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THE SETTLEMENT OF INTERNATIONAL DISPUTES BY MEANS OF ADJUDICATIVE METHODS

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Abstract

The aim of this research is to examine the core mechanisms of international adjudication, the enforcement mechanisms of judgments of the International Court of Justice and cases of non-compliance, and to find improvements.

The research methodology will consist of examining the history of enforcement and non-compliance in the International Court of Justice through cases and statistics of the ICJ, as well as examining the Court's jurisdiction and enforcement mechanisms currently setup.

A clear problem is the Court's jurisdiction being optional. Less than half of the UN Member States have recognized the compulsory jurisdiction of the Court. In addition, the political powers affecting the Security Council's role as an enforcer of ICJ's judgments undermine the whole institution.

As a result of the research, the author finds that actual non-compliance or defiance in ICJ judgments is rather rare. It is the international community and political pressure, which is the downfall of the Security Council, that works best as an enforcement mechanism in most cases of non-compliance.

However, i.e. the permanent members of the Security Council having power to veto any matter, there is always a possibility that the ICJ, SC and international adjudication as a whole could find itself powerless due to the political nature of the system.

Keywords: International Court of Justice, judgement, non-compliance, enforcement

List of Abriviations

ECJ	European Court of Justice
GA	General Assembly
ICJ	International Court of Justice
PCIJ	Permanent Court of International Justice
SC	Security Council
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
VCCR	Vienna Convention on Consular Rights
WTO	World Trade Organization

Introduction

The title of this thesis is The Settlement of International Disputes by Means of Adjudicative Methods. The thesis will revolve around exploring the non-compliance of international judicial decisions and further, the enforcement of such decisions. The International Court of Justice will be the focus point as it is the principal judicial organ of the United Nations. It is also the only international court that has general jurisdiction in all kinds of legal disputes between member states of the United Nations.

The author came up with the idea for this topic from current events around the world. There have been many incidents in recent history that have shaken the international community and global peace and security. Events such as the Arab Spring, the annexation of Crimea by the Russian Federation, the Syrian civil war and the global refugee crisis to name a few. Are there any ways to hold states accountable for their actions? Are the current structures to ensure peace and security working? The aim of this research is to examine the core mechanisms of international adjudication, the enforcement mechanisms of ICJ judgments and cases of non-compliance, and to find improvements, if there can be found room for improvement. Based on these ideas the author decided to investigate the following research questions in this thesis:

1. What is the history of enforcement and non-compliance in the International Court of Justice?

2. In light of the previous question, is the current international judicial system working in terms of states complying with judgments of the International Court of Justice?

The structure of the thesis will be set as follows. The first chapter will define the problem examined in the thesis. Additionaly, it will include history of international adjudication and the development of the League of Nations and the United Nations. The following chapter will describe the structure of the UN more closely, focusing on the Security Council. As it is the main enforcer of the International Court of Justice, the author will go into detail on how it functions. The General Assembly's role in maintaining international peace and security will also be examined. In the following chapter the author will start with judicial settlement and the International Court of Justice, briefly going through its history. Further on, getting into the topic of this paper, the

different forms of jurisdiction of the ICJ will be examined. In the following part of the research the author analyses statistics of the ICJ's docket, followed by defining compliance and examining five cases of non-compliance in recent history. Next the author will assess the findings of the research and evaluate solutions to the problem.

The research methodology will consist of studying and researching academic publishes (journals, reviews, essays) and text books on the topic. Also included are related conventions, charters, treaties and various case studies to deepen the research. Additionally, statistics regarding the docket of the International Court of Justice with a focus point on cases of non-compliance are examined.

1. Definition of the Problem

The authority and jurisdiction of the International Court of Justice is based on consent. The United Nations has 193 member states, of which 73 have signed the declaration recognizing the jurisdiction of the Court as compulsory. The Security Council is the UN body enforcing ICJ's judgments, but four of its five permanent members have not recognized the Courts compulsory jurisdiction. For all the positives that have come out of the ICJ in shaping international law, there are fundamental problems in the enforcement of its decisions and cases of non-compliance.

1.1 History

The idea for settling disputes with binding decisions has not originated from the last few centuries, even though actual permanent courts were established in the last century. During the ancient Greek times, city-states would use arbitration as a dispute settlement method. There is even a clause in the peace treaty between Athenians and Spartans[1], which provides that disputes would be solved by way of arbitration rather than war. Italian city-states in the thirteenth and fourteenth centuries used arbitration as a way of settling their disputes. Even though international law developed steadily during the latter half of the second millennium, it was only in the late eighteen-hundreds that arbitration became a foundation for settling disputes.[2]

The main problem of international legal order has been the question of whether to allow war and the overall use of violence, or the outright prohibition of them. At the same time, we have tried to develop ways of settling international disputes by peaceful means and this way maintaining peace. One of the most evolved forms of international dispute settlement is judicial settlement. Before its introduction, the attitude towards war and the overall use of violence, which were the most used ways of settling international disputes, has gone through many stages of evolution. Simultaneously, the methods of settling international disputes by peaceful means, as a counterpart to violent methods, have developed and diversified as the community has gotten organized.[3]

[1] Bagnall N. (2006). The Inter-War Years 480-431 BC; The Peloponnesian War; Athens Sparta and the Struggle for Greece. Thomas Dunne Books. p 123.
[2] Rosenne T. D. G. (2003). THE WORLD COURT WHAT IT IS AND HOW IT WORKS. Brill Academic Publishers. p 3.
[3] Ibid.

As the nation state structure developed in the nineteenth and twentieth centuries, war became an instrument of power and a negative manifestation of the doctrine of sovereignty. People didn't want to abolish war, but rather restrain and humanize it. The development of methods to settle international disputes and possibilities to restrain armament were sought out. As the strain between superpowers got worse, a peace movement was born. This led to the 1899 Hague Peace Conference initiated by the Russian tsar Nicholas II.[4] Twenty-two states participated, and as a result, three conventions were concluded, of which the first was on the peaceful settlement of disputes and the two others regulating warfare. The second Hague Peace Conference was held in 1907, to which 44 states participated. Thirteen conventions were concluded, of which the first was also on the peaceful settlement of disputes and was a renewed and complemented edition of its predecessor from 1899.[5]

Nowadays the settlement of international disputes can happen by applying several different means, of which numerous were included in the Covenant of the League of Nations. Article 12 of this Covenant stipulates that member states had to settle their disputes by way of either arbitration or judicial settlement, or to leave the settlement to the League of Nations Council.[6] The UN has in particular been spearheading a regime between states where conflcits are resolved using peaceful methods in contrast to war[7], for example, the UN Charter Article 33 stipulates that the parties to a dispute must pursue a settlement primarily by way of negotiation, mediation, inquiry, conciliation, arbitration or judicial settlement, using the aid of regional agencies or treaties, or any other form of peaceful settlement deemed useful.[8] The independent republics of America concluded the Bogota Treaty in 1948, in which it is stated that parties to a dispute must choose between procedures of good offices, mediation, investigation, conciliation, arbitration or judicial settlement.[9] The Treaty binds the parties to settle disputes using any type of methods, which have to be peaceful. In other treaties, the parties have committed themselves to using arbitration, judicial settlement or conciliation with differing provisions. As an example, the 1957 European Convention for the Peaceful Settlement of Disputes.[10]

[4] Tiefenbrun S. (2010). Decoding International Law, Oxford University Press. p 145.
[5] Ibid.
[6] The Covenant of the League of Nations (1919)
[7] Posner E. A. (2009). The Perils of Global Legalism, The University of Chicago Press. p 130.
[8] Charter of the United Nations, San Fransisco, 1945, Articles 33
[9] American Treaty on the Pacific Settlement of Disputes (1948)
[10] Council of Europe, European Convention for the Peaceful Settlement of Disputes, European Treaty Series No.23 (1957)

1.2 League of Nations

The absence of any central political administration for the international community was one of the main reasons all the earlier attempts to establish a permanent international tribunal of general jurisdiction had faced so many difficulties. Before the First World War there was no international machinery at any level. The socalled Concert of Europe was an informal system, where the powers of Europe consulted each other. It was based on nineteenth century traditional diplomacy, but didn't have any attributes of a system of constitution.[11]

The League of Nation was born as a result of the 1919 Peace Treaty. An important part was that the Council and Assembly were kept separate. The political responsibility was held by the League Council, which was the executive body. The remaining powers formed the core of the Council as permanent members and they also elected rotating members to it. The General Assembly, was the contemplative body of the League and it met once a year. The Secreteriat worked as a permanent administrative organ of the League, which also had a regular budget.[12]

The Covenant of the League of Nations formed the first attempt to establish a significant organization of peace. It did not ban war per se, but it obliged its member states not to go to war. This obligation was reinforced with sanctions.[13] The Covenant of the League of Nations defined the role of the League as one of developing international co-operation, as well as advancing the achievement of peace and security.[14]

1.3 The United Nations

The idea for an organization that would secure a stable and durable peace after the Second World War started on a general level from the Declaration on Friendship and Mutual Assistance of the Government of the Soviet Union and the Government of the Polish republic on December 4th 1941.[15]

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[11] Rosenne T. D. G. (2003) The World Court What It Is and How it Works. Brill Academic Publishers.6th Edition. Leiden. p 8.
[12] Ibid.
[13] League of Nations (1919). Covenant of the League of Nations.
[14] Ibid.
[15] Cassese A. (2001). International Law, Oxford Press. p 276.

The foreign ministers of the main states of the allied forces met in the Moscow Conference.[16] They adopted the Declaration of Four Nations on General Security, China being the fourth. This Declaration included the decision to create a new international organization. This decision was confirmed in the Tehran conference on the 1st of December 1943. Parties to this conference were the leaders of the three leading Allied powers (Soviet Union, the United Stated and Great Britain).[17]

A conference was held in the United States in 1944 to which USA, UK and Soviet Union specialists took part in. They drafted the Charter for the future organization entitled Proposals for the Establishment of a General International Organization. This draft was also signed by China. Many problems arose in the conference. For example, the Security Council's voting system, the future of mandated territories and the contents of the Statute of the International Court of Justice all raised suspicion. These issues were resolved in the Yalta Conference in 1945, to which participated the three allied powers.[18]

1.4 UN Security Council

When the UN Security Council was created, it was envisaged that it would play a significant role in securing international peace and security.[19] The UN Charter has specified the function of the Security Council (SC) in the pacific settlement of disputes and its actions in cases of breaching or menacing peace, acts of aggression and so forth. Article 33 states that the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.[20] This article only applies to international disputes. The Security Council has to, when it sees fit, recommend the parties to a dispute to settle their dispute by peaceful means. The Charter states that UN bodies should be used for the peaceful settlement of disputes only secondarily.[21]The parties to the dispute have the primary duty to resolve their dispute and the stipulations made in Art. 33 of the Charter apply to only cases of severe quality. It is therefore

[16] B. Broms. (1976). Yhdistyneet Kansakunnat, Helsinki: Suomalaisen Lakimiesyhdistyksen Julkaisuja. p 19.
[17] Ibid., p 20.
[18] Ibid.
[19] Sarooshi D. (1999). The United Nations and the Development of Collective Security: The Delegation by the UN Secutiy Council of its Chapter VII Powers, Oxford University Press. p 3.
[20] Charter of the United Nations, San Fransisco, (1945) Articles 33
[21] Ibid.

natural that minor border and economic disputes would not fall into the jurisdiction of the UN. However, it has to be noted that when interpreting Art. 33 of the Charter, one has to abide by objectivity and proportionality. What might seem small to a larger state, might be critical for a smaller state's existence, which might not have the means to invoke the aid of weapons. When a larger state applies economical pressure to a smaller state, or is guilty of other similar activities, international peace and security might be in danger within the meaning of Article 33 of the Charter. UN member states are not only to abstain from war and other forms of violence, but also from threatening with them.[22]

In case the parties to a dispute have failed to solve their dispute, they have to bring the case to the Security Council. If the Council feels that the continuation of the dispute is a real threat to the peace and security of the community, it shall recommend such terms of settlement as it may consider appropriate. As the required actions are merely recommendations, they are not binding by nature. At this point of a dispute, the Council is still merely a middleman. Provided that the Council's recommendations are not followed, it might see it as a threat to peace and proceed to take more severe measures provided by chapter VII of the Charter. Thus, the parties to a dispute must carefully consider whether to obey the Security Council's recommendations or not.[23]

As previously was mentioned, the Security Council has the right to start investigating every dispute, or situation, that might lead to international disagreements or disputes, to assess whether the continuation of the situation or dispute might be capable of endangering the maintenance of international peace and security.[24]

Member States of the UN have the right to bring any dispute, or any situation of the nature that might lead to international friction, to the attention of the Security Council or of the General Assembly.[25] This leads to the UN having to deal with many unnecessary minor international disputes, which have been brought to its attention. However, this is the lesser evil, compared to many smaller disputes combined, that have not been brought to the attention of the Council, which might lead to international conflicts.

[22] Charter of the United Nations, San Fransisco, 1945, Articles 2 and 33
[23] Charter of the United Nations, San Fransisco, 1945, Articles 37
[24] Charter of the United Nations, San Fransisco, 1945, Articles 34
[25] Charter of the United Nations, San Fransisco, 1945, Articles 35

In practice, the Security Council carries out preliminary investigations. Depending on the findings, it is decided whether investigations are to be continued. The fact that the difference between 'situation' and 'dispute' is not defined in the Charter is problematic. The two terms appear to somewhat overlap. A thing that makes the matter even more complicated is that article 27 paragraph 3 states that decisions of the Security Council on all matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that a party to a dispute shall abstain from voting. Questions from whether it is a situation under investigation, or rather a dispute, is a state party to it or not, concern the procedures of which abstaining from voting does not apply to. Still, it is depending on the answer to these preliminary questions if a state is to abstain from voting. Interpreting article 27.3 of the Charter literally, it is the party to a 'dispute' that has to abstain from voting, when the recommendations regarding the dispute are at question. As according to chapter VI of the Charter, the Security Council can give recommendations concerning situations and disputes, this type of interpretation could lead to differing procedures and so also to differing results.[26]

A characteristic of a dispute is that parties express clearly contradictory opinions and demands. And only in this case the parties should abstain from voting. This is however contradictory to the well-known principle of nemo iudex in causa sua (no one should be a judge in his own case). The aforementioned provision must be interpreted in a way that abstaining from voting extends to concerning decisions made both about disputes and situations. Thus, states shall abstain from voting when the Security Council's decisions have a direct effect on their interest. Merely the fact that a state brings to the attention of the Council a dispute or situation, without the notion of its own interests being violated, does not lead to the state having to abstain from voting.[27]

When the Security Council decides to start investigating a dispute or situation, the decision is binding on the member states of the UN. The member states are also obliged to co-operate with the board of investigators and let them enter into their territory.[28]

Above was explained the role of the Security Council as the UN's main international dispute settlement agency. The SC and the General Assembly have as roles investigating and giving recommendations, but they have also been seen to have the right to give requests within the

[26] B. Broms. (1976) Yhdistyneet Kansakunnat. Suomen Lakimiesliiton Julkaisuja. p 180.
[27] Ibid.
[28] Charter of the United Nations, San Fransisco, 1945, Article 25

framework of recommendations. For example, one of the two bodies can request the parties to the dispute to follow a certain line of conduct. As was in a resolution of the Security Council in 1948, where it recommended both parties to the dispute the governments of Netherlands and Indonesia, to stop hostilities. It also recommended Netherlands to free the detained president of Indonesia and other political captives.[29] In the Council's decision in 1949, it recommended, in an authoritative tone, that especially the government of Netherlands would make sure that military operations would stop immediately and that all captives would be released immediately and without stipulations as well. At the same time the Council recommended the government of Indonesia to instruct its supporters to stop guerrilla warfare.[30]

After the threat to peace has come true in accordance with article 39 of the Charter, the Security Council can still resort to giving recommendations. These are still not binding, but if not obeyed, the Council can proceed to take coercive measures against the insubordinate state. When the Council, in its decision, attaches to a new recommendation, regarding procedures or the matter itself, terms, which it is entitled to under article 39, it is regarded as a recommendation which is binding and enforceable.[31]

The Security Council can give recommendations and can begin investigations regarding disputes or situations even before the parties to the dispute have begun negotiating. After putting forth the recommendations, the Council can try to solve the dispute or recommend appropriate measures or means to solve the dispute.[32]

1.4.1 The Security Council as an enforcer

As the main goal of this research is to examine compliance in ICJ's cases. It is suitable to examine the enforcement mechanisms abailable to implement ICJ decisions. The Security Council's role as an enforcement mechanism of the ICJ is outlined in the UN Charter article 94. It provides firstly that "each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party".[33] Secondly, that "if any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court,

[29] United Nations Security Council Resolutions, Resolution 65 (1948)
[30] Autere T. (1968). Kansainvälisten Riitojen Rauhanomaisesta Selvittelystä. Suomalainen Lakimiesyhdistys p 34.
[31] Charter of the United Nations, San Fransisco, 1945, Article 39
[32] Charter of the United Nations, San Fransisco, 1945, Articles 34, 36, 39
[33] Charter of the United Nations, San Fransisco, 1945, Article 94

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".[34]

The article gives the Security Council the task to enforce ICJ judgments. It is important to note that art. 94 is written in quite broad terms. Rather than using authoritative language, words such as "may", appear.[35] Tanzi argues that the language effects enforcement in the way that it gives the Security Council the freedom of discretion regarding enforcement.[36] The broad discretion has led to ICJ's judgments having to lean on negotiations between SC members that are driven by political motives. This kind of discretion also means that the SC might end up not enforcing an ICJ judgment, even though a member would request it to do so. This reflects why the UN gets some of the blame that it does. The contradiction begins with the SC being UN's only political organ and the only institution enforcing ICJ's decisions. Tanzi notes that if the SC had to enforce all ICJ decisions, it would make it a subordinate of the ICJ. Meaning that if an ICJ judgment made based on law differs to the SC's evaluation, made based on politics, it would be unrealistic to assume that the SC would budge. This emphasizes the fact that the UN Charter is mostly developed my SC's permanent members, since it is largely unlikely that the SC would decide against a permanent member, in case one of them received an unfavorable judgment from the ICJ.[37] Thus it can be concluded that article 94 of the UN Charter was created with political motives in mind.

The case of the military and paramilitary activities in and against Nicaragua is a prime example of how the Security Council's inability to take action can cause harm to the authority of the ICJ.[38] The ICJ ruled in favor of Nicaragua and awarded it compensation. The ICJ held that the United States had breached international law by supporting the Contras in their rebellion against the Nigaraguan government and by mining their harbors.

A few months after receiving a favorable judgement from the ICJ, the permanent representatives of Nicaragua requested a Security Council meeting. The meeting was requested because Nicaragua wanted the SC to take action, since the ICJ judgement had not been complied with by the United States, even after four months. The meeting produced a draft resolution, which called for

[34] Ibid.
[35] Tanzi. (1995) Problems of Enforcement of Decisions of the International Court of Justice and the Law of the United Nations. European Journal of International Law. p 541.
[36] Ibid.
[37] Ibid., p 542.
[38] Case Concerning Military and Paramilitary Activities in and Against Nicaragua (1986)

immediate compliance with the order. However, the draft resolution could not be adopted, because one of the permanent members of the SC, the United States, did not sign it. They based their objection on the opinion that the ICJ did not have jurisdiction, or competence in the matter. This way the United States placed the authority and reputation of the ICJ under question.[39] This case shows how the SC's actions, or inability to take action, can have a negative effect on the ICJ. Damrosch evaluated the effect of the Nicaraguan case on compliance in other cases and found it not to be favorable. The enforcement of the Nicaraguan judgment was tried several times in US courts, but it ultimately had a damaging effect on subsequent efforts to enforce the Court's decision in the cases involving VCCR.[40]

The SC also has the power to apply economic and other sanctions provided in Articles 41 and 42 of the Charter. As the SC works amongst political play, it may also lean on intergovernmental organizations such as the International Monetary Fund (IMF), World Bank, International Civil Aviation Organization (ICAO) and World Health Organization (WHO).[41]

1.5 Competence of the UN General Assembly

The General Assembly of the United Nations has been given the secondary role in looking after maintaining peace. Article 10 of the Charter provides that it may discuss any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.[42] However, in case the Security Council uses its jurisdiction (provided by the Charter), the General Assembly does not have the right, without the request of the Council, to make recommendations. When making recommendations, the situation does not have to have escalated into a serious crisis, as is in the case of the Security Council.[43] Questions regarding the competence of the General Assembly are a bit looser than the ones of the SC. Article 11 provides that the GA has unrestricted possibilities and rights to consider and offer recommendations, to UN Member States and the Security Council,

[39] Bernhardt R. (1990). Reviewed Work: The International Court of Justice at a Crossroads by Lori Fisler Damrosch. The American Journal of International Law Vol. 84, No. 1. p 294.
[40] L. F. Damrosch. (2012). The impact of the Nicaragua case on the court and its role: harmful, helpful or in between? Leiden Journal of International Law. p 145.
[41] O'Connell M.E. (2008) The Power and Purpose of International Law, Oxford University Press. p 299.
[42] Charter of the United Nations, San Fransisco, 1945, Article 10
[43] Autere (1968), Supra nota 42, p 37.

on principles that have to be followed in order to keep international peace and security.[44] This leads to the division of work between the GA and SC. The GA's tasks have to do with marking put principles and the SC emphasis is on settling situations and disputes on a singular level. However, the division is not clear since article 11 gives the GA the right to intervene in concrete matters if a state has asked it to.[45]

The GA may use similar power as the SC when it asserts itself in a way that Article 37 and 38 of the Charter provides. Such acts of power can be as much as giving recommendations on the terms to settle a dispute. As an example Merrils uses 1948 when the Assembly gave a recommendation on the emerging struggle of Arabs and Israelis.[46] The Assembly went as far as creating a plan for the future of Palestine. However, this recommendation didn't have an effect on the dispute, as has happened to many other recommendations as well. This was a reminder of the fact that recommendations are not binding to the Member States of the UN and that their impact varies a lot.[47]

[44] Charter of the United Nations, San Fransisco, 1945, Article 11
[45] Ibid.
[46] Merrils J.G. (2005). International Dispute Settlement, New York: Cambridge University Press. p 223.
[47] Ibid.

2. Judicial Settlement

Judicial settlement happens when a dispute is referred to a permanent tribunal in order to reach a legally binding decision. It started developing from arbitration, which is why the two have so many similarities. Judicial settlement has been available for over half a century.[48]

There are many reasons why international adjudication is seen as a favorable way of settling international disputes. To start off, the responsibility to make a decision falls on a third party. This lowers the political cost to the parties. The reason being that when comparing judicial settlement to other methods of dispute settlement, the party receiving the unfavorable decision can stomach the decision with more ease since it was given by a third party. Secondly, the idea of a court is often more favorable because the parties can somewhat rely on previous cases. However, it has to be mentioned, that there is no clear rule of precedent in international law, even though decided cases are relied on by parties in similar situations. Thirdly, as the case is dealt by judges, it gives the possibility for international norms to develop. Finally, what differentiates international adjudication from other methods of dispute settlement, is that rulings are authoritative and made based on law. The rulings might not have an effect on a global scale, but at least they are binding to the parties of the case.[49]

2.1 Permanent Court of International Justice

It is hard to say whether every dispute brought to judicial settlement would have formed into a "subject" of war, casus belli, and isn't the Permanent Court of International Justice's role in maintaining peace based mostly on giving advisory opinions.[50]

Many reasons had given demand for a permanent and independent judicial agency, a court, to be established for the use of the international community, which would also have absolute jurisdiction as many had suggested. The appointment of arbitration tribunals being ad hoc led to many rulings in similar cases to differ. Which means that it is hard to talk about the continuity of legal praxis. Worst of all, the wavering in the use of law creates mistrust in the objectivity of the justice system,

[48] Ibid.
[49] Ibid.
[50] Autere (1968), Supra nota 42, p 83.

in international, and national dispute settlement. Justice can therefore become an injustice and vice versa.[51]

After the end of World War One, one positive was the establishment of the Permanent Court of International Justice, which was called for in article 14 of the Covenant of the League of Nations. This article provided that the League of Nations Council was to prepare a motion for the establishment of a permanent international court and subject it for the member states of the League of Nations to accept. After preparations the general assembly accepted unanimously the motion with some amendments on the thirteenth of December 1920. The Permanent Court of International Justice operated during the time between the World Wars. After the Second World War, the Court came down with the League of Nations and it was terminated in the general assembly in 1946. Between 1922 and 1940 the PCIJ dealt with 29 contentious cases between States and delivered 27 advisory opinions.[52]

The PCIJ was formally an independent and self-sufficient judicial body, as its beginnings showed. Its importance was widely acknowledged in international legal praxis. It was obvious that when the United Nations replaced the League of Nations, there had to be a successor to the PCIJ.[53] The most convenient way was to create a new court. While creating the UN in San Fransisco in 1945 a Committee of Jurists was set to prepare a motion to create a new charter for the court and its relation to the UN. As a result, a motion was created by the Committee to establish a new international court. It would have been hard to establish the new court based on the old statute of the PCIJ and two important members of the UN (United States and Soviet Union) weren't even members of the older court.[54]

The UN Charter article 7 states that the International Court of Justice is one of the principle organs of the organization. Article 92 of the Charter states that the ICJ is the principal judicial organ of the United Nations and it functions in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.[55]

[51] Ibid.
[52] Ibid.
[53] Nii Lante Wallace Bruce. (1998) The Settlement of International Disputes. Martinus Nijhoff Publishers. p 53.
[54] Autere (1968), Supra nota 42, p 85.
[55] Terry D. Gill, Supra nota 2, p 15.

2.2 The International Court of Justice

2.2.1 Organization

The Statute of the International Court of Justice chapter I discusses the organization of the Court. One of the more important articles is the second one, which states that the Court should be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.[56] There can't be more than one judge of the same nationality. The judges are elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration. The General Assembly and the Security Council proceed independently of one another to elect the members of the Court. The members of the Court are elected for nine years. The member of the Court may not exercise any political or administrative function or engage in any other occupation of a professional nature, nor can they function as agents, counsel, or advocate in any case. The attendance of nine judges shall constitute the Court.[57]

Still to this day, states do not want to submit themselves to the Court's jurisdiction. The cause of worry is losing a case and having it affect negatively in regard to their independence and autonomy in the international community. Secondly, even when winning a case, the Court's power to prescribe remedies is weak due to its poor enforcement measures. Ultimately, a ruling might be meaningless. As an example, the Corfu Channel case from 1946.[58] In this case two British ships struck mines in Albanian waters. This led to grave damages and loss of lives. The case was brought up in the Security Council, from which it continued its way to be considered by the ICJ. The main issues were: was Albania responsible for the explosions, and did it have to pay compensation or not. ICJ ruled in favor of Great Britain. The Court ordered Albania to pay over eight hundred thousand pounds for the harm. During the proceedings Albania announced that ICJ didn't have jurisdiction to decide on the sum of the compensation and that its role is only to consider the case

[56] Statute of the International Court of Justice, Chapter I (Articles 2-33)
[57] Ibid.
[58] The Corfu Channel Case (1949) p 6. of the judgement

based on principles. Albania did not take part in any further proceedings and it did not agree to implement the Court's ruling.[59]

ICJ does not have the same status as national courts, in a way that national courts are an authoritative arm of the government. This is due to the shape of the international legal system currently. Most importantly the Court's jurisdiction is based on consensus and the rule of precedent is not used. For these reasons it is compared to other dispute resolution methods in international law.

The ICJ is not the only court handling international matters and operating between states, but the court certainly has a special position as an international court with a historic background of its own kind.[60]

2.2.2 Jurisdiction of the International Court of Justice

The court's capacity to settle disputes is drawn out in the Statute and it is known as contentious jurisdiction. The Statute provides that only states that are parties to the dispute can be a part of contentious proceedings, and the court's jurisdiction is based on the consent given to it by both parties to the dispute. This originated from the same principle that was used in arbitration, which means that if the parties haven't given their consent, the court doesn't have jurisdiction to settle the case. The most common ways in which a state may give its consent are listed below.[61]

Firstly, consent can be given before a dispute arises by means of a compromissory clause in a treaty, or a declaration under Article 36 (2) of the Court's Statute.[62] There are treaties that provide for the reference of disputes in advance to the Court. Treaties that have been concluded multilaterally with the general goal of settling disputes peacefully include the General Act of 1928, the Pact of Bogota (1948) and the 1957 European Convention for the Peaceful Settlement of Disputes.[63] All of these treaties constitute a general acceptance of judicial settlement. Since the

[59] Cordier A. W., Foote W. (1969). Public Papers of the Secretaries- General of the United Nations. New York and London: Columbia University Press. p 147.
[60] Franck T. M. (1986). Judging the World Court. Priority Press Publications. p 76.
[61] Statute of the International Court of Justice, Article 36
[62] Ibid.
[63] Merrils (2005) Supra nota 42, p. 128

treaties have a far-reaching effect on the states involved, they have not been very popularly accepted. And if they are accepted, there are some kinds of reservations.

Secondly, consent may be given after a dispute has arisen in a manner in which both parties agree to it, also known as the special agreement. Most commonly, the parties to a dispute notify the Court by sending a written application where they depict the subject of the dispute as well as the parties to the dispute. As soon as consent has been given in a way of a legal act, jurisdiction has been created, and parties can't back out anymore.[64]

There is also the compulsory jurisdiction, in which a state may consent to the jurisdiction of the Court by recognizing as compulsory the jurisdiction of the Court. The compulsory jurisdiction is based on Article 36 (2) of the Statute and it is an optional clause to which states may choose to adhere to. Only about a third of the UN Member States have recognized such compulsory jurisdiction.[65]

In addition to contentious jurisdiction, the Court may give advisory opinions. They are non-binding opinions of the Court that nevertheless carry weight in international law and have effect in maintaining international peace and security.[66]

[64] Merrils J.G. International Dispute Settlement. (1993). Cambridge University Press p 109.
[65] Statute of the International Court of Justice, Article 36
[66] Statute of the International Court of Justice, Article 65

3. Statistics of the ICJ

The Rules of Court provides that The Registrar shall keep a General List of all cases brought before the Court.[67] From the year 1946 to 1999 there were 98 cases registered which were considered to be contentious cases.[68] Eight of those cases were excluded for being mere incidents to the principal case.[69] Of the 90 cases left, judge Oda excluded eight cases in which forum prorogatum arose and 11 cases which were withdrawn.[70] In addition, 24 other cases were excluded because they were still pending. Among the 47 cases left, in only 19 cases was there consent to the Court's jurisdiction.[71] In the other 28 cases, the respondent States were regarded as not being ready to settle willingly their disputes, which had been brought before the Court unilaterally by the applicant States.[72] At this point the Court does not yet proceed to the merits phase if it accepts the respondent's preliminary objections concerning jurisdiction and dismisses the application initiating the case. From the 28, there were thirteen cases such as this that were dismissed. Thus, after the rejection of preliminary objections, there had only been 15 cases in the history of the Court that had proceeded to the merits phase.[73] Eventually the Court handed down a judgment on the merits in only 13 cases, since two cases were withdrawn by the applicant State in the merits phase. (No.74, Border and Transborder Armed Actions (Nicaragua v. Honduras), and case No.80, Certain Phosphate Lands in Nauru (Nauru v. Australia).[74]

Two of the decisions: the Fisheries Jurisdiction Cases (No. 55 UK v. Iceland) and (No. 56 FRG v. Iceland) 'lost their object' owing to contemporary developments in the law of the sea. Two other judgments'lost their object because France had no reason to continue with the testing Nuclear Tests Cases (Nos. 58,59 Australia v. France; NZ v. France) As with the Fisheries Jurisdiction cases, the Nuclear Test Cases are 'accepted as being independent or separate cases, and separate judgments in these cases were handed down'.[75]

[67] Rules of Court (1976). Article 26
[68] Oda S. (2000). The Compulsory Jurisdiction of the International Court of Justice: A Myth? A Statistical Analysis of Contentious Cases. International and Comparative Law Quarterly. Vol. 49. p 253-254.
[69] Ibid.
[70] Ibid., p 257.
[71] Ibid., p 258.
[72] Ibid., p 259.
[73] Ibid., p 260.
[74]Ibid.
[75] Ibid.

In the period prior to 1975 (after which Oda became Judge in the ICJ), in terms of effectiveness of judgments, a meaningful result was achieved in only seven cases. These were: Corfu Channel (1949), Ambatielos (1953), Nottebohm (1962) Right of Passage Over Indian Territory (1960), Barcelona Traction (1970), Temple of Preah Vihear (1962), and Appeal Relating to the Jurisdiction of the ICAO Council (1972).[76]

During the time Judge Oda served as a Member of the International Court of Justice, there were only two cases brought by unilateral application where judgment on the merits were handed down, United States Diplomatic and Consular Staff in Tehran (1980), and Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (1986). In these cases the Court's decision went against the respondent States, the judgments were not complied with as such, although in both cases the Court's judgment did have a long-term effect.[77]

Llamzon found that Judge Oda's pessimistic finding that only seven judgments arising from unilateral application to the Court's compulsory jurisdiction achieved a 'meaningful' and 'effective' result is tempered somewhat by the absence of discussion about the compliance record of cases instituted by special agreement. One of the more interesting revelations arising from Judge Oda's study is how few ICJ cases actually arrive at final judgment relative to their docket.[78]

In addition to judge Oda's findings, a few other scholars have examined the history of the ICJ's docket in terms of compliance. Colter Paulson found that in the fifteen years dating from 1987 to 2002 there were fourteen contentious cases that reached a judgment on the merits in the ICJ.[79] Dr Schulte examined all ICJ judgments dating from 1946 to 2003 and found that 27 different cases reached a judgment on the merits.[80]

[76] Ibid.
[77] Llamzon A. P. (2008) Jurisdiction and Compliance in Recent Decisions of the International Court of Justice. The European Journal of International Law Vol. 18 no.5. p 825.
[78] Ibid.
[79] Paulson C. (2004) Compliance with Final Judgments of the International Court of Justice since 1987. The American Journal of International Law Vol. 98, No. 3. p 437.
[80] Björklund A. K. (2007) Reviewed Work: Compliance with Decisions of the International Court of Justice by Constanze Schulte. The American Journal of International Law Vol. 101, No. 2. p 526.

4. Defining Compliance

We can start at the far end of the spectrum in terms of defining compliance, with is defiance. Defiance refers to the "wholesale rejection of a judgment as invalid coupled with a refusal to comply."[81] In order for compliance to be meaningful, it should consist of acceptance of the judgment as final and reasonable performance in good faith of any binding obligation. Compliance in good faith was defined by the ICJ (in case Gabvikovo-Nagymaros Project (Hungary/Slovakia) (1997)) as including a duty to give effect to the judgment with a view to avoiding its superficial implementation or otherwise circumventing it. This is a practical measure of compliance and has been implied in some of the Court's decisions.[82]

There haven't been many, if any, cases in recent history where states would have been openly defiant. The case of Nicaragua and US is widely held as a turning point in the history of compliance in the ICJ. Paulson found that in the 15 years of cases he examined, none of the states were directly defiant, but five judgments were met with clearly less compliance than others.[83]

4.1 Five Cases of Non-compliance in Practice

4.1.1 The Land, Island and Maritime Frontier Dispute Between El Salvador and Honduras

The case stemmed from a long-lasting dispute, which went back to the 19th century and led to violence. The dispute was regarding land, which amounted to 440 square kilometers and a maritime boundary including numerous islands. Honduras and El Salvador first concluded a General Treaty of Peace in 1980 in which they delimited their land boundary in the sectors in which there was no dispute.[84] As the dispute continued, the states notified to the ICJ a Special Agreement whereby they requested the Court to form a Chamber. The Chamber consisted of three Members of the Court and two judges ad hoc. Nicaragua also intervened in the case as a non-party intervener to protect its rights concerning the Gulf of Fonseca. The Chamber gave its judgment in 1992, in which it determined 300 square kilometers of the disputed area was to belong to Honduras and 140 square kilometers to El Salvador. Regarding the islands and the Gulf of Fonseca, El Salvador received two of the three disputed islands and Honduras ensured access to the Pacific

[81] Llamzon (2008), Supra nota 69, p 823.
[82] Paulson (2004), Supra nota 71, p 437.
[83] Ibid.
[84] Llamzon (2008), Supra nota 69, p 826.

Ocean. The judgment was quickly accepted by both parties, with the knowledge that it would be difficult to work out the details.[85]

Around six to fifteen thousand people lived in areas, which were affected by the land apportioned by the ICJ. El Salvador's solution to the problem was to grant dual citizenship for the affected people, but the Honduran Constitution did not allow it. In addition, the Constitution did not allow foreigners owning land near the border. Many difficulties ensued after the judgment and the parties made many agreements to demarcate the border officially.[86] In 2000, Honduras submitted a letter to the secretary-general of UN urging El Salvador to comply with the judgment. In 2002, Honduras continued to pressure El Salvador alleging unjustifiable delays in the demarcation. It made a formal accusation of non-compliance to the Security Council.[87] It wanted SC to "dictate the measures it deemed appropriate in order to ensure that the judgment is executed". El Salvador saw its position differently. The state said that it had stated the intent to request a review of the Judgment and it denied accusations of unjustifiable delay, therefore claiming that non-compliance did not exist. Eventually, El Salvador filed an application for revision to the ICJ one day before the ten-year limit on such requests. The application was rejected and both states agreed to continue the demarcation process in the areas not affected by the application for revision. The process started in 2002.[88]

It was not much of a surprise, that despite all three states bordering the Gulf of Fonseca accepted the judgment regarding the gulf waters, uncertainty regarding jurisdiction in the shared waters caused issues and armed conflicts in the area.

All things considered, the continuing border problems, failed demarcation agreements and Honduran allegations suggested that El Salvador did not completely fulfill its obligation to execute the judgment reasonably and in good faith. However, there were two parties to the dispute, so it can be said that both states failed in negotiating in good faith and there was "mutual non-compliance". Despite the compliance issues, the parties realized the complexity of the dispute and were pleased with the judgment. As the judgment was complied with to a considerable extent,

[85] Paulson (2004), Supra nota 71, p 437.
[86] Ibid.
[87] Llamzon (2008), Supra nota 69, p 828.
[88] Ibid.

and parties being seemingly happy, the ICJ succeeded in its role of alleviating political tensions in the area.

4.1.2 The Territorial Dispute, Libya and Chad Case

Libya and Chad had a longlasting dispute over an area of around 330 000 square miles, which included 114 000 square kilometeres of the Aouzou Strip. The Strip had been occupied by Libya since 1973. Thousands of people died in the 70's and 80's fighting over the Strip. The conflicts eventually led to war between the states in 1986-87 and there was a significant number of Libyan casualties.[89] Moving on from the war, Libya offered help in rebuilding Chad and even recognised the new government led by Habré. This sign of amicabilty is believed to be the reason Habré decided to live with the fact Libya occupied the Strip, despite Chad having legal claim over the area. The situation made it possible for Libya to finally secure their southern border and gain control over supposed uranium reserves in the area.[90]

As Libya and Chad signed a peaceful settlement of disputes in 1989, but the political conflict continued, the states left a special agreement to the ICJ to settle the case. Soon after the Special Agreement, there was a change in power in Chad. Habré was replaced by Idriss Déby, who was strongly supported by Libya. As the change happened, the relationship between the states got better. Thus it came as a surprise to Libya, when Déby wanted to continue pursuing the ICJ case and Chad's claim for the Aouzou strip. The Libyan ruler Qaddafi was reluctant to take part and accept the ICJ's jurisdiction, but due to polital pressure and Libya's previously succesful results in maritime delimitation cases, the case went on. The Court gave its Judgment in 1994 and awarded Chad with the Aouzou Strip.[91] To start, Libya wanted nothing to do with the judgment and rejected it. During the following month the international community applied political pressure to Qaddafi, who realized that there might be something to gain in accepting ICJ's order. Libya wanted to clear its reputation and better its relationship with other North African states. In April of 1994 the Libya and Chad announced that they had reached agreement in implementing the Order. Libyan forces left the Aouzou area in May of the same year, but the future was far from being trouble-free. There were many reports in the following years of Libyan presence in the contested area and the states

[89] Paulson (2004), Supra nota 71, p 440.
[90] Ibid.
[91] Paulson (2004), Supra nota 71, p 441.

had to resettle the dispute in 1998. However in 2001, Déby announced that Libya had been supporting rebel forces fighting in the Aouzou Strip.[92]

The ICJ's effect can be seen as positive to the extent that the politcal and legal sovereignty of the area was settled. In addition, the judgment was important in securing peace between Libya and Chad. However, the findings regarding Libyan influence in the Aouzou area after the judgment and other reconciliations, indicate that full good faith compliance was not reached.[93]

4.1.3 The Land and Maritime Boundary Between Cameroon and Nigeria Case

This case was a longlasting dispute as well, regarding their border of 1600 kilometers extending from Lake Chad to the Gulf of Guinea.[94] The delimitation was of great importance for a few reasons. The Bakassi peninsula was an oil rich area and the dispute had an effect on almost 100 000 people. The Judgment awarded Nigerian controled areas, such as the Peninsula to Cameroon and some Cameroonian areas to Nigeria.[95]

Soon after the Judgment Nigeria declared that it accepted the fair and favourable parts of the Judgment, but that other parts were unacceptable. For one, the Nigerian Constitution specified the land and territory comprising Nigeria and before the Constitution was to be amended, they could not comply. Even though the presidents of both states had allegedly promised to accept the ICJ's judgment in a meeting with the UN Secretary-General Kofi Annan a few months prior to the Judgment, Nigeria was under great political pressure from their own people to not let go of e.g. the Bakassi peninsula. Rather than give up the peninsula, they would go to war to protect it.[96] However, the international community applied political pressure as well. Both the United States and France called for Nigeria to comply with the ruling. The United Kingdom took it a bit further calling the judgment binding and not subject to appeal and that Nigeria had an obligation under the UN Charter to comply with the judgment. Over the next four years progress was made and eventually even a ceremony was held in 2006 to mark the transfer of control in the disputed territories.[97]

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[92] Ibid.
[93] Llamzon (2008), Supra nota 69, 832
[94] Ibid., p 835.
[95] Ibid., p 836.
[96] Ibid.
[97] Jones H. L. (2012) Why Comply? An Analysis of Trends in Compliance with Judgments of the International Court of Justice since Nicaragua. Chicago-Kent: Journal of International and Comparative Law Vol. XII. p 60.

4.1.4 Gabcíkovo-Nagymaros Project (Hungary/Slovakia) Case

In 1977, the then Czechoslovakia and Hungary signed a treaty to start building a dam on the Danube River. Over ten years later in 1989, Czechoslovakia was nearing completion of the project, but Hungary on the other hand tried to terminate the treaty and abandon constructions. They had concerns over environmental quences and effects on the water supply of Budapest. Hungary and Slovakia agreed to submit the dispute to the ICJ by special agreement in 1993.[98]

The Court gave its judgment in 1997 and found that the 1977 treaty was still valid and binding. Hungary had thus breached its legal obligations. ICJ did not agree with the notion of rebus sic stantibus, the treaty becoming inapplicable due to fundamental circumstances, in this case possible environmental damage.[99] The Court refrained from giving specific orders, but urged the states to negotiate with each other and solve the dispute in good faith.

And so the states began negotiating, but not for long, since the negotiations broke down the following year. Slovakia left a request for revaluation of the case to the ICJ, it claimed that Hungary had not been negotiating in good faith. The Slovakian regime changed soon after, and no further proceedings were needed from the ICJ. In the years 2002-2003, the negiation had still not really advanced. Both parties seemed to agree that the dispute was rather technical and legal in nature, rather than political. The degree of compliance in this case is difficult to interpret. The ICJ left so much ambiguity in its judgment, that the states did not really know how to proceed post judgment.[100]

4.1.5 LaGrand Case

Article 36 of the Vienna Convenvtion on Consular Rights (VCCR) the competent authorities of the receiving State shall inform the consular post of the sending State if a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities should inform the person concerned without delay of his rights.[101]

[98] Llamzon (2008), Supra nota 69, p 833.
[99] Ibid.
[100] Ibid.
[101] Vienna Convention on Consular Relations (1963) Article 36

In LaGrand German nationals Karl and Walter LaGrand were arrested on suspicion of murder and armed robbery in the State of Arizona in 1982. The brothers were later charged and convicted with first-degree murder, which is a conviction that carries the death penalty in Arizona. Karl and his brother Walter LaGrand were not notified of the possibility and right to communicate with the German Consulate. The right is based on the VCCR 1963.[102]

United States authorities never informed their German counterparts of the arrests. German authorities received information of the incident ten years later in 1992. Germany tried to get the death sentences of its citizens waived without any luck. In February 1999 the first of the brothers, Karl LaGrand, was executed. Less than a month later, ICJ issued a ruling of its own accord. It was a request for provisional measures issued for the very first time, which stated that the United States should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision of the ICJ".[103]

During these events the US was party to the Vienna Convention Optional Protocol Concerning the Compulsory Settlement of Disputes 1963.[104]

Article 1 of the Protocol states that: "disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the ICJ and may accordingly be brought before the court by an application made by any party to the dispute being a Party to the present Protocol."[105]

Despite everything, Walter LaGrand was also executed. Stated in its judgement of June 27th 2001, the ICJ found the United States in violation of the Vienna Convention for not informing the LaGrands of their right to communicate with their consulate. Unfortunately, this decision came too late for the LaGrand brothers.[106]

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[102] Journal Article, (2001) International Court of Justice (ICJ): LaGrand Case (Germany v. United States). International Legal Materials Vol. 40, No. 5. American Society of International Law; Cambridge University Press. p 1098.
[103] Ibid., p 1099.
[104] Optional Protocol Concerning the Compulsory Settlement of Disputes 1963
[105] Optional Protocol Concerning the Compulsory Settlement of Disputes 1963 Article 1
[106] Journal Article, (2001) International Court of Justice (ICJ): LaGrand Case (Germany v. United States). International Legal Materials Vol. 40, No. 5. American Society of International Law; Cambridge University Press. p 1099.

The LaGrand case represented the first time the Court's measure were stated as being binding and that the United States did not comply. For some time, it was unclear whether the UN Charter article 94 or the ICJ Statue article 41 was the binding authority.[107]

In her article Weinman highlighted a few issues in the ICJ judgmenent of this case. As the wording used in the judgement has a narrow connotation, it may leave U.S. Courts with the possibility to ignore international obligations, especially regarding the question of whether international law and domestic criminal procedure relate to one another. "Nationals of the Federal Republic of Germany" should be sentenced to "severe" penalties.[108] If the opinion is read as only applying to a situation involving German nationals in the United States, the broad remedial purposes of the ICJ's order will not be met.

As the VCCR is a multilateral treaty and has one hundred seventy-seven ratifying states as of now, the finding of the violation of the Convention is significant. As a general rule, all parties to the Convention have the right to the same rights under the Convention. If Germany can bring the U.S. In front of the ICJ and show that it has violated their citizen's rights, all other members have to be able to do the same. For this to be possible, the U.S. would have to consent to ICJ's jurisdiction, which is very unlikely at least in similar cases. For the Convention to work on any level, ICJ's opinion should affect all member states equally. Many scholars have noticed that smaller countries simply don't have the means to stand up to the U.S. in cases of VCCR violations. As Weinman notes, the rights of the Convention should be applied equally to all signatories, regardless of their economic or political condition.[109]

Since the case of La Grand, the United States have had similar cases. In 2008, a Mexican national (Medellin) was sentenced to death in Texas and he was never properly advised of his right to contact the Mexican consulate.[110] The US Supreme Court reviewed the case of Medellin and came to the conclusion that neither international treaty nor ICJ decisions are binding domestic law.[111] In addition, despite president Bush trying to urge US states to review their stance on convictions of

[107] Ibid.
[108] Weinman J.L. (2002) The Clash Between U.S. Criminal Procedure and the Vienna Convention on Consular Relations: An Analysis of the International Court of Justice Decision in the LaGrand Case. American University International Law Review. Vol 17. p 898.
[109] Ibid.
[110] Medellin v. Texass 2008
[111] Llamzon (2008), Supra nota 69, p 840.

foreign nationals, the Supreme Court held that without action of Congress or Constitutional authority, the President does not have the power to enforce such treaties or decisions.[112]

[112] Jones H. L. (2012), Supra nota 89, p 80.

5. Assessment and possible improvements

Measuring compliance is a complexe state of affairs. In the cases examined by the author in this research, there were different levels of compliance. How should one interpret compliance in the case of El Salvador and Honduras, where the judgment regarding territorial and maritime delimitation was only partly complied with? How is compliance measured in the La Grand case, where the actions of the US State Department are the unit of measure? On the other hand, in one of the non-compliance cases examined, Cameroon v Nigeria, the ICJ judgment was eventually fully complied with.

The judgments of disputes regarding territorial boundaries are usually complied with. Problems arise when there are ambiguities in the judgment. Negotiations held in good faith are helpful and problems in these situations are due to misunderstandings and uncertainty. Regardless of proceeding in good faith, ambiguous territorial boundaries and unclear instructions leave the parties with not much guidance in solving the dispute, and they cause obstacles for future negotiations and even compliance.[113]

Another factor effecting compliance in cases of the ICJ include the effect of the international community. The community can set sanctions or ramifications to states not complying with the Courts's orders. In the Libya and Chad case, the judgment was first met with outright non-compliance and critization, but pressure applied by the international community, inter alia, led to Libya accepting the judgment. Even the Security Council had a role in this case, imposing sanctions, i.e. setting a flight ban on Libya.[114] Another element pushing states to accept ICJ's judgments is reputation costs. In the El Salvador and Honduras case, Honduras repeatedly blamed El Salvador for not following the Court's orders in good faith. El Salvador had to repeatedly publicly make assurances regarding the compliance of the judgment. Without the aspect of international community and reputation costs, El Salvador might have disregarded the matter completly. These instances show how the role of the international community works as an enforcement mechanism.

[113] Gabčíkovo-Nagymaros Project (1997) (Hungary/Slovakia)
[114] Security Council Report. (2016). The Rule of Law: Can the Security Council make better use of the International Court of Justice? p 6.

What made the La Grand and Medellin cases different in nature, was that everything happened on American soil. Meaning, that the ICJ's judgment had direct effect on US autonomy. When a judgment is in direct conflict with a state's sovereignty, autonomy principles and legal system, there is a higher risk of non-compliance.[115] This risk wouldn't be a factor if the case was more international in nature, with cross-border aspects. In which states are more likely to give up some of their autonomy to international tribunals, because they are in a better position to resolve the dispute. Thus, it is rather logical that a state is more reluctant to comply when the judgment has an affect on its internal affairs. One prevailing concern in this regard is that as the practice of international adjudication increases, the issue of noncompliance will also become increasingly more pressing.[116]

5.1 Jurisdiction

The ICJ may only decide cases in which all parties to the dispute have given their consent to the Court's jurisdiction. The general opinion regarding the link between ICJ's jurisdiction, and compliance to its judgments, has to do with how the parties to a dispute have consented to the jurisdiction of the Court. Cases brought to the Court by special agreement are seen as more likely to end up as cases where the judgment is complied with, as the parties have agreed on the framework of the dispute.

On the other hand, there are the optional and compromissory clauses, where states may become parties to a case rather unwillingly compared to the special agreement. Some scholars have thus come to the conclusion, that the Court should favor cases brought by special agreement in order to improve the Court's record and effectiveness. This way leaving more of a foot print on international law.[117]

[115] Jones H. L. (2012), Supra nota 89, p 85.
[116] O'Connell M.E. (2008), Supra nota 41. p 299.
[117] Llamzon (2008) Supra nota 69, p 844.

5.2 Improving the Security Council

The most important relationship to review when assessing possible improvements in the compliance of ICJ's judgments, is the relationship between the Security Council and the ICJ. It is evident, that these UN bodies are not working together sufficiently. Moreover, the Sectreteriat and the GA haven't used their potential to alleviate the ICJ's work either.

All disputes coming to the SC should not end up on the docket of the ICJ, but the SC should utilisize the tools at its disposal. In situations where states bring their disputes, possibly affecting international peace and security, to the SC, the Council shoud try to solve these disputes at least by requesting an advisory opinion from the Court.

In cases such as the one of Honduras and El Slavador, where Honduras wanted the SC to consider El Salvador's non-compliance of the ICJ's judgment, the SC should start discussions with parties to the dispute and possibly take action if non-compliance is found. Moreover, the SC should be much more proactive in cases of non-compliance, as it does not follow and oversee the enforcement of judgments. A possibilty would be to make states report on developments happening post-judgment. However, in case such process is left voluntary, it is likely that states would not co-operate for practical and political reasons.

CONCLUSION

The peaceful settlement of disputes is one of the most important issues of our time. As the author mentioned in the introduction, recently there have been events that have shook the international community. In some disputes, the use of force would lead to the destruction of civilization. It might not be realistic to think that in the future all disputes would be settled peacefully, but it is still important to keep improving the system and analyzing its current state.

As international law has developed, the effects of globalization are greater day by day. This means that states can no longer disregard international principles. Globalization has also had the effect that it has brought social media. This can have a positive effect in the issue of complying to international court's judgments, in the way that reputation costs have shown to affect the compliance of states.

The ICJ's record can be considered rather good, but not perfect, especially during the post-Nicaragua era. Judge Oda's stastistical analysis paints an interesting picture, as out of 98 contentious cases on the ICJ docket from 1946 to 2004, only seven cases reached a final judgment. These statistics show that cases of non-compliance have been limited. As for the recent cases of non-compliance, the non-compliance has been only partial.

In order for the ICJ's good direction regarding compliance to continue, the international community should continue to have a critical role as an enforcement mechanism. The problems arising in international adjudication are often due to the political nature of how the system is built. The Security Council is the enforcer of the International Court of Justice. One of its weaknesses is the five permanent members, each of which can veto any type of matter. In the case of military and paralimitary activities in and against Nicaragua, this was on display. The United States was held to have breached its customary international law obligations. Nicaragua wanted a draft resolution after the United States had not complied with the judgment. However, the draft resolution could not be adopted, because the United States did not sign it. They based their objection on the opinion that the ICJ did not have jurisdiction, or competence in the matter. This way the United States placed the authority and reputation of the ICJ under question. This case showed how the Council's actions, or inability to take action, had a negative effect on the ICJ. As the United States have continued their domination of the Security Council with cases such as La Grand and Medellin in recent years, it raises doubts on the SC being a democratic institution.

Going forward, the Court should try to assess a few challenges it faces in order to prevail as a more efficient and powerful Court. The number of states that have accepted compulsory jurisdiction is still too low, for example the United States withdrew from accepting compulsory jurisdiction after losing their case. ICJ should also keep an eye on the growing number of other international Courts and tribunals, which could become a challenge in terms of conflicting jurisprudence. The Court should also review its relationship with the Security Council, and vice versa. The added cooperation between the two bodies could bring a big change in the realm of international law.

SUMMARY

The aim of this research was to examine the core mechanisms of international adjudication, enforcement mechanisms of the ICJ judgments and cases of non-compliance, and to find improvements, if there could be found room for improvement.

The Security Council is the main enforcer of ICJ judgements. The research found that the Court's record, especially post-Nicaragua case, had been rather good. The fact that only a few contentious cases made it to a final judgment phase (being droped or settled for various reasons) having a big effect, but there were also only a few incidents of non-compliance in recent history. What was common between most of the cases, was that the international community, political pressure and reputation costs were the most effective enforcement mechanisms. The Security Council on the other hand, seemed not to be working in terms of its role set out by the UN Charter article 96 as an enforcer, mostly for the reason of being chained by political motives. As an improvement measure, the SC should be more proactive in cases of non-compliance. The SC could require reports on whether the parties to the dispute have proceeded as the Court ordered. It could also arrange negotiations directly after cases of non-compliance arise and be more forceful of enforcing ICJ's judgments.

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