capacity in settling disputes as well as exercise interpretative functions on behalf of state parties and states which may not be parties to its founding treaty. Some of these are the International Court of Justice (ICJ), the International Criminal Court (ICC), the International Tribunal for the Law of the Sea among others.

3. THE INTERNATIONAL COURT OF JUSTICE

The International Court of Justice (ICJ), which is located in the Hague, Netherlands, is commonly called the "World Court". It was founded in 1946 replacing the Permanent Court of International Justice (PCIJ), after the Second World War. The ICJ is the principal judicial organ of the United Nations. The Court is composed of fifteen judges of different nationalities, that are elected by the General Assembly and the Security Court. The Court has a dual role: to settle in accordance with international law the legal disputes submitted to it by States, and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies. Accordingly, the jurisdiction of the Court falls into two distinct parts, namely, contentious jurisdiction and advisory jurisdiction. The ICJ is regarded as the primary means for the resolution of disputes between States.

The ICJ as a major player in world politics has had a docket of cases. Critics argue that the ability of international law and the ICJ to bind states to compliance is weak.[5] In domestic jurisdictions, there is a complete cycle of dispute resolution measures which include compliance and enforcement. There are institutions whose responsibilities are to ensure compliance of courts decisions for example, in criminal cases the police and the prisons. In civil matters, through the orders of the court for attachment, sale, liquidation, etc, compliance may be ensured. But at the international level, however, there is no certainty that binding, it requires the clear consent of the parties either by signature and ratification or accession. Even if a state is involved in the process of treaty making, without ratifying same, it is unenforceable against it.[6] Thus, in international settings the mandatory jurisdiction of the court is based upon consent. In the domestic setting, with or without the consent of the parties, the court is seized of jurisdiction once the certain criteria have been met. It is then possible for a state to be party to a treaty, but upon the need for adjudication, consent must be obtained.

Though ICJ is a principal organ of the UN, its jurisdiction is not automatically, mandatory for the member states of the UN, they must accept by passing a special act of submission within the state. The states that have however submitted to the ICJ's jurisdiction are those who have ratified a treaty creating the Court's competence or have pleaded necessity on the merits of a case pending in Court or have made a unilateral declaration. Some states have also accepted the Court's jurisdiction but with reservations.

---

[4] Encyclopedia Britannica accessed September 26, 2014.

[5] Compliance with decisions of the ICJ by Constanze Schulte – www.lawcourts.org/LPBR/reviews/schulte405.htm

[6] Monitoring Compliance with and enforcement of binding decisions of International Courts – Joseph Sinde Warioba – www.mpil.de/files/pdf1/mpunyb_warioba_5.pdf

The basis for mandatory compliance was first located in Article 13(4) of the League of Nations Covenant and later fashioned into Article 94 of the United Nation Charter, mandating member states and non-member states to the UN under Article 93(2), if the latter wish, to comply with the orders of the ICJ. Similarly, interim orders are considered decisions under Article 94 and are also binding upon UN member states and upon non-members who opt to resolve their disputes with the ICJ. Primary enforcement of ICJ orders is covered by Article 94(2), giving the Security Council a range of options to compel or encourage compliance though some states have avoided compliance by feigning, delaying or modifying their ascent to the Court's jurisdiction (as provided for under Article 36 of the Statutes of the Court), most of which have occurred with interim orders.

Some of the factors which have enhanced the mistrust for the ICJ are that; there is no opportunity for appeal. The procedures rely majorly on documentary evidence. Also, it is believed that the election of judges is most times more political than procedural. As international law is administered generally to sovereign states, it has been argued that the need for enforcement was not projected by establishing international law rather the Court was established as a last resort in conflict resolution. Other seemingly more peaceful measures are to be applied first, such as negotiations, good offices, inquiry, facilitation, conciliation, among others. It is true that states prefer more diplomatic ways of resolving their disputes as they are more flexible and confidential, and parties feel they are more in control of the outcome.

4. JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE

4.1 Contentious Proceedings

As stated earlier, the Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in one or more of the following ways:

- By entering into a special agreement to submit the dispute to the Court;
- By virtue of a jurisdiction clause. This means that when states are parties to a treaty containing a provision stating that in the event of a dispute of a given type or disagreement over the interpretation or application of the treaty, one of them may refer the dispute to the Court;
- Through the reciprocal effect of declarations made by states under the Statute whereby each has accepted the jurisdiction of the Court as compulsory in the vent of a dispute with another State having made a similar declaration. A number of these declarations, which must be deposited with the United Nations Secretary-General, contain reservations excluding certain categories of disputes.

States have no permanent representatives accredited to the Court. They normally communicate with the Registrar through the medium of their Minister for Foreign Affairs or their ambassador accredited to the Netherlands. Where they are parties to a case before the Court they will be represented by an agent. An agent plays the same role, and has the same rights and obligations, as a solicitor with respect to a national court or as it were the head of a special diplomatic mission with powers to commit a sovereign State. He/she receives communications from the Registrar concerning the case and forwards to the Registrar all correspondence and pleadings duly signed or certified. In public hearings the agent opens the argument on behalf of the government he/she represents and lodges the submissions.

In general, whenever a formal act is to be done by the government represented, it is done by the agent. Agents are sometimes assisted by co-agents, deputy agents or assistant agents and always have counsel or advocates, whose work they co-ordinate, to assist them in the preparation of the pleadings and the delivery of oral arguments. Since there is no special

International Court of Justice Bar, there are no conditions that have to be fulfilled for counsel or advocates to enjoy the right of arguing before it except only that they must have been appointed by a government to do so. Proceedings before the Court may be instituted in one of two ways:

- Through the notification of a special agreement: This document, which is of a bilateral nature, can be lodged with the Court by either of the States parties to the proceedings or by both of them. A special agreement must indicate the subject of the dispute and the parties thereto. Since there is neither an "applicant" State nor a "respondent" oblique stroke at the end of the official title of the case, e.g., Benin/Niger;
- By means of an application: The application, which is of a unilateral nature, is submitted by an applicant State against a respondent State. It is intended for communication to the latter State and the Rules of Court contain stricter requirements with respect to its content. In addition to the name of the party against which the claim is brought and the subject of the dispute, the applicant State must, as far as possible, indicate briefly on what basis – it claims, the Court has jurisdiction, and must succinctly state the facts and grounds on which it bases its claim. At the end of the official title of the case the names of the two parties are separated by the abbreviation "*v.*" (for the Latin *versus*), e.g., Nicaragua *v.* Colombia.[7]

The date of the institution of proceedings, which is that of the receipt by the Registrar of the special agreement or application, marks the opening of proceedings before the Court. Contentious proceedings include a written phase, in which the parties file and exchange pleadings containing a detailed statement of the points of fact and of law on which each part relies, and an oral phase consisting of public hearings at which agents and counsel address the Court. As the Court has two official languages (English and French), everything written or said in one language is translated into the other. The written pleadings are not made available to the press and the public until the opening of the oral proceedings, and then only if the parties have no objection.

After the oral proceedings the Court deliberates in camera and then delivers its judgment at a public sitting. The judgment is final, binding on the parties to a case and is without appeal (at most it maybe subject to interpretation or revision). Any judge wishing to do so may append an opinion to the judgment.

By signing the Charter, a State Member of the United Nations undertakes to comply with any decision of the Court in a case to which it is a party. Since, a case can only be submitted to the Court and decided by it if the parties have in one way or another consented to its jurisdiction over the case, it is rare for a decision not to be implemented.[8] A State which contends that the other side has failed to perform the obligations incumbent upon it under a judgment rendered by the Court may lay the matter before the Security Council, which is empowered to recommend or decide upon the measures to be taken to give effect to the judgment.

The procedure described above is the normal procedure. Certain matters can however affect the proceedings. The most common case is that of preliminary objections raised in order to prevent the Court from delivering judgment on the merits of the case (the respondent State may contend, for example, that the Court lacks jurisdiction or that the applicant is inadmissible). The matter is one for the Court itself to decide. There are also provisional measures, which can be requested as interim measures by the applicant State if the latter considers that the rights which form the subject of its application are in immediate danger. It

[7] http://www.icj-cij.org/court/index.php?p1=1&p2=6; searched August 18, 2014 by 8:35pm
[8] Supra, note 9.

may further occur that a State seeks to intervene in a dispute involving other States because it considers that it has an interest of a legal nature which may be affected by the decision to be taken in the dispute between those States.

The Statute also makes provision for cases where the respondent State does not appear before the Court, either because it totally rejects the Court's jurisdiction or for any other reason. Hence failure by one party to appear does not prevent proceedings in a case from taking their course. But in such a case the Court must first satisfy itself that it has jurisdiction. Finally, where the Court finds that parties to separate proceedings are submitting the same arguments and submissions against a common opponent in relation to the same issue, it may order joinder of the proceedings. The Court discharges its duties at the request of the parties, it may also establish *ad hoc* chambers to examine specific cases. A Chamber of Summary Procedure is elected every year by the Court in accordance with its Statute.

The sources of law that the Court must apply are: international treaties and conventions in force; international custom; the general principles of law; and judicial decisions and the teachings of the most highly qualified publicist. Moreover, if the parties agree, the Court can decide a case *ex aequo et bono,* i.e., without limiting itself to existing rules of international law.

A case may be brought to a conclusion at any stage of the proceedings by a settlement between the parties or by discontinuance. In the latter case, an applicant State may at any time inform the Court that it is not going on with the proceedings, or the two parties may declare that they have agreed to withdraw the case. The Court then removes the case from its List.

4.2 Advisory Proceedings

Advisory proceedings before the Court are open solely to the five organs of the United Nations and to 16 specialized agencies of the United Nations. The United Nations General Assembly and Security Council may request advisory opinions on "any legal question". Other United Nations organs and specialized agencies which have been authorized to seek advisory opinions can only do so with respect to "legal questions arising within the scope of their activities". When it receives a request for an advisory opinion, the Court, in order that it may give its opinion with full knowledge of the facts, is empowered to hold written and oral proceedings, certain aspects of which recall the proceedings in contentious cases. A few days after the request is filed, the Court will draw up a list of those States and international organizations that will be able to furnish information on the question before the Court. Those States are not in the same position as the parties to contentious proceedings: their representatives before the Court are not known as agents and their participation, if any, in the advisory proceedings does not render the Court's opinion binding upon them. In general, the States listed are the Members States of the organization requesting the opinion. Any State not consulted by the Court may ask to be.

It is rare, however, for the ICJ to allow international organizations other than the one having requested the opinion to participate in advisory proceedings. The written proceedings are shorter, but as flexible as in contentious proceedings between States.[9] Participants may file written statements, the object of written comments by other participants. The written statements and comments are regarded as confidential, but are generally made available to the public at the beginning of the oral proceedings. States are the usually invited to present oral statements at public sittings.

[9] The Court's advisory procedure is otherwise modeled after contentious proceedings, and the sources of applicable law are the same.

Advisory proceedings are concluded by the delivery of the advisory opinion at a public sitting. It is of the essence of such opinions that they are advisory, i.e., that, unlike the Court's judgments, they have no binding effect. The requesting organ, agency or organization remains free to give effect to the opinion by any means open to it, or not to do so. Certain instruments or regulations can, however, provide beforehand that an advisory opinion by the Court shall have binding force (e.g., Conventions of the Privileges and Immunities of the United Nations).

4.3 Jurisdiction of the ICJ

States' access to the Court is not automatic. There are several ways for a State to gain access to the Court:

- By Article 93 of the UN Charter, all members of the Un are *ipso-facto* members of the Statute.

- States that are not members may become parties, on conditions to be determined in each case by the UN General Assembly, based on the recommendations of the Security Council.

- Any other State that is neither a member of the UN nor a party the Statute of the ICJ may become a party before the ICJ by depositing a declaration with the Registry of the ICJ. The declaration must state that such State accepts the jurisdiction of the Court and undertakes to comply in good faith with the Court's decisions in respect of all or a particular class or classes of disputes.

However, becoming a party of the ICJ Statute is entirely different from accepting the Court's jurisdiction. It is merely the first step toward submitting to the Court's jurisdiction.

4.4 Classification Of The Icj's Jurisdiction

4.4.1 Contentious Jurisdiction

Applies only to disputes between States which have accepted the ICJ's jurisdiction. It is important to note that a state's adherence to the International Court of Justice Statute (ICJS) does not constitute acceptance of the Court's jurisdiction. It means that the State can bring a suit to the ICJ, but whether the ICJ will hear the case depends on if it has jurisdiction, posing the fundamental question of whether the parties to the dispute have accepted its jurisdiction. Under Article 36 of the ICJS, there are three ways of expressing consent to the ICJ's jurisdiction:

a) Acceptance of jurisdiction on an *ad hoc* basis for the adjudication of a particular dispute: Article 36(1) of the Statute provides that the jurisdiction of the Court comprises all cases that the parties refer to it. Such cases normally come before the Court by notification to the Registry of an agreement known as a special agreement (Compromis) and concluded by the parties especially for this purpose. This method was used in The Corfu Channel Case.[10]

[10] Corfu Channel (Merits) (United Kingdom v. Albania), 1949 I.C.J. 4(Apr. 9).

b) Also under Article 36(1), States can adhere to a treaty, in which the Court's jurisdiction is accepted for cases relating to the interpretation or application of the treaty or for any other dispute under the treaty.[11] Many treaties will contain a 'compromissory clause', providing for dispute resolution by the ICJ. However, the facts that form the dispute must have occurred after such treaty entered into force. Also, it is necessary to determine whether a State has filed a reservation to the provision regarding dispute settlement when ratifying the treaty. For example, the US ratified the Genocide Convention but stated that before any dispute can be submitted to the ICJ under Article IX, the specific consent of the US is required in each case. When Yugoslavia in 1999 tried to sue the US under the Genocide Convention for acts associated with NATO's intervention in the Kosovo conflict, the ICJ found that because of the US reservation, the Court lacked jurisdiction and dismissed the case. Later claims by Yugoslavia against other NATO states were dismissed on the grounds that Yugoslavia was not at that time member of the UN and thus not a party to the ICJS.

c) The use of an Optional Clause Declaration (i.e. Declaration Accepting the Compulsory Jurisdiction of the Court): States that are parties to the Statute may be the means of a unilateral declaration undertake that they recognize as compulsory and without special agreement the jurisdiction of the court, in relation to any other state accepting the same obligation, with respect to disputes governed by international law. This is described in both Paragraphs 2 and 3 of Article 36 of the Statute. Paragraph 2 provides that the States Parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning;
    - the interpretation of a treaty;
    - any question of international law;
    - the existence of any fact which, if established, would constitute a breach of an international obligation;
    - the nature of extent of the reparation to be made for the breach of an international obligation.

A number of States have recognized the compulsory jurisdiction of the Court (with or without reservations). Among those reservations, there are two that are most important; one relates to other methods of pacific settlement while the other relates to matters of domestic jurisdiction. These two reservations correspond to Article 95 and Article 2(7) of the United Nations Charter, respectively. The declarations are made for a specific period, generally for five years with tacit renewal – as rule – and usually provide for the declarations to be terminated by simple notice, such notice to take effect after a specified time or immediately.

A good illustration of jurisdiction by declaration is the Fisheries Jurisdiction Case.[12] On December 4, 1998, the ICJ ruled 12-5 that it lacked jurisdiction to adjudicate the dispute brought by the Kingdom of Spain against Canada in 1995. To claim the Court's jurisdiction, Spain relied on the declarations made by the two parties in accepting the Court's compulsory jurisdiction under Article 36(2) of the ICJ Statute. Canada challenged the Court's jurisdiction, invoking a reservation contained in its 1994 declaration excluding from jurisdiction "disputes

[11] See Art. IX of the Convention on the Prevention and Punishment of the Crime of Genocide: Dispute between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

[12] See Fisheries Jurisdiction (Spain v. Can.) 1998 I.C.J. 432 (Judgment of Dec. 4).

arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area…" The Court agreed with Canada that the words of an Optional Clause declaration, including a reservation contained in it, must be interpreted in a natural and reasonable way, having due regard to the intention of the State making the reservation at the time when it accepted the Court's compulsory jurisdiction. Such State's intention, in turn, may be deduced not only from the text of the relevant clause, but also from its context, the circumstances of its preparation, and the purposes intended to be served.

The Court rejected Spain's argument that Canada's reservation should be interpreted in accordance with the legality under international law of the matters sought to be exempted from the Court's jurisdiction, which matters in Spain's view violated international law by involving the use of force on the high seas against a Spanish vessel. The Court explained that there is a fundamental distinction between a State's acceptance of the Court's jurisdiction, and the compatibility of particular acts with international law. The latter is a question that can be addressed only once the Court turns to the merits after having established its jurisdiction.

In offering its interpretation of Canada's reservation, the Court held that the reservation's purpose was to prevent it from exercising jurisdiction over matters that might arise with regard to the international legality of Canadian legislation and its implementation. Unfortunately, the ICJ could not proceed to the merits of this case because it lack jurisdiction.

By the Reciprocity Principle Article 36(2), a State having made such a declaration accepts the court's jurisdiction on the basis of reciprocity, and if sued by another state that has made a similar declaration, it is required to respond. Moreover, any jurisdictional defenses the applicant (the state suing) state under its declaration, are also available to the respondent because of reciprocity. Since two unilateral declarations are involved, jurisdiction is conferred only to the extent that such declarations coincide.[13]

Consequently, the Court's jurisdiction can also be narrowed in any case where a party has made a reservation, and the party that has not made a reservation nevertheless invokes it against the other party. Authorities agree that when a State has accepted the jurisdiction under Article 36(2) and declared it to be unconditional; it is still entitled to invoke the reservation of any state that filed an action against it.

Pursuant to Article 36(2), the ability of a state of withdraw or modify may be limited by the terms of its declaration. Thus, in Nicaragua/United States, the US declaration of 1946 accepted the court's jurisdiction stating that it will remain in force for 5 years and thereafter until the expiration of 6 months after the giving of notice to terminate the declaration. In anticipation of litigation by Nicaragua in 1984, (3 days before Nicaragua filed a suit before the ICJ) the US sought to amend its declaration shall not apply to any disputes between the US and Central American states, regardless of the terms of the 1946 declaration. However, the ICJ found that it had jurisdiction over the dispute and upheld Nicaragua's contention that the US was bound by the 6-month notice requirement. Also, issues regarding national security are usually the most sensitive and, thus, less likely to be submitted to the ICJ. Several states have modified their acceptance of the ICJ to exclude such matters. The US in 'Nicaragua' (1984), although it had not made such modifications to its declaration, cited national security reasons for precluding it from asserting jurisdiction. The ICJ rejected the US argument that disputes involving national security or self-defense were *ipso facto* not suitable for adjudication.

On the issue of advisory jurisdiction, it has long been recognized that even when the Court has jurisdiction to render an advisory opinion, it is not compelled to do so. It lies within the Court's discretion whether or not it will give an opinion asked of it. This discretion is

[13] *See France v. Norway (*Certain Norwegian Loans) 1958.

provided for in Article 65(1) of the Court's Statute, which provides that "the Court may give an advisory opinion…" and it has been confirmed in the jurisprudence of the Court.

Despite this discretion, the Court has also noted that a request for an advisory opinion should not in principle, be refused. The reason given is that the Court is itself an organ of the United Nations and its response 'represents its participation in the activities of the Organization'. The constitutional relationship between the Court and the United Nations thus ensures that there must be 'compelling reasons' for it not to render an advisory opinion requested of it. Though the Court had never exercised its discretion of refuse to render an advisory opinion, scholars have suggested circumstances in which the Court should make such a decision. In the opinion of Sir Gerald Fitzmaurice,[14] the Court should refuse to render an opinion:

- If the Court felt that it could not do substantial justice in the matter, e.g. because essential facts were lacking which could not be made available to the Court by the means at its disposal, or because the question was framed in an ambiguous or tendentious way;
- If the question, though in a sense legal, involved an essentially legislative and non-judicial task, e.g. to make proposals for altering the law on any subject or for amending a treaty instrument;
- If the request related to something which had nothing to do with the work of the organ requesting it and appeared to be directed to some ulterior purpose."

5. EFFECTS AND ENFORCEMENT OF INTERNATIONAL COURT OF JUSTICE JUDGMENTS

Article 59 of the ICJS, states that ICJ judgments are binding upon the parties to the suit, they are deemed final and without appeal. Under Article 60, revision is possible only under certain very limited circumstances. Article 61 shows that revision can be allowed upon the following:

- Discovery of new facts that are decisive factors and were unknown to the Court and the party seeking revision.
- A 10 year statute of limitations applies (which means that there can be no revision 10 years after the date of the judgment);
- There should be no negligence on the party of the party seeking revision.

States have generally complied with ICJ decisions, as required by Article 94 of the UN Charter. If a State fails to abide by the judgment, it would violate the compliance to the UN Security Council, which "may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment". The Security Council may, but need not take such measures. If the Security Council chooses to act, it can do so by recommendation or decision, with only the latter being binding. Failure of a member state to comply with a Security Council decision may trigger enforcement measures.[15]

[14] See G. Fitzmaurice, *The Law and Procedure of the International Court of Justice* (1986), at 79.
[15] See UN Charter, Article 39, 41 and 42.

5.1 Compliance to the Judgments of the International Court of Justice[16]

The contention has been whether the ICJ has played its role in ensuring respect of the rule of international law among nations. However, Judge Lauterpacht says, 'If the ICJ was unable to contribute more towards overall peace and security, it was because, but not adhering to its compulsory jurisdiction, '[g]overnments have not availed themselves of these potentialities of international justice'.[17] The United Nations has been the primary exponent of a robust ICJ. In 1974, the General Assembly expressed the desirability of having states submit to the compulsory jurisdiction of the ICJ, and of providing in treaties for the submission of future disputes to the Court.[18] Also, at the 60th anniversary celebration of the ICJ in 2006, former Secretary-General Kofi Annan made a renewed call for 'all states that have not yet done so to consider recognizing the compulsory jurisdiction of the Court'.

It is true that states are understandably reluctant to consent to the adjudication of conflicts by the ICJ because of the important political issues that may be at stake. Thus, few states have consented to the Optional Clause of the ICJ without reservations. Typically, states adhering to Article 36(2) of the ICJ Statute do not do so unconditionally; they retain a number of potent reservations to the Court's jurisdiction. A strong reason being the decline is the reduced usage of the Court by the 'major powers', evidenced by the withdrawal by most Security Council members except the UK, from the ICJ's compulsory jurisdiction.[19]

There has been an increase, in recent years, in the docket of the ICJ, which while some scholars have considered a sign of both progress and growing respect for the Court, others have expressed concern at the reliance on compulsory jurisdiction to fuel this increase. Defiance of ICJ judgments, in turn, would have a corrosive effect both on the ICJ itself and upon broader efforts to institute meaningful settlement of international incidents through adjudicatory means.

An examinations of some final judgments that have occurred following Nicaragua v. United States[20] (as perhaps the single most controversial case in the ICJ's history) which showed the contentious nature of the Court's assertion of jurisdiction, coupled with the non-appearance of the United States at the merits phase and its subsequent defiance of that judgment, as well as the relationship between jurisdiction and compliance pos-Nicaragua. There has though been afterwards a marked paradigm shift on the issues of non-compliance, open defiance and non-appearance which have created a better understanding of contemporary issues facing the Court.[21] The theoretical compliance framework originally envisaged by the

---

[16] European Journal of International Lawejil.oxfordjournals.org http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2115529_code1680226.pdf%Fabstractid%3D2115... Eur J Int Law (2007) 18 (5): 815-852. doi: 10.1093/ejil/chm047 'Jurisdiction and Compliance in Recent Decisions of the International Court of Justice' – Aloysius P. Llamzon* *JSD Candidate, LL.M. 2006, Yale Law School, AB, JD, Ateneo de Manila University.

[17] H. Lauterpacht, *The Development of International Law by the International Court* (1958), at 5.

[18] UN Res No. 3232, *Review of the Role of the International Court of Justice,* 12 Nov. 1974, UN Doc. A/RES/12 Nov. 1974, UN Doc. A/RES/3232 (XXIX). Para. 1 states: "The General Assembly… (1) *Recognizes* the desirability that States study the possibility of accepting, with as few reservations as possible, the compulsory jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute;…'

[19] See Posner, 'The Decline of the International Court of Justice', in International Conflict Resolution (2006) 111, at 131.

[20] *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. US*), Provisional Measures [1984] ICJ Rep 169; Jurisdiction and Admissibility [1984] ICJ Rep 392; Merits [1986] ICJ Rep 14.

[21] The most comprehensive of these recent studies is that of Schulte, *supra* note 15. Another notable work is Paulson, 'Compliance with Final Judgments of the International Court of Justice since 1987', 98 *AJIL* (2004) 434, which focuses on ICJ judgments since 1987.

UN Charter in Article 94 (1) declares the expected obligation on member states: '(e)ach member of the United Nations undertakes to comply with the decisions of the International Court in any case to which it is a party.

According to Professor Rosenne, the provision appears in the Charter, and not the Statute of the ICJ, apparently to highlight the difference between the adjudicative and post-adjudicative phase is really not determined by another judicial examination, but rather by immediate political action.[22] Thus, under the framework of the Charter, therefore, responsibility for ensuring compliance is not within the ICJ's mandate, but rather, with the principal political organ for maintaining peace and security – the Security Council. Therefore:

> "[i]f any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment."

This clearly manifests the strong link between the ICJ and the Security Council as institutions with related, but decidedly different competencies in the settlement of international disputes – the ICJ is tasked with allocating rights and responsibilities and assessing competing legal claims among states party, while the Security Council is tasked, upon judgment, to give effect t o that decision, should the debtor state refuse to comply.

Clearly, the enforcement of ICJ judgments involves essentially political acts by both parties and the Security Council, in which the Court itself has little involvement and over which it has no power. It is thus at least partly improper to blame the ICJ (as some commentators sometimes do) when states do not comply with its decisions, as the Charter assigns the responsibility to enforce the Security Council.

5.2 A Review Of Some Non- Compliance Statistics Post Nicaragua v. USA

(a) Gabcikovo-Nagymaros Project (hungary/Solvakia)[23]

In 1977, Hungary and the then Czechoslovakia signed a treaty jointly to build the Gabcikovo-Nagymaros Project, a system of locks and dams on the Danube River. While Czechoslovakia's portion was at an advanced state of completion by 1989, Hungary elected to abandon the project, apparently for fear of damaging Budapest's water supply, as well as other environmental concerns. Negotiations between the two states having failed, Slovakia completed work on a variant of the proposed system and, in 1992 began damming the river.

Hungary and Slovakia (successor to Czechoslovakia) submitted the dispute to the ICJ by special agreement in 1993. The ICJ's 1997 judgment upheld Slovakia's contention that the 1977 treaty remained valid and binding, notwithstanding the state of necessity arguments propounded by Hungary concerning the environmental damage that would purportedly occur due to the Project. The Court refrained from making any specific orders, and imposed instead a duty on the parties to negotiate the 'modalities' of implementing the judgment in good faith, nothing that the environmental consequences brought up by Hungary may affect treaty compliance.

Consequently with the 1997 judgment, negotiations started anew with experts from both states preparing a framework agreement for continued operation and construction at

[22] S. Rosenne, *The Law and Practice of the International Court 1920 – 1996 (1997),* , 249.
[23] See *Gabcikovo-Nagymaros Projects* (Hungary/Slovakia) [1997] ICJ Rep 1, at paras 15-22, 37 ILM (1998) 162

alternative sites. However, negotiations broke down in 1998, and Slovakia filed a request for additional judgment before the ICJ sought a declaration that Hungary was not negotiating in good faith. A change in Slovakia's government after its September 1998 elections prompted renewed negotiations (though not necessarily productive) and no further ICJ proceedings were pursued. There were further talks in 2002 and 2003 that Slovakia would return the dispute to the ICJ; nevertheless, both were confident that the dispute would remain a technical (or legal), and not a political, problem. In 2004, after a two-year hiatus, talks resumed between both states as to how the ICJ decision would be implemented,[24] with both sides announcing willingness to continue negotiations, but 'apparently accomplished little more'.

Assessing compliance in Gabcikovo-Nagymarosis especially complicated largely because of the ambiguity inherent in the Court's requirement of further negotiations, which did little to resolve the underlying dispute and arguably left the parties in the same position they were in before the case.

Principle would suggest that a contract repudiated by both parties was a dead letter, and the Court should have been concerned only with delineating the legal consequences of its termination. The decision can only be defended as a pragmatic one, the very serious financial and political implications of a finding that the contractual regime had been frustrated was not lost on the Court. Slovakia had already expended huge sums of money on the project in its original form was utterly unacceptable to Hungary and genuinely imposed serious environmental threats. By asking the parties to negotiate a solution, possibly with the help of a third party, it is arguable that the Court was abdicating the very responsibility that the parties had assigned to it.

If one is to view an ICJ decision as a stabilization of expectations around an adjudicated solution, the most one can point to in Gabcikovo-Nagymaros is that a positive obligation of negotiation in good faith was mandated. The available facts on current negotiations are too sparse to assess compliance with that obligation with finality, but if the test of good faith is a whether negotiated resolution has been achieved, then the parties are not fulfilling their duty by refusing to compromise. Slovakia has taken the ICJ judgment as wholesale justification to insist on implementation of the 1977 treaty. Probably prompted by domestic opposition to the project as an outdated and harmful communist leftover, Hungary's interpretation of the ICJ judgment is that it is not obliged to build a dam.

Conversely, it seems at least equally plausible to argue that the duty of good faith negotiation has been met in this case, as agreement does not fall within the ambit of negotiation. In any case, the fact is that the parties gave thus far been unable to use the ICJ's judgment to resolve their differences.

(b) Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria; Equatorial Guinea Intervening)

The core of the issue here was in regard to the sovereignty over the Bakassi Peninsula and areas in the Lake Chad Basin was the source of this long-running territorial dispute between Nigeria and Cameroon. With estimated populations of 37,500 and 60,000,[25] respectively, and significant resources located therein, both states had claimed the Bakassi

[24] 'Week in Review: Politics', Budapest Bus J, 8 Mar. 2004, 2004 WLNR 151317 ("Experts from Hungary and Slovakia will restart talks on March 23, seeking ways to implement a decision by the International Court of Justice on the long-disputed Gabcikovo-Nagymaros Danube barrage system').

[25] See Counter-Memorial of the Federal Republic of Nigeria (*Cameroon v. Nigeria*) [1999] ICJ Rep, Pleadings, para. 33, 416 (May), ICJ Doc CR 2002/9, at 45, para. 134 (1 Mar. 2002).

Peninsula and Lake Chad basin for at least 20 years and, despite years of bilateral negotiations, no diplomatic progress had been achieved.[26]

Cameroon submitted the case unilaterally, and invoked the ICJ's jurisdiction pursuant to both states' declarations adhering to Article 36 (2) of the ICJ Statute. Upon commencement of the case, Nigeria initially contested jurisdiction, arguing that both states had already agreed to settle the dispute through existing bilateral channels.[27] Despite its initial resentment, Nigeria later participated fully throughout the ICJ proceedings.[28] On the ground, armed conflict continued while the case was pending. [29]

The ICJ's October 2002 judgment awarded Cameroon the Lake Chad boundary it sought, and allocated around 30 villages to Cameroon and a few to Nigeria.[30] The Court also awarded Cameroon the Bakassi Peninsula. Nigeria won the maritime-related rulings contained in the Judgment and much of the boundary between Lake Chad and Bakassi. The Court explicitly obligated both parties to withdraw their military, police and administration from the affected areas 'expeditiously and without condition'.[31] As for Equatorial Guinea, the intervenor, the ICJ drew the maritime boundary in a manner favourable to it.

Soon after the ICJ judgment, Nigeria issued an official statement which appeared to accept parts of the decision it considered fair or favourable, while rejecting other parts it found 'unacceptable'.[32] Nigeria pleaded its Constitution's principles of federalism as a reason for non-compliance: since 'all land and territory comprising the nation of Nigeria is specified in the Constitution', the federal government could not give up Bakassi until the requisite national and state assemblies amended the Constitution.[33] Internationally, it was felt that Nigeria's position was recalcitrant being that both countries had agreed in advance to respect whatever decision the ICJ arrived at.

It would be empathetic to recognize that the Nigerian Government was under tremendous internal political pressure not to respect the judgment, especially with regard to Bakassi, as various large Nigeria groups have opposed it and called for war, if necessary and ethnic Nigerians in that area also feared unequal treatment and persecution by Cameroon.

Nigeria was subjected to substantial diplomatic pressure by the international community. While the United States and France have pressured Nigeria to accept the ruling, the United Kingdom took the lead – the British High Commission to Nigeria state: ICJ judgments are binding and not subject to appeal. Nigeria has an obligation under the United Nations Charter to comply with the judgment'[34].

The UN has played a pivotal role in the easing of tensions and renewing cordiality between Cameroon and Nigeria. At the request of both states, the United Nations set up a commission to consider the implications of the verdict, protect the rights of the people in the

---

[26] Paulson, *supra* note 28, at 449-450, citing, *inter alia,* 'Focus on Nigeria's Response to ICJ Ruling to ICJ Ruling on Bakassi Penninsula', UN Integrated Regional Information Networks, 15 Oct. 2002, at www.allafrica.com; Schulte, *supra* note 33, at 351.

[27] *Preliminary Objections of Nigeria, Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria(* [1998] ICJ Rep 275, at para. 18.

[28] 'Cameroon's Biya Said Satisfied with Talks with Obasanjo, Annan on Bakassi Crisis', Radio France International, doc. FBIS-AFR-2002-0909 (9 Sept. 2002).

[29] In 1996, four people died and 13 were injured in another skirmish. Paulson, *supra* note 28, at 450, citing 'Nigerian Press Reports Four Killed in Boarder Clash with Cameroon', *Agence France-Presse,* Doc. FBISAFR-96-025 (6 Feb. 1996).

[30] See further Bekker, 'Case Report: Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria; Equatorial Guinea Intervening)', 97 AJIL (2003) 387.

[31] *Land and Maritime Boundary between Cameroon and Nigeria [2002]* ICJ Rep 303, at para. 325.

[32] 'Cameroon; Bakassi: Why the ICJ Judgment is Unacceptable – Government', Africa News Service, 24 Oct. 2002, available in Lexis, News Library , Allnews file.

[33] *Ibid.*

[34] Paulson, *supra* note 28, citing *Agence France-Presse,* Doc. FBIS-AFR-2002-1025 (25 Oct. 2002).

affected areas, and propose a workable solution.[35] The Commission's recommendations with respect to Lake Chad appear to be successful, with Cameroon taking control of the area, and both states trading villages across their long mutual border.[36] Indeed, a public statement from the Nigerian Boundary Commission on 17 January 2006 affirmed that 'both countries had agreed on the implementation of the decision on the Lake Chad Region, the land boundary from the Lake to the sea and their maritime boundary', and that '[f]ield work on the land boundary, including mapping and identification of pillar site in accordance with that decision was also ongoing.'[37]

Despite high tension at the time, Nigeria and Cameroon also appear to have resolved the dispute over the Bakassi Peninsula, which was always a source of greater tension because of its vast oil resources,[38] coupled with strong internal opposition towards relinquishing the area in Nigeria and Nigeria's status as a regional power. [39]The Nigerian Boundary Commission reported that, as of January 2006, implementation of the ICJ judgment was progressing. Both countries have secured the technical assistance of the UN to undertake the field work… and have secured the latest satellite imagery of the border area 30km in Nigeria and 30km in Cameroon. With satellite mapping, a technical team of Nigeria, Cameroon, and UN officials reportedly commenced intense cartographic demarcation work in the field in accordance with the judgment.[40]

The decisive point of compliance occurred on 12 June 2006. Following intensive mediation efforts by UN Secretary General Kofi Annan, the two states entered into an agreement setting out a 'comprehensive resolution of the dispute' over the Bakassi Peninsula in reliance upon the ICJ demarcation. Mr. Annan considered the agreement 'a great achievement in conflict prevention, which practically reflects its cost effectiveness when compared to the alternative forms of conflict resolution'.[41] In August 2006, both states held a joint ceremony to mark the transfer of control over the peninsula through the withdrawal of Nigerian troops from the northern part of the territory. Thus despite Nigeria's earlier seeming defiance, compliance has been achieved.

5.2.1 Assessment And Implications of the Cases

Of the cases treated above, the only case where progress towards compliance seems wholly problematic, Gabcikovo-Nagymaros, was instituted by special agreement, and even there, there is basis to question whether the Court provided the parties with enough guidance

[35] Larewaju, 'UN Panel on Bakassi Meets Dec. 1', *Vanguard* (Lagos), 29 Nov. 2002; Abdulmajeed, 'Bakassi: Committee to Demarcate Border Set Up', *Daily trust* (Abuja), 4 Dec. 2002, all available at:www.allafrica.com.

[36] Paulson, *supra* note 23, at 451, citing 'Nigeria, Cameroon to Sign Friendship, Non-Aggression Treaty', Xinhua General News Service, 1 Feb. 2004.

[37] Paulson, *supra* note 23, at 451, citing 'Nigeria, Cameroon to Sign Friendship, Non-Aggression Treaty', Xinhua General News Service, 1 Feb. 2004.

[38] Reports suggest that the Bakassi Peninsula may have as much as 10% of the world's total oil and gas reserves: 'Nigeria Hands Bakassi to Cameroon', BBC News Report, 14 Aug. 2006, available at: http://news.bbc.co.uk/2/hi/africa/4789647.stm.

156 Paulson, *supra* note 23, at 452.

[39] Reports suggest that the Bakassi Peninsula may have as much as 10% of the world's total oil and gas reserves: 'Nigeria Hands Bakassi to Cameroon', BBC News Report, 14 Aug. 2006, available at: http://news.bbc.co.uk/2/hi/africa/4789647.stm.

156 Paulson, *supra* note 23, at 452.

[40] 'Nigeria, Cameroun Reach Accord on Boundary', *The Tide Online* (Nigeria: Rivers State Newspaper Corp., 17 Jan. 2006), available at: www.thetidenews.com.

[41] See 'Cameroon, Nigeria Sign Agreement Ending Decades-Old Border Dispute', UN Press Release AFR/1397, 12 June 2006.

for effective resolution to occur, which in turn may lead one to question altogether whether compliance is the proper optic from which to evaluate the decision.

In contrast, in Cameroon v. Nigeria which was instituted through unilateral application of the ICJ's compulsory jurisdiction, give good cause for optimism. Here Nigeria showed substantial, although imperfect, compliance with those judgments despite early resistance. This suggests, at the very least, that the Court's compulsory jurisdiction and subsequent compliance problems are not as neatly correlated as is commonly advanced.

In fact since Nicaragua, there has not been a single instance of open defiance of ICJ final judgments. This suggests that the recent compliance record of ICJ judgment is much less delinquent is often portrayed. A major reason why there may be cases of partial compliance irrespective of the political conditions prevalent in the respective scenarios is as a result of the under-utilization of the Security Council in the enforcement of ICJ judgments.

Under the Charter's framework, non-compliance is dealt with principally through Article 94(2) of the UN Charter, which offers the creditor state recourse to the Security Council in seeking enforcement of the judgment. Thus, the Charter views compliance as much more a political issue involving international peace and security than a legal one.

In its entire history, the Security Council has never employed its Article 94 powers even on occasions of clear non-compliance. It is understandable, given the discretionary nature of Article 92(4),[42] for the Council to be passive in situation wherein the debtor state is a Permanent Member. The fundamental ambiguity of Article 94(2) lies not in itself but in its relationship with the rest of the Charter. Security Council decisions may commission armed force or measures short of such force *only* if peace is threatened. Clearly not every act of non-compliance constitutes an imminent threat to the peace.

Another reason why Article 94(2) was never employed by the Security Council is that in appropriate cases, the mere threat of Security Council action was sufficient to trigger the desire response from the recalcitrant state. In Land, Island and Maritime Frontier Dispute,[43] for example, Honduras' letter to the Secretary-General was sufficient to trigger a more conciliatory tone from EI Salvador, prompting renewed vigour in negotiation that diffused tensions and ultimately sped up compliance with the ICJ's delimitation of their common border. Thus, when the debtor state does not have the power to block Security Council action, the possibility of Security Council action is often enough impetus for them to agree to a negotiated, less destructive solution in order to avoid Article 94(2).

5.3 Institutional Implications for the ICJ

Once consist theme underlying many of the studies about the 'effectiveness' of the ICJ and its institutional challenges is an assessment of what the Court's identity and purpose is within the international community. This multifaceted issue is probed in various ways – is the ICJ primary function resolve concrete disputes *ad hoc,* or is its function (as may scholars suggests) of a more general character, that of actively engaging in the interpretation and progressive development of public international law? Sir Robert Jennings, former President of the World Court, forcefully took the latter view, based largely on the central; role given to the Court by the UN Charter in matters of law and the dispensation of justice:

> "Ad hoc tribunals can settle particular disputes; but the function of the established 'principal judicial organ of the

[42] See Reisman, 'The Enforcement of International Judgments', 63 *AJIL* (1969) 1, at 13 – 14.
[43] Application for Revision of the Judgment of 11 Sept. 1992 in the Case Concerning the Land, Island, and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening) (El Salvador v. Honduras), Judgment of 18 Dec. 2003 [2003] ICJ Rep 392.

> United Nations' must include not only the settlement of disputes but also the scientific development of general international law … there is therefore nothing strange in the ICJ fulfilling a similar function for the international community".[44]

The decline of the Court's compulsory jurisdiction should not be taken as an indication that the ICJ is in irreversible decline. Indeed, the approach of states towards its jurisdiction over the years suggests that the world community has matured in its understanding of the potential and limits of ICJ, and is moving closer to an equilibrium situation where, based on rational choice, most states have decided both to comply with the Court's judgments and further restrict its compulsory jurisdiction due to the uncertainties inherent in being unable to control outcomes. The Court's docket is increasingly being left only for cases in which:

- States that actually wish to settle present disputes through special agreement (because they already discounted and are prepared to accept the consequences of an adverse decision); or
- Are undaunted at the prospect of resolving future disputes through international adjudication (those who remain committed to the optional clause or have signed treaties with compromissory clauses).

This, in turn, is likely to lead to even greater compliance with the Court's decisions, thus strengthening the institution.

6. AFRICA COURT OF HUMAN AND PEOPLES' RIGHTS

The African Court on Human and Peoples' Rights (the Court) is a continental court established by Member States of the Africa Union to ensure the protection of human and peoples' rights in Africa. The Court was established by virtue of Article 1 of the Protocol to the Africa Charter on Human and Peoples' Rights (the Protocol). In fact, the Africa Charter on Human and Rights, which is the main Africa human rights instrument that sets out the rights and duties relating to human and peoples' rights in Africa, provides a framework within which the Africa Court on Human and Peoples' Rights was created.

The mandate of the Court is to complement and reinforce the functions of the Africa Commission on Human and Peoples' Rights (the Africa Commission often referred to as the Banjul Commission), which is a quasi-judicial body charged with monitoring the implementation of the Charter.

The Protocol establishing the Africa Court on Human and Peoples' Rights was adopted on 9 June 1998 in Burkina Faso and came into force on 25 January 2004 after it was ratified by more than15 countries, to date, only the following twenty seven (27) states have ratified the Protocol: Algeria, Burkina Faso, Burundi, Cote d'Lvoire, Comoros, Congo, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria Niger, Rwanda, Sahrawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia, and Uganda.

The Court has its permanent seat in Arusha, the United Republic of Tanzania. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation

[44] Jennings, The Role of the International Court of Justice in the Development of International Environmental Protection Law', 1 *Rev. Eur Community & Int'l Envt'l L* (1992) 3, at 240, cited in *East Timor (Portugal v. Australia*) [1995] ICJ Rep 90 (Ranjeva J, separate opinion).

and application of the Africa Charter on Human and Peoples' Rights, the (the Charter), the Protocol and any other relevant human rights instrument ratified by the States concerned. Specifically, the Court has two types of jurisdiction: contentions and advisory.

The Court is composed of eleven Judges, nationals of Member States of the Africa Union. The first Judges of the Court were elected in January 2006, in Khartoum, Sudan. They were sworn in before the Assembly of Heads of State and Government of the Africa Union on 2 July 2006, in Banjul, the Gambia. The judges of the Court are elected, after nomination by their respective States, in their individual capacities from among Africa Jurists of proven integrity and of recognized practical, Judicial or academic competence and experience in the field of human rights. The judges are elected for a six year or four year term renewable once. The judges of the Court elect a president and Vice-President of the Court among themselves who serve a two year term. They can be re-elected only once. The President of the Court resides and works on a full time basis at the seat of the Court, while the other ten (10) judges work on part-time basis. in the accomplishment of his duties, the President is assisted by a Registrar who performs registry, managerial and administrative functions of the Court.

The Court officially started its operations in Addis Abba, Ethiopia in November 2006, but in August 2007 it moved to its seat in Arusha, the United Republic Tanzanian, where the Government of the Republic provided it with temporary premises pending the construction of a permanent structure. Between 2006 and 2008, the Court dealt principally with operational and administrative issues, including the development of the structure of the Court's Registry, preparation of its budget and drafting of its Interim Rules of Procedure. In 2008, during the Court's Ninth Ordinary Session, judges of the Court provisionally adopted the Interim Rules of the Court pending consultation with the Africa Commission on Human and Peoples' Rights, based in Banjul, the Gambia in order to harmonize their rules to achieve the purpose of the two institutions of the Protocol establishing the Court, which requires that the two institutions must harmonize their respective Rules so as achieve the intended complementarity between the Africa Court on Human and Peoples' Rights and the Africa Commission on Human and Peoples' Rights. This harmonization process was completed in April 2010 and in June 2010, the Court adopted its final Rules of Court.

According to the Protocol (Article 5) and the Rules (Rule 33), the Court may receive complaints and/ or applications submitted to it either by the Africa Commission of Human and Peoples' Rights or State parties to the Protocol or Africa Intergovernmental Organizations. Non-Governmental Organizations with observer status before the Africa Commission on Human and Peoples' Rights and individuals from States which have made a Declaration accepting the jurisdiction of the Court can also institute cases directly before the Court. As of March 2014, only seven countries had made such a Declaration. Those countries are Burkina Faso, Ghana, Malawi, Mali, Rwanda, Tanzania and Republic of Cote d'Ivoire. The Court delivered its first judgment in 2009 following an application dated 11 August 2008 by Mr. Michelot Yogogombaye against the Republic of Senegal.

On March 28, 2014, the Court ruled against Burkina Faso, in a case brought by the family of Norbet Zongo, a newspaper editor who was murdered in 1998. The court found that Burkina Faso had failed to properly investigate the murder, and had failed in its obligations for advisory opinion.

As at September 2013, the Court has received 28 applications. It has already finalized 23 cases. Currently the Court has 5 pending cases on its table to examine including requests for advisory opinion. Under Article 3 of the Protocol, the Court has jurisdiction to deal with all cases and disputes submitted to it regarding the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the concerned States.

Under Article 4 of the Protocol, the Court may, at the request of a member State of the Africa Union, any of the organs of the Africa Union, or any Africa organization recognized by the Africa Union, provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.

In February 2009, the Assembly of Heads of State and Government of the African Union requested the AU Commission, in consultation with the African Commission on Human and Peoples' Rights and the Africa Court on Human and Peoples' Rights, to assess the implications of extending the jurisdiction of the Court to try international crimes, such as genocide, crimes against humanity and war crimes and to submit a report thereon to the Assembly in 2010.

To implement this decision of the Assembly, the Africa Union Commission engaged a consultant to undertake a study on the implications of extending the jurisdiction of the Africa Court of Justice and Human Rights (yet to become operational), including considering whether unconstitutional change or prolongation of government, could be considered a new crime. The Draft Protocol with an extended mandate of the Court is currently under consideration by AU Policy Organs.

6.1 Planned merger with the Africa Court of Justice

On July 1, at the Africa Union Summit in Sharm EL Sheikl, Egypt, Heads of State and Government signed a protocol on the merger of the Africa Court of Human and Peoples' Rights with the still non-existent Africa Court of Justice following a decision by member states at a June 2004 Africa Union summit. As of 3 February 2014, only five countries have ratified the protocol out of 15 needed for its entry into force. The new court will be known as the Africa Court of Justice and Human Rights.[45] The Africa Court of Justice was originally intended to be the "principal judicial organ of the Union"[46] with authority to rule on disputes over interpretation of Africa Union treaties.

A Protocol to set up the Court of Justice was adopted in 2003, and entered into force in 2009. It was, however, superseded by a protocol crating the African Court of Justice and Human Rights, which will incorporate the already established African Court on Human and Peoples' Rights and have two chambers – one for general legal matters and one for rulings on the human rights treaties. The 'merger protocol' was adopted in 2008. The united court will be based in Arusha, Tanzania.

7. THE CHALLENGES TO THE EFFECTIVE ADMINISTRATION JUSTICE IN INTERATIONAL LAW

From a historical review of the development of judicial bodies at the international level, it is seems that judicial institutions do not automatically receive acceptance by state parties for various reasons:

- States are reluctant to relinquish some of their sovereignty to external bodies even were they realize to ensure international political stability.
- Unlike municipal settings where enforcement of judicial authority is assured by the executive, at the international plane, it requires consent of the state parties arising from a lot of political negotiations.

[45] http://en.wikipedia.org/wiki/African_Court_of_Justice; assessed 06/03/2015.
[46] Article 2(2), Protocol of the Court of Justice of the African Union.

- Also, there has been a growing divergence in political ideologies on the general standards and ethos of democracies which makes it difficult for some states to willingly submit to the jurisdiction of international courts and tribunals.
- Cost of operations have widened with a greater participation in international civil service by the establishment of more microcosmic agencies which have more detailed subject matter roles in advising these judicial bodies, this is placing an increasing burden for financial contributions by member states. Without adequate financial support, the effectiveness of these institutions becomes Limited.
- Pace of proceedings: In the prosecution of Thomas Lubanga Dyilo by the International Criminal Court for conscripting and using child soldiers, the first verdict took six years.
- Sate cooperation: Many states have used reservations within their declaration of acceptance of the jurisdiction of these courts to stultify the progress of international justice and jurisprudence.

Also with regards to criminal justice, some states have not effected the judgments of the courts by arresting defaulting state representatives who travel into their jurisdiction as is the case of President Omar al-Bashir in Africa.

8. CONCLUSION

It is clear that without judicial bodies at the international level, chaos would reign in world politics as both states and individuals would be without much control as international obligations will have no avenue for proper interpretation and enforcement. It is the opinion of this writer that the international courts have been quite effective in their discharge of justice and establishing customary rules of conduct in international jurisprudence. However, there is a need for the establishment of more courts, especially to handle specialized subject matters as this will reduce the burden on existing courts and create greater judicial efficiency.

9. THE WAY FORWARD

a) Increased Ratification of treaties and protocols by national governments. This will ensure effective delivery of judgment.
b) Increased contributions by state parties: with state parties increasing their contributions to these institutions to these institutions, there will be greater funding, which will lead to more expeditious delivery of justice as bureaucratic bottlenecks will be more easily ‘oiled’.
c) Widened increased financial contributions, especially from enlarging economies of developing states: This is necessary to reduce the undue influence of the developed states which have borne the greater burden of funding the international justice system.
d) Increased number of specialized international courts: This will reduce the subject matter of disputes and advices sought before the currently available courts.
e) Closer relationships of civil societies: These bodies are effective in providing legal and research support.

Sacha & Diamond Academic Publishers, Meridian Centre,
258 Kingsland Road, Hackney, London E8 4DG, England, United Kingdom.
In Compliance with the Standards Approved by the UK Arts and Humanities Research Council
Abstracting and Indexing in:
GIGA - The Electronic Journals Library of the German Institute of Global and Area Studies, Information Centre, Hamburg; Google Scholar; Global Development Network (GDNet); Social Science Research Network (SSRN); Econlit - The American Economic Association's Index; EBSCO; IndexCopernicus USA; British International Libraries; Anton's Weekly Digest; Econlit (USA); International Abstracts in Operations Research; Environmental Science and Pollution Management; Research Alert
For the Advancement of Knowledge to the World. www.sachajournals.com