Law Journals

Journal of
Constitutional Law and
Jurisprudence

ISSN: 2583-388X
Volume 6, Issue 1, 2023
DOI (Journal): 10.37591/JCLJ

http://lawjournals.celnet.in/index.php/Jolj/index

Review JCLJ

Application of the Bona Fide Principle to State Party Compliance with Court Judgments

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Abstract

A decision made by the International Court of Justice is final, irrevocable, and enforceable against the parties. According to Article 59 of the statute, such decisions of the court have binding effect between the parties and with regard to a specific matter. A judgment's ability to be executed by the parties is justified by the fact that it has binding force. As one can see, many states continue to disregard and refuse to implement court judgements, despite the fact that these judgments have a binding legal force. The act of non-compliance reduces the effectiveness of the courts as "solution factories". This document stands to illustrate on state party comportment in the recognition and execution of the judgements of the world court, calling on the said states to execute the judgment of the court in a good faith spirit. The analyses in the document were illustrated using case law, specialized books, and articles as sources of inspiration. Hence, we thus arrived at the understanding that, the execution of court judgments is highly unrealistic in the absence of a good faith spirit. However, once the call for compliance appears to be complicated, besides making use of the enforcement measure set forth by the Charter of the UNs, external political pressure might be given preference as a remedy to non-compliance.

Keywords: Compliance, dispute settlement, execution, court, good faith, judgments

INTRODUCTION

International courts all around the globe are set forth as solution building factories to disputes between opposing sovereign state parties. Set forth by the international community for the settlement of disputes, they do so by issuing decisions that serve as medications to the controversies between opposing state parties in disputes. Such decisions appear in diverse forms. Some are interlocutory in nature while others are definite. The said decisions irrespective of their nature are said to be binding on the parties in the dispute thus requiring a prompt and absolute compliance, done in a bona fide spirit [1]. Talking of a bona fide spirit, we are simply referring to the spirit of good faith which is expected from the states to whom a decision is destined [2]. One must however be strict on the point that, considering the absence of a supreme body or state set forth to govern and give orders to all the sovereign states of the globe, one can only count on the good faith of states to have them comply with court decisions in absolute satisfaction. Considering further that there exist a diversity of courts within the international community, this document shall focus more on the decisions of the International Court of Justice which happens to be the most prominent court with a universal character, set forth to settle disputes amongst the subjects of the international community.

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Received Date: January 10, 2023
Accepted Date: January 21, 2023
Published Date: February 03, 2023

Citation: Asanji Roland Ndikum. Application of the Bona Fide Principle to State Party Compliance with Court Judgments. Journal of Constitutional Law and Jurisprudence. 2023; 6(1): 1–15p.

A judgment once delivered is final, without appeal, and binding upon the parties. The clear

language of Article 59 of the statute states that such court decisions bind the parties involved in the relevant matter. The parties to whom the decision was served must abide by it in order for it to have a compelling impact. To be clear, compliance refers to an ultimate assent and the just execution or implementation of the aforementioned judgments with the observation of good faith. The ICJ defines "good faith" as a moral responsibility to carry out the court's decisions in its real sense and value.

States, however, frequently undercut and disregard the legal force of court judgments, which diminishes the value of courts as "solution factories" and hence reducing their efficiency [3]. Courts are given the opportunity to make decisions of diverse nature. Courts have the capacity of making orders for interim measures of protection; likewise they are granted the powers to give judgements which are final and binding on state parties as one will see in the case of the International Court of Justice [4]. Created within the UNO as a world Court to settle disputes opposing international law subjects, it does not suffice for the court to simply make decisions with respect to the disputes set on its table, what matters most is to have the said decisions implemented accurately by its debtors.

Is it necessary to resolve international disputes?

It is important to remember that a disagreement need not be seen as a nasty thing. This is corroborated by the fact that it appears to be a consideration for a proper and objective examination and clarification of a crucial fact or legal principle [5]. An element relating to two or more parties may contain a point of conflict or ambiguity [6]. There would not likely be a sharp clarity in the situation where the parties have not identified the contradiction or unclear point in question unless the parties become aware of it and then ask for clarifications [7]. Given that a contentious scenario is never ideal in a relationship between state parties, states must work together and understand each other [8]. In such a spirit of understanding, they are called upon to settle their disputes in the spirit of good faith, using the various mechanisms laid down in the UNs Charter [9].

Do states owe the obligation to comply with court decisions in good faith?

Considering the fact that the most prominent task vested in states within the international community is to maintain international peace and security, states must endeavour to put aside all sorts of bias and negative energy that might jeopardise the said task. The settlement of disputes has always served as a bold step towards preserving a harmonious atmosphere among states. In this respect, what makes the settlement exercise meaningful is the outcome of the settlement exercise which of course will be meaningless if states turn to undermine what has been decided in the course and at the end of the settlement process. That said, states are thus required to comply with final judgments, not leaving out the interlocutory decisions which includes the orders for interim measures, set forth to maintain the *status que* [10], prevent irreparable harm [11], and hence cement the base for an equitable judgment that will end the dispute and bring satisfaction to the parties at play. All in all, the good faith spirit must accompany the action of compliance since with the absence of a good faith spirit, compliance might appear artificial and will not reflect the original intent and value of what is required by the judge in the judgment. Considering the call and need for compliance with court decisions, what responses have been received from state parties to the call for compliance with court decisions, precisely those of the International Court of Justice? To respond to the present problem, it is thus necessary to deal with the *raison d être* and reaction of state parties towards final judgments, and hence proceed with some possible mechanisms for the enforcement of compliance.

THE CALL FOR STATE COMPLIANCE WITH COURT DECISIONS IN GOOD FAITH

Once rendered, a judgment is final with no possibility of appeal. Such decisions are vested with binding effect between the parties and with regard to the specific case in question, as illustrated in Article 59 of the statute. The validity of a judgment is qualified in the ability of its execution by state parties. As one can see, despite the fact that court decisions has a legal force and effect, [12] many states continue to refuse to acknowledge and carry out the aforementioned judgments, which as such reduces the efficiency of the courts as "solution factories". The act of resisting to comply with court

judgments thus goes contrary to good faith requirement slated in the UNs Charter [13]. Considering the paramount position occupied by the good faith principle in the execution of court judgments, it is thus important to work on the grounds that warrant compliance with court judgments, and hence proceed with the reaction of state parties towards the said judgment.

The Standard Bases for Compliance with Court Judgments

One of the main factors that determine the effectiveness of the court as an institution for the peaceful resolution of conflicts is respect for the court's decisions. When a judgment is given by the ICJ, it is final and thus vested with the rub of *res judicata*, especially when there is the absence of a valid objection to the judgment by one of the state parties to the judgment. At this juncture, the judgment is crowned with authority which thus demands for an obligation of compliance in good faith from the parties to whom the judgment is destined. Notwithstanding the absolute call for compliance from the state parties concerned there may exist certain circumstances beyond control that may hinder the debtor state party from complying with the said judgment. At this level, one might not qualify the act of non-compliance from the hindered state party as an act of bad faith. For proper examination, one will discuss on the authority of judgment and hence proceed with the survey of the steps involved in the process of compliance.

Authority of Judgment as a Ground for State Compliance

Authorities are central to law and to legal argumentation presented in every jurisdictional institution. As one will witness in the community of states, in most models of legal adjudication, decision-makers cannot render discretionary decisions which are not in conformity to the sources of international law [14] set forth for courts to follow when overseeing proceedings between member states of the United Nations, or states that have become parties to the statute of the ICJ [15]. Considering the fact that judicial power is delegated power, added to the widely-recognized rule that judges should not "legislate from the bench" it drives us to the affirmation that their decisions must hinge on a legal—that is, authoritative-base, which thus binds the parties to which it is destined and the parties in question must put in efforts to comply with the said decisions in a spirit of honesty, sincerity, transparency, and fidelity [16]. Few legal propositions or judicial pronouncements can be valid or even appear valid without being grounded on authorities.

When using the phrase "authorities" in its general sense, it might refer to a statute or an equivalent positive regulation from the legislature, which gives the adjudicator minimal flexibility since he must apply the rule to the cases he has before him [17]. The phrase can also apply to a private rule relating the parties on the matter [18], which a court might make reference to while making its decision. All these are "materials" that calls for acute legal reasoning, creating blocks that drives to a legal conclusion [19]. As such, it establishes the crown of *res judicata* on court decisions and imposes a force of obligation on the parties to comply with the said decision. Assuming that the arguments of parties in legal proceedings are thus based on authorities which in return happen to be the source of reference to the judge, note must be taken on the point that in the present document, it signifies a source of international law as outlined in Article 38 of the ICJ Statute[i]. The notion of *res judicata* produces two categories of effect where one is procedural and the other substantive. Looking at the said categories, the former acts as a procedural barrier to a subsequent hearing of a case by the same court and the latter having a wider scope and intended to make the judgment govern the parties' interactions with regard to the issue it is said to resolve [20]. The phrase "*res judicata*" has been used and mentioned with considerable regularity and assurance as an established law principle for more than a century [21]. With respect to the dissenting opinion of Judge Anzilotti in the Chorzów Factory case, *res judicata* has typically been interpreted as a general concept of law in accordance with Article 38(1)(c) of the Court's Statute [22].

Progressive Steps of State Party Compliance

The progressive steps of state parties manifesting the will of complying with court decisions can be traced from a range of 0 to 10 points. This thus drives one to the understanding that;

The stage of point 0 signifies a non-execution stage. This represent the *status que* point where the disputing parties have not taken any action or measures to kick-start with the implementation of the substance that has been decided by the court. At this stage, mindful of the fact that execution is at 0, one cannot assume that the parties are short of a good faith spirit [23]. This stands for the reason that the parties might still be at a position of meditation on the subject of how to make the execution exercise successful. Making reference to the land and maritime dispute between Cameroon and Nigeria [24], where the court made a judgment in 1998, followed by a definite one in 2002, a non-execution stage implies that the immediate cessation of military activities by both states will not actually signify that fighting has stop to its fullness, given that the troops of both states precisely those of Nigeria which was the debtor to the judgment will still be present in the area of dispute.

The stage at points 2.5 represents an initiated execution stage. This represents some observable measure of the beginning of the execution of the decided substance, meaning that the parties have meditated on the subject of execution and have established a date of the execution of the task or are having formal or informal discussions on the execution of the concerned decided substance [25].

Moving to points 5 thus signifies a minimal execution stage. This represents the situation where the disputing state parties have made some efforts towards the execution of the decision, but these efforts are not enough for the concerned task to be completed by the end of the established deadline given the current pace of the process [26]. For instance, with respect to the Cameroon Nigeria territorial dispute, in the context of the immediate cessation of military activities, a minimal execution position would imply that Nigeria has ended the combat but that at least seventy percent of its fighting soldiers are still present in the Cameroonian territory. This might be seen as an initiation of a good faith spirit which is very vital for the execution process.

Points 7.5 imply an intermediate execution position. This is a stage in which the parties have made some progress toward executing the orders of the court, and if the current rate of action is maintained, there is a chance that the task can be finished by the end of the designated deadline. An intermediate execution position, for instance, would suggest that Nigeria has halted the conflict but that between thirty and seventy percent of its fighting men have left the territory of Cameroon in the context of the cessation of armed activity [27].

Taking our analysis to points 10 will imply a complete execution stage [28]. This depicts the moment in which the Nigerian army has stopped fighting and withdrew all its personnel and their equipment from Cameroon. This position might be seen as that which has been manifested in an utmost absolute spirit of good faith which is a gesture worth encouraging in every dispute settlement process. With respect to these analyses, an illustration of how states have reacted towards the judgment of the ICJ in the past years might be of relevance.

THE REACTION OF STATE PARTIES TOWARDS THE JUDGMENTS OF THE ICJ

In our modern culture, the need to abide by international judicial decisions in general and those of the ICJ in particular, as well as the accurate execution of the *pacta sunt servanda* concept, is of major concern. The notion of *pacta sunt servanda* and state party compliance are grouped together because their applications are complementary. Respecting court orders is an act of great honor since it preserves the commitment to jurisdictional recognition and must be done in a spirit of good faith in order for the aggrieved state parties to find satisfaction from the executed substance. This statement shows the bond that exists between the two notions mentioned here [29]. This thus leads one to the understanding that, with the absence of either of the cited obligations, the execution process cannot be qualified as satisfactory.

The magnificent spirit of consent expression that characterizes the international community gives much importance to the good faith principle which is very much needed to guide the conduct of

parties in the process of executing judgments. Looking at the notion of consent vested on states in their international engagements, many states rather turn to utilize this prerogative in an abusive manner. It is this spirit of consent that often gives states the powers to challenge the authorities of the court [30]. One can equally observe that, the obligation to comply with the ICJ judgments derives its origin from the consent expressed by parties which in return, crown them with the obligation to comply and respect their engagements in good faith, as illustrated in the "*pacta sunt servanda*" principle [31].

However, despite the circumstance of some recalcitrant states resisting to comply with the judgments of the court, one cannot negate the fact that, there are instances of successes where some states have duly complied with the courts' decisions. One must however equally note that, the cases of non-compliance with the judgments of the ICJ are now rare than was the case with its predecessor, PCIJ. This is corroborated by the fact that many states that initially show bad faith by refusing to abide to court decisions eventually turn to abide to the said judgments as was the case with the Cameroon/Nigeria land and maritime boundary dispute, followed by other cases, which will be covered in more depth below [32].

Instances of Compliance as a Product of Good Faith

It is well understood that, once parties undertake to consent for the obligatory jurisdiction of the court, the outcome of the court's works which are its verdicts are considered final and binding on the parties to the dispute as stated in Articles 59 and 60 of the statute [33]. No reservations voiced by any of the disputing states at this point in the proceedings can be admitted since it may fragile the solemn agreement that was willingly made by the parties concerned which serves as the base of the court's jurisdiction [34]. Despite the competences vested on the court to grant advisory opinions, this in no way sounds as a trespass on the contentious jurisdiction of the court, producing binding decisions[ii]. When the legal bases of the court's jurisdiction is well determined, the obligation of compliance to court judgments is not to be debated upon since, what is requested from the parties is to respect the outcome of the engagement they freely consented to.

The obligation of good faith can thus be qualified as an implicit obligation inherent in the obligation of complying with the court's judgments. In the military and para-military case filed by Nicaragua against USA in 1984, the court was of the view that, the principle of good faith is of paramount importance in the network of engagements and should be well respected in international relations [35]. These obligations are attributed as a result of the finality and authority of court judgments. To this regard, some states have been objective and have put forth positive reactions towards the said judgments. These states in question may be seen to have submitted to the obligation of good faith as they are required to, following the words of Article 26 of the 1969 Vienna Convention. As a source of reference to the states which have shown signs of good conduct by complying with the court's judgment, one can talk of the frontier dispute between Burkina Faso and Mali, 1986 [36]. With respect to the court's decision, Thomas Sankara, the president of Burkina Faso, and General Mousa Taure, the president of Mali at the time of the dispute, wrote a note to Judge Bedjaoui, the president of the International Court of Justice, reiterating their approval of the court's decision. As stated in their letters sent on December 24th, 1986 and January 1st, 1987, respectively, these states pledged to adopt cooperative stance to aid in the implementation of the court's judgments. As one can see, both states honored their commitments to uphold the decision of the court which resulted to peace and amicable relations between the two states. As an advantage of the good conduct, both states actually gained in time and resources which would have been wasted on proceedings of re-judgment. Notwithstanding, despite this instance of good conduct exercised by Burkina-Faso and Mali, many other cases of non-compliance or delay in compliance has equally been registered in the archives of the court.

Non-compliance as a Gesture of Bad Faith

Certain states have deliberately decided not to give credit or value to the engagement which they have entered into when they consented for the jurisdiction of the International Court of Justice. These

states stand the ground to challenge the court's decision, regardless of the authority vested on such decisions. One needs to however admit the fact that, subjects of international law who refuses to comply with the decision of the court in good faith have violated the engagement they freely went in for, thereby committing an international wrongful act [37]. Most of these bad acts from states keeps on persisting due to the lack of a means of constraint which can be imposed on recalcitrant states, as it is with the case of the municipal societies where, the citizens have often been forced to comply with court decisions, thanks to the existence of hierarchical authorities coupled with the presence of forces of law and order, all vested with absolute powers of sanctioning recalcitrant individuals. Considering the absence of a sheriff or marshal within the international scene, powerful enough to compel states to comply with court decisions, the only hope one may rely on is the obligation of states to comply with the said verdicts in good faith. However, despite the exigencies of good faith in compliance required from sovereign states, the general tendency have often been cases of non-compliance by some states manifesting traces of bad faith as one will see in the subsequent cases. As for the case of non-compliance, let's take a look at the cases between Libya/Chad followed by the Cameroon Nigeria case.

Looking at the case between Libya and Chad, there was an atmosphere of dispute over a region covering 330.000 square miles, including the 114,000sq km at the *Aouzou strip*, a resource-rich area occupied by Libya in 1973. This atmosphere of conflict resulted to severe damages and loss of lives. Following the special agreement arrived at by the disputing states in 1989, accepting the jurisdiction of the ICJ, the court in question went through the case and handed down the judgment in February 1994, awarding the entire *Aouzou* strip to Chad [38]. After the judgment was made, Libya displayed bad faith by initially contesting it and reportedly starting to increase army numbers in the Aouzou region. One month after, following negotiations between the two states, president Quadaffi of Libya indicated to comply with the court's decisions.

As one will note, accepting a judgment is good, but what matters the most is the implementation of the said judgment. This statement simply goes to support the fact that, Libya formally recognized the judgment of the court to liberate the *Aouzou* area. Despite this formal declaration of recognition, reports of continuous Libyan presence in the *Aouzou* strips continued to surface through Libyan nationals occupying the area, added to the fact that the Chadian rebels were supported by the Libyans. The Libyan government lacked the spirit of good faith where it pretentiously accepted the judgment of the court, but still went on supporting rebel movements against the Chadian government over the *Aouzou* region. One can thus mark here that, Libya manifested lack of good faith by delaying its compliance, though it ended up complying thanks to pressure from the international community. One may not be wrong in concluding that, the spirit of lack of good faith cannot be denied in the attitude of Libya who lacked the spirit of voluntary compliance and could only comply with the court verdict after receiving pressure from the international community.

Looking at the land and maritime boundary dispute between Cameroon and Nigeria, one equally see it as a case where, the defending state first of all denounced the court decision before later on complying to it, after the implementation of long term enforcement measures by Cameroon. This therefore clearly portrayed the spirit of bad faith on the Nigerian side[iii].

Notwithstanding, it does not mean non-compliance in every circumstance shall be tantamount to a manifestation of bad faith. It may be possible in certain cases to admit that, the attitude of non-compliance is being manifested as a result of certain situations of difficulties faced by the debtor states[iv]. Considering the fact that, the obligation to comply with a court decision can be considered as an obligation under the coverage of the *Pacta Sunt Servanda* principle, non-compliance with a judgment may not necessarily be tantamount to bad faith if it comes about as a result of the present situation that stands to be recognized as exceptional circumstances to the *Pacta Sunt Servanda* rule. Failure to comply may equally exist in circumstances where, the judgment is deemed to be invalid and is thus considered dissatisfactory to the debtor of the judgment. In this case, the state in question has

no option left than to file an application to the registrar of the court, requesting the revision of the judgment, an act which equally needs to be exercised in good faith.

THE REPERCUSSION OF A BONA FIDE SPIRIT IN STATE COMPLIANCE TOWARDS COURT JUDGMENTS

States within the international community are all equal and vested with prerogatives of sovereignty. This concept of sovereignty nowadays rather serves as a bar to the progress of state compliance with the judgments of the court [39]. For non-compliance to be qualified as an act of bad faith, a judgment must be completely and continuously refuted by the defiant state party. Even though it is uncommon in the recent days to come across such a stubborn behavior, most instances of non-compliance include a party pretending to honour a judgment but fails to take up actions to match its verbal commitments [40].

To the humble conception of the researcher, I might stand for the fact that, resistance to comply with a judgment is an act of bad faith and thus equal to non-compliance, till compliance is rightly met with. However, non-compliance in certain circumstances may not be seen as act of bad faith. In certain cases, ambiguity in a judgment will act as a barrier to implementation where, one may rather talk of inability rather than bad faith. Nevertheless, some cases of good conduct can be traced where court decisions were complied with voluntarily thereby giving much substance to the court's authority. Such comportment can be qualified as a product of good faith which serves to regulate state conducts and thus stands to be the most prominent source of assurance in inter-state relations. Therefore, the good faith of states during and after the expression of consent for the court' jurisdiction, operates as a guarantor towards state compliance with future judgments (A), likewise, compliance can be fostered through external political influences exerted on the debtor state to the judgment (B) as elaborated here.

Good Faith Expressed Post Consent, Guarantees Eventual Compliance

International institutions are plagued with too many expectations and too little powers [41]. One striking example is the ICJ whose judgments have often been subject to challenges from some states which in one way or the other, are often reluctant and even unwilling to comply with the judgments rendered by the court. The greatest obstacle towards compliance with ICJ judgment always results from state sovereign immunity which makes them supreme within the international scene. Considering the fact that within the international scene, there is the absence of an international institution that stands above states hierarchically, capable of giving authoritative orders to recalcitrant states to comply with judgments from the ICJ, the good faith principle therefore stands to feel the gap. To this regards therefore, the greatest autonomous hope one can count on for state compliance towards judgments is the good faith of the states in question. State conduct exercised in good faith often results to positive and reasonable results, though at times what is witnessed is the reverse. It is possible to see action causing prejudice on a state, though not necessarily the result of bad faith.

Nevertheless, it is obvious that, everything being equal, acts effected in the spirit of good faith will often lead to positive outcomes. It is thus in this vane that one sees the good faith principle as a guarantee to the compliance of states towards the judgments of the ICJ. We must recall that, the jurisdiction of the court is absolutely based on the consent of states. Considering the fact that a sovereign state cannot be judged by the ICJ when it has not consented for the court's jurisdiction, the good faith principle then operates as a push factor to make states respect the engagement they freely consented for [42]. It therefore implies that, it does not only suffice to give in consent for the jurisdiction of the court, but what matter is the comportment of states after the expression of their consent. Thus, good faith in the conduct of states after expression of consent will guarantee compliance to court judgment (1), of which the same consent expressed in a contrary manner may slow down compliance to the said decision (2).

The Conduct of States as a Factor of Compliance

As seen in the first part of this work, the expression of consent is been done in several ways. As one can recall, we have consent expressed by way of unilateral acts[v], consent expressed mutually either before or after the dispute, and lastly consent expressed implicitly thus termed the *Forum prorogatum consent* [43]. Whatever be the manner in which the consent is being expressed, what really matters is the act of the states toward what has been consented for. Counting on the good faith of states, the international judges may be rest assured of been safe from acts of unwarranted interruptions, till the time of the final judgment, coupled with states complying with the said judgments.

Compliance to judgments does not only lie on the shoulders of the respondent state, but equally calls for the collaboration of the creditor state to the judgment who intern should abstain from acts that may harden the task on the debtor to the judgment. This sense of cooperation is often witnessed from states acting in the spirit of honesty, loyalty, fidelity, and sincerity. The guarantee emanating from the good faith principle even stands as an additional point to counter the ideas of some jurist who sees international law as primitive and imperfect, basing such analysis on the weaknesses in the strength of international law norms.

However, as one can evaluate, consent expressed through a compromise has often resulted to successes in what concerns compliance with ICJ decisions. As sources of good examples to be cited, one can see the cases of Burkina Faso/Mali, and the territorial dispute between Libya and Chad [44]. As one may reason it out, special agreements always come as a result of mutual cooperation for dispute settlement. Making reference to the land and maritime dispute between Cameroon and Nigeria, one may not be wrong to think that, if the parties to this case might have requested for the settlement of their dispute via a special agreement, compliance with the decided substance from the court might have been easier than was the situation at hand where the non-compliance of Nigeria had to cost Cameroon an extra effort resulting to the Green Tree agreement signed by both parties [45], which later resulted to Nigeria complying to what was decided by the ICJ. To this regard, one will get to understand that the good faith principle stands as that ultimate factor for compliance but the bases of the court's jurisdiction might also be a complement to the good faith factor.

Goods faith may even guarantee an atmosphere of understanding between two disputing states. When a judgment is rendered, the two states in dispute may come to amicable discussions on the execution terms. It is obvious that, a party that is not in good faith will hardly be in the mode of admitting amicable talks, tilting towards the execution of a judgment [46].

Good faith does not only guarantee the ultimate end of a dispute, but may even result in neutralizing the disputed object while the procedure is still in motion. As it can be detected from the nuclear test case, it is the good faith of France that rendered the claims tabled against the said state later to be declared as moot. The unilateral declaration made by France to stop its activities of nuclear testing in the atmosphere, causing the deposit of radioactive fall-out on Australian and New Zealand territories, help in neutralizing the claims of Australia and New Zealand tabled against France [47]. As France announced its intention to stop the conduct of such tests, the court found that, the objective of the applicants having been accomplished, the claims no longer had any object and that the dispute had thus disappeared [48]. This gesture put forth by France served in preserving time and cost since, the lengthy period of settlements coupled with cost that would have been incurred by the parties was thus preserved thanks to the mootness of the dispute.

In addition to the gains of procedural economy, equally comes that of judicial propriety, which comes as a result of a qualitative judgment rendered. This nature of judgment can only be achieved where the parties are of good conduct by aiding the court with truthful and valid facts that facilitates the settlement exercise. Notwithstanding, the conduct of states may equally stand as a bar towards compliance to court judgment, when it is plagued by the spirit of bad faith manifestation of states.

Bad Faith Hinders Compliance

Just as it is with the good faith principle which stands as a guarantee towards compliance with court judgments, on the contrary, bad faith may result to non-compliance. It is obvious that, if states decide not to value the terms and effects of the engagement wilfully made by them, accepting the obligatory jurisdiction of the ICJ, the subsequent effect shall be non-compliance with the judgments of the court. States have accepted the court's jurisdiction, and later on turn to behave adversely towards their engagement. This is often common with the case of ungrounded argument often raised by states, mainly for the purpose of delaying a court process or escape from the result that may occur from the final judgment [49]. This statement can be related to the reluctant conduct set forth by Nigeria towards the final verdicts of the court in 1998 where it filed an application to the court in request for interpretation of the court's judgment [50]. Despite the fact of states having the rights to raise objections against invalid claims raised before international jurisdictions, it may be obviously analysed that, a cross section of the objections rose by Nigeria were without substance. This attitude was later on worsened by its reluctance towards the execution of the final judgment. Such comportment thus showed traces of bad faith portrayed by Nigeria, which all stood as a hindrance towards compliance.

However, non-compliance to court judgments will not necessarily imply lack of good faith. We may have cases where non-compliance with judgment comes as a result of difficulties faced by the debtor state to the judgment. Here, one is referring to cases of difficulties that can render compliance impossible with what has been decided by the court. As illustrated earlier, the hindrance may be based on *force majeure,* a circumstance of necessity, or a change of circumstance that renders compliance impossible [51].

Beginning with the case of *force majeure*, it is governed by the dispositions of Article 23 of the ILC's article on state responsibility. This is the occurrence of an irresistible force or an act of unforeseen event that is beyond the control of the state, making it materially impossible to perform obligations. Here, the validity of *force majeure* will depend on the situation at hand. As a point of example, consider the situation where a court ordered the judgment debtor to "repair a sculptures, stelae, fragments of monuments, sandstone model, and an old pottery", as stated in the court's verdict in the Temple of Preah Vihear case from 15 June 1962. Following the destruction of these sculptures and pieces of antique pottery, the court's judgment was deemed un-executable. This was due to a circumstance beyond the judgment debtor's control [52]. Articles 23 (1) and 61 (1) would apply at this point since the act of non-compliance with the judgment is due to a force majeure, making execution difficult to the judgment debtor. In the same vein, if the judgment creditor is to be blamed for making it impossible to carry out the judgment, then by doing so, the judgment creditor would have jeopardized its rights under the judgment. On the contrary, *force majeure*[vi] will not apply in circumstances where, the performance of an obligation has become more difficult. This can be drawn for example, in the case of non-compliance witnessed due to political or economic crisis. Equally, situations generated from the negligence or default of the state concerned, cannot be qualified as *force majeure*, even if the resulting injury is accidental and unintended [53]. Furthermore, a plea of *force majeure* will not be rendered admissible in the case of monetary judgment or on grounds of financial difficulties as was the case in the *Société Commerciale de Belgique* case where, Greece was claiming to escape compliance with the judgment of the court for reasons of its budgetary and monetary situation [54].

A plea for necessity shall be considered admissible only in circumstances where the state in question is out to safeguard an essential interest against a grave and imminent peril as illustrated in Article 25 (1) of the ILC's article on state responsibility. The ILC's article defines the extent of this provision to include *"particular interests of the state and its people, as well as of the international community as a whole" [55].* In the land and maritime dispute between Cameroon and Nigeria where, sovereignty over the Bakassi Peninsular was granted to Cameroon, Nigeria in an official statement

issued on October 23, 2002, raised a flimsy defence of non-compliance, justifying its acts on reasons of safeguarding the rights of its citizens occupying the area[vii]. Normal arguments against a court's verdict on the grounds that complying with the judgment would represent "a grave" or even an "imminent hazard" look absurd when a state has granted the court's authority to settle a dispute. In fact, the international community as a whole as well as the judgment creditor may have a vital interest in compliance with a particular judgment. Therefore, even while using the rule of necessity, a recalcitrant state cannot declare on its own that a judgment creditor has no fundamental interest in the court's decisions to which it is a party [56]. The last aspect to be discussed in this subsection is the case of a fundamental change of circumstance which may render the performance of an obligation impossible. A fundamental change in circumstances may be used as a reason by a state to terminate or withdraw from a treaty, according to Article 62 of the Vienna Convention on the Law of Treaties.

What lies as a matter of discuss is whether the recently cited disposition in the Vienna Convention can be applied in the case of the execution of a judgment. In the fisheries jurisdiction case between the UK and Iceland where proceedings were introduced by the UK in 1972, Iceland contested the court's jurisdiction and also invoked the doctrine of change of circumstance resulting from an increase in exploitation of fishery resources around its shore. Despite Iceland's absence from the proceedings, the court determined on February 2, 1973, by a vote of 14 to 1, that it had jurisdiction and that, in order for the doctrine of change of circumstance to be valid, the said change of circumstance had to have "increased the burden of the obligations to be executed to the extent that renders the obligations to be executed ineffective [57]." In this regard, the court reasoned that a state cannot use the notion of change of circumstance to challenge its jurisdiction and ultimately, the decision that would be rendered, without doing so in a contradictory manner, and thus it dismissed Iceland's claims [58]. To sum up, the researcher is of the humble opinion that, when a state is faced with a judgment to be executed, and it is well proven that the state in question is in a situation of crisis which intern renders the execution process difficult, the state may be pardoned for a certain period but will not escape the consequences of the judgment because, states are internationally liable towards others thus, cannot raise reasons of impossibilities based on political, economic, and administrative difficulties as a cause for absolute exoneration of responsibility [59]. Notwithstanding the mentioned possible exceptions to compliance with court judgment, if the recalcitrant state proves to be resistant towards complying with what has been decided by the court, external political influence may serve as a remedy.

CONCLUSION AND RECOMMENDATION: EXTERNAL POLITICAL INFLUENCE AS A REMEDY TO NON-COMPLIANCE

The judgments of the ICJ have often been faced with challenges from states which are often unwilling or hesitant to comply with what has been decided. In this regard due to its perceived inability to regulate state behavior, the court has been criticized as an ineffective player in achieving international peace and security. This weakness from the court has long been attributed to its "flawed" jurisdictional design, which relies solely on consent [60]. Any signal of consent by the respondent state party in a particular case is deemed to carry a significant risk of non-compliance. This conduct of bad faith is often manifested under the influence of sovereignty crowned on states. The task of compliance with judgments is often not very problematic when it concerns private persons standing as debtors to the judgment. In the case of a private person resisting to comply with a judgment, it is easy to put in measures to push the recalcitrant to order. This same task is not quite easy when dealing with sovereign states, crowned with exorbitant prerogatives both at the municipal and international level. Considering the fact that there is the absence of a hierarchical body placed above states to handle a commanding baton on the states in question, it is of little or no doubt that, the good faith of states comes in as an ultimate tool to assure compliance with court judgments. However, when good faith is proven to be lacking in the conduct of the states, the ultimate solution may lie within the international community to force the stubborn state to order. Within the international community, external political influence has proven to be a strategic factor for state compliance with court judgments. The efforts of international organizations and pressure from the international community could greatly reduce the

possibility of stubborn behavior, thereby ensuring that states comply with decisions from the International Court of Justice [61].

Pressure from the International Community

A key element in guaranteeing adherence to the judgments of the International Court of Justice is pressure from the international community. When the risk of non-compliance is presumed or anticipated, major states can play an important role in bringing a recalcitrant state to order as one could see in the land and maritime dispute between Cameroon and Nigeria where, upon the delivery of the court's verdict, Nigeria openly showed signs of disapproval to the court's judgment. The result of this malpractice perpetrated by Nigeria was a mass of pressure exerted by prominent states such as USA, France, UK, ….., compelling Nigeria to respect and comply with the judgment of the court [62]. Likewise, in the case of the judgment granted in the dispute opposing Chad to Libya, regarding sovereignty over the *Aouzou* Strips, despite a mass of resistance put forth by Libya with regards to the court's judgment, granting sovereignty of the disputed area to Chad, Libya was left with no option but to comply with the judgment following a mass of constant pressure exerted at the regional and international level [63]. Looking at the act of bad faith manifested by Libya, it was thus thanks to the pressure of the international community that Libya was brought to order and the resulting effect was the return of peace and friendly ties between the two disputing states [64].

Furthermore, every state will like to belong and reap the benefits of reputable associations of states in the universe. The simple desire of a state to be granted membership in most of the prominent organizations of the universe can serve as an automatic pressure, compelling the said state to comply with a judgment rendered by the world court. No one will ignore the fact that, most organizations of reputable status will avoid admitting recalcitrant states in their mist as members. Judging from the Kasikili/Sedudu Island case, for example, the statement of the Namibian President, declaring its full desire to submit and comply with the judgment of the court may stand as a clear fact that, most states will not like to stain their reputation within the international community [65].

Moreover, pressure from the international community is not only a factor for compliance, but equally a factor that compels states to submit to the court's jurisdiction as a necessary means of dispute settlement and equally to submit to international legal engagement. The *Gabcikovo-Nagymaros* project case can be applied as a valid example here since the dispute was based on the abandonment of the project obligations which was the subject of a treaty between Hungary and Slovakia. Considering the fact that submission to the court was a clause to the treaty, pressure from the international community to enhance compliance did not only compel the parties to submit to treaty terms, but also brought the recalcitrant party to order. Considering further the fact that, states will always be tempted to manifest bad faith in tempting circumstances, external political pressure, precisely from major states may serve as remedy to such recalcitrant behaviours. Beside the pressure from states within the international community to foster compliance with court judgments, the presence of international organizations is also of paramount importance.

The Influence of International Organizations

Mindful of the fact that the United Nations Charter states that member states must abide by the judgments of the International Court of Justice [66], the mere existence of international organizations creates natural pressure within the international community that compels states to comply with court judgments. This can be well illustrated by making reference to the LaGrand [67] and the Avena cases [68]. In these cases, both disputes were submitted to the ICJ through the optional protocol of the Vienna Convention based on the compulsory settlement of disputes. As a matter of fact, thanks to the membership of the parties in the UNs that, the given protocol was ratified by both parties [69].

The presence of international organizations is so important to the extent where, it can foster the settlement of a dispute even without a court judgment. Looking at the boundary dispute between

Guinea-Bissau and Senegal where Guinea-Bissau contested the arbitration award of 31st July 1989, after a mass resistance put forth by Guinea-Bissau toward implementing the said award, thanks to recommendations given by regional and international organizations that the parties finally compromised for the termination of their long-lasting grievances. For this to be achieved, an international agency was created to coordinate the joint exploitation of the resources in the problem area, and to foster cooperation between the parties. A long-lasting dispute that was never settled neither by arbitration nor by adjudication was finally settled by the parties themselves all thanks to the aid of international organizations.

In the land and maritime dispute between Nigeria and Cameroon, where Nigeria showed bad faith by rejecting the court's decision after it was issued the active involvement of international organizations in promoting adherence to the court's judgments could further be envisaged. Nigeria after getting pressure from the international community executed the judgment regarding the northern region of Cameroon, but resisted compliance with regard to the Bakassi Peninsula. Thanks to the influence of the UNs that, both parties came to a compromise in signing the Green-Tree accord where, Nigeria finally abided with the verdict of the court. The UNs played an active role in calming down tensions and revitalized cooperation and friendly ties between Nigeria and Cameroon [70]. Similar to this, despite accusations of disobedience in the settlement process in the El Salvador-Honduras boundary dispute, both states later made declarations recognizing the court's decision. This effort was supported by international organizations both regional and universal to ensure that, the parties comply satisfactorily with their obligations under Article 94(1) of the UN Charter. The given analysis and example clearly illustrates the active role played by international organizations to subdue the bad faith of recalcitrant states towards judgments, thereby fostering international peace, security, and cooperation.

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ENDNOTE

i. The frequent application of this Latin expression is widespread in English and German speaking countries, but literal translations are more commonly used elsewhere: for example, cosa juzgada, chose jugée, or cosa giudicata in Spanish, French, and Italian respectively.

ii. It goes in line with the ideas of judge Evensen who stated in the Continental Shelf case between Tunisia and Libya that; I share the view of the Court that clearly states that the Court's task is to render a binding and final 'judgment in a contentious case in accordance with Articles 59 and 60 of the statute and Article 94, paragraph 2, of the Rules of Court, a judgment which will have therefore the effect and the force attributed to it under Article 94 of the Charter of the United Nations and the said provisions of the Statute and the Rules of the Court' (Judgment, paragraph 29). Of course the Court has not been asked to render an advisory opinion ... Nor could it agree to give in any other way solely to give "guidance" to the parties to the present dispute which would lack the essential elements of a formal judgment (UN Charter, Art. 96). I share the view that the Court in its judgment should lay down the practical method for the application of the principles and rules of international law with the degree of precision applied by the Court in the operative part thereof, ICJ Reports, (1982), pp. 279-280, paragraph 2.
iii. Following the judgment of October 2002, the ICJ awarded to Cameroon the lake Chad boundary followed by 30 villages and the Bakassi area, and few to Nigeria. After the ICJ judgment, Nigeria issued a statement which appeared to have accepted part of the decision which she considered as fair and favourable, while rejecting the rest of which it claimed as unacceptable. Nigeria proved to be a recalcitrant though both countries had agreed in advance to respect whatever decisions coming from the court. It is equally out of long lasting enforcement measure that Nigeria finally bowed to the verdicts of the court. Thus, it is in this line that one may judge the dalliance to compliance from the Nigerians as an instance of lack of good faith. ICJ Reports 2002 Nigeria/Cameroon.
iv. See for example, the case of force majeure, a circumstance of necessity, or a fundamental change of circumstance that may render difficult or impossible the performance of an engagement, for instance, circumstances which are highly debatable as to the nature in which it may affect the state in question.
v. ICJ statue, Article 36(2), "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: (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation."
vi. This was well illustrated in the Chorzow factory case where the court said; It is, moreover, a principle generally accepted in the jurisprudence of international arbitration, as well as by municipal courts, that one party cannot avail himself of the fact that the other has not fulfilled some obligation or has not had recourse to some means of redress, if the former party has, by some illegal act, prevented the latter from fulfilling the obligation in question, or from having recourse to the tribunal which would have been open to him.
vii. The statement read, "being a nation ruled by law we are bound to continue to exercise jurisdiction over these areas in accordance with the constitution", and lion no account will Nigeria abandon her people and their interests.

