

An Examination of the Enforcement of ICJ Decisions Through Regional Organizations and Specialized Agencies

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Abstract

The existence of inadequate measures and process for the enforcement of ICJ decisions is attributable to the growing concern and trepidation of non enforceability of ICJ decision hence the need to seek an approach and arrangement that will address this flaw. This article strives to examine the enforcement of ICJ decisions through regional organizations and specialized agencies. This study is aimed at evaluating the use, effectiveness and observed challenges associated with enforcement of ICJ decisions through regional organizations and specialized agencies. The methodology chosen in this study was basically descriptive, analytical and argumentative methods. Secondary literature and qualitative analysis of the work of other scholars were complemented with the review of regional organizations and specialized agencies, articles as well as decided cases with the intent of eliciting and providing useful information which will enhance the research discussion. In totality, the assessment of the study findings reveals that ICJ decisions can be enforced through regional organizations and specialized agencies but not without challenges highlighted in the study which points to the need of balancing of the positive and negative effects of the use of regional organizations and specialized agencies in the enforcement of ICJ decisions. This articles concludes by examining if regional organizations and specialized agencies exercises suzerainty over member States to secure the enforcement of ICJ decisions, from the outcome of the study recommendations which are relevant to address the lapses recorded in the use of regional organization and specialized agencies as a channel for the enforcement of ICJ decisions.

Keywords: Suzerainty, Regional Organizations, Argumentative Methods, Specialized Agencies

Introduction

It is not in doubt that the enforcement of the judicial decisions of the International Court of Justice through the United Nation (U.N) itself or any of its organs is inadequate and not enough. Therefore, in order to bridge the gaps of these inadequacies, it is necessary to resort to the use of other regional organizations and specialized agencies. Pursuant to Chapter VIII of the U.N. Charter, potentialities of international regional and sub-regional organizations in the maintenance of international peace and security under which the issues of non-compliance fall, are well recognized. The United Nations Charter urges the parties to any dispute which is most likely to endanger international peace and security to allow settlement through judicial settlement and resort to regional agencies or arrangements.¹

From the definition and meaning of regional arrangements and agencies under Article 52 comes the difficult question as to the role of these institutions under Chapter VIII of the UN Charter. Furthermore, by virtue of provision of Article 53(1) of the United Nations Charter, it is stated specially that: "...no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council ...". From the understanding of this provision, it means that no provision is made for any definition of the phrase "enforcement action" or "enforcement measures", in Articles 1(1), 2(5) and (7), 5, 11(2), 39, 41, 45, 49, 50 and 52 of the United Nations Charter.²

Thus, the Charter uses the idea of enforcement action and enforcement measures more or less interchangeably in its provisions. However, this could lead to argument as to the competence of the regional organizations when it comes to the issue of taking any action without the authorization of the Security Council.

Also, with respect to international specialized agencies and their role in the enforcement of the International Court of Justice (ICJ) judgments, it is better to start our introduction by stating that, notwithstanding the fact that international specialized agencies are specifically seen as related to the United Nations, most of them are established by inter-governmental agreements and their international responsibilities is of a global dimension but with a separate legal entity as section 57(1) of the UN Charter stated thus: " the

¹ Article 33(1) of the United Nations Charter

² Hummer, W & Schweitzer M. "Comment of Article 52 in Simma B, et al (eds) The Charter of the United Nations "A Commentary (Oxford University Press 2002) pp 807 – 853 at p. 815.

various specialized agencies established by inter-governmental agreement are having wide international responsibilities as defined in their basic instruments in economic, socio-cultural, educational, health and related fields shall be brought into relationship with the United Nations in accordance with the provision of Article 63”.

A number of the international specialized agencies apart from their special agreements with the Security Council and the obligation to co-operate with the said Security Council as it concerns the carrying out of its decisions,¹ equally have what can be said to be statutory duties pursuant to their power which means they can sanction through certain ways any of the party to the ICJ judgment who is in breach of its international obligations and obligations of compliance.

It is however important to point out that most writers who have critically examined the roles of these international agencies in relation to the enforcement of the ICJ judgments placed more emphasis on specific provisions of the instruments establishing the agencies while overlooking what limitations exist in the application of these instruments as it relates to every judicial decision of the International Court of Justice. This will certainly be examined in this paper especially when considering the activities of the International Labour Organization, International Civil Aviation organization, International Atomic Energy Agency, the World Bank, I.M.F and other agencies that are relevant to this area of study.

United Nations and Relationship with other Regional Organizations

From a combine reading of Articles 33, 45, 52, 53 and 54 of the UN Charter, it is not in doubt that the UN Charter did not specifically provide a definition of what is regional arrangements and agencies.

However, it should be noted that at the San Francisco Conference, the Delegates from Egypt presented a proposal to the conference with regards to the definition of regional arrangements or agencies which states that: *“there shall be considered as regional arrangements, organizations of a permanent nature grouping in a given geographical area several countries which, by reason of their proximity, community of interest or cultural, linguistic, historical or spiritual affinities, make themselves jointly responsible for the peaceful settlement of any disputes which may arise as well as for the safeguarding of their interest and the development of their economic and cultural relations”*². This proposal for a working definition was welcome but was not accepted because it was not all encompassing but restrictive in its definition.

In the quest for a non-restrictive definition, the Secretary-General of the UN in 1992 proposed a wide and flexible definition of what can be described as regional arrangements and agencies which will include regional organizations for mutual security and defence, organizations for general regional development or for cooperation on a particular economic topic or function and groups created to deal with a specific political, economic or social issues of concern. The reason for the above flexible proposition was to allow diverse organizations vis-à-vis sub-regional organizations to actually make contribution to the maintenance of the International Peace and Security,³ including more integration and also for effectiveness in the maintenance of International Peace and Security.

The importance of this proposition can be appreciated when one considers the decision of the International Court of Justice in the Land and Maritime Boundary case between Cameroon and Nigeria⁴, where Nigeria contended that the role of the statute of Lake Chad Basin Commission which was annexed to an agreement dated 22/5/64 and which was signed between Cameroon, Niger, Nigeria and Chad must be taken and understood in the framework of regional arrangement or agencies referred to in Article 52 of the Charter and that means that it should have the exclusive competence on the issues of security and public order as far as the area of Lake Chad region is concerned, and that these issues includes those of the boundary demarcation.

The reaction of the ICJ to the above contention was that the Lake Chad Basin Commission is an International Organization exercising its powers within a particular geographical area and therefore, it does not

¹ Article 7 of the ICAO Convention 8 UNTS p. 324,328 and Article 6(1) of the Agreement between the United Nations and I.M.F April 15, 1948 16 UNTS p. 328, 332 and also Article 11, 5, of the UNESCO Constitution which allows the expulsion of members from the United Nations to automatically ceased to be members of UNESCO 4, UNTS p. 275

² 12 UNCIO, pp. 850, 957

The Charter of the United Nations provides no precise definition of regional arrangements and agencies which are dealt with in Articles 33, 45, 52, 53 and 54 of the Charter.

³ Boutras-Ghali, B. *“An Agenda for Peace 2nd eds United Nations*, 1995.

⁴ ICJ Rep (1998) para. 67

From the finding, it is a fact that for a regional arrangement or agency to fall into the category of a regional organization or agency to acquire the position of a regional organization or agency as far as the legal framework of the UN Charter is concerned, the said regional organization or agency must have been created by states that are within a specific or particular geographical area and that legal framework must also be based on a collective treaty signed by the parties with the purpose and principles of the United Nations, whose major objective is the maintenance of peace and security under the control and on the basis of the framework of the United Nations and for the purpose of the settlement of international disputes among the member states having come together.

have as part of its objective, the settlement of regional level of matters pertaining to the issue of the maintenance of International Peace and Security. Therefore, the Lake Chad Basin Commission does not come under Chapter VIII of the United Nations Charter because of its limited geographical area which does not cover a region.

Enforcement Through Article 53 of UN Charter

Looking at Article 53(1) of the United Nations Charter, it provides that no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council. However, the pertinent question to be asked, is; does this provision contain the definition of the phrase “enforcement action” or “enforcement measure”?

The answer to this poser is that the provision does not contain any definition of what is called “enforcement action” or “enforcement measures”. Therefore, the next question to be asked is; what then is meant by “enforcement action” and what is its scope pursuant to Article 53 of the UN Charter which may be the constraining factor with respect to the competence of the regional organizations as it concerns the taking of any action in the process of enforcing a particular international obligation vis-à-vis the enforcement of the ICJ’s judgment without a prior approval of the Security Council? Can it also be said in other words that the idea of “enforcement action” connotes “a military action” or does it involve non-military action such as economic sanctions and sanctions dealing with diplomatic relationships?

With respect to the aforementioned questions, their relevance in this regard can be linked to both the diplomatic and economic sanctions that were imposed on Dominican Republic in 1960 by the Organization of American States (OAS) in connection with its activities in Venezuela. The Organization of American States eventually informed the Security Council about the sanctions imposed pursuant to Order 54 of the UN Charter but the Soviet Union as it was known as at then, insisted that before the sanction was imposed, the OAS should have been given approval by the Security Council. The reason for the Soviet Union opposition can be traceable to the fact that it was anxious to avoid a situation where the OAS will equally impose economic sanctions on Cuba Republic without also waiting for the approval of the UN Security Council.

Further, the United States on its part proffered the argument that the issue of enforcement action has to do with military action and that it does not connote diplomatic sanction or economic sanctions. It should be noted that this line of argument enjoyed the support of most of the members of the Security Council but Poland and Soviet Union were absent during the meeting¹.

However, in 1962, the OAS still went ahead to impose economic and diplomatic sanctions against Cuba to the annoyance of Soviet Union who argued that the sanction were illegal since there was no prior approval by the Security Council on the said sanctions but the Soviet Union position was not supported by the members of the Security Council. However, both the United States and Soviet Union placed heavy reliance on the Dominican Republic case earlier cited to assist their argument.

While the argument was going on before the Security Council, the members were tempted to agree that the two sanctions were justified and it was further rightly argued that the actions undertaken by the regional organizations should be protected in order to make sure that there is effective enforcement of the principles and the act of the United Nations Charter.

Therefore, any action which may have been taken pursuant to Chapter VII and Articles 41 & 42 of the United Nations Charter refers to enforcement action even if the said enforcement action takes the form of military measure or non-military measures.² It should however be understood that Article 53(1) of the United Nations Charter according to the debate of the Security Council after the OAS’s sanction against the Dominican Republic and Cuban, was designed specifically to increase the enforcement procedure of international law and to make provision for further methods to be utilized by the Security Council in order to effectively act under the particular provisions stipulated in the United Nations Charter. What is meant is that regional organizations are performing as subsidiary organs of the United Nations.³ From what can be understood, the particular measures and action expected by the Security Council to be taken through regional organization must only be taken by these regional organizations when there is in existence the approval and the authorization of the Security Council. Apparently, the idea of enforcement action pursuant to Article 53(1) of the United Nations Charter must have a direct link with the idea of enforcement action which is undertaken by the Security Council, whether the action is permissible non-military enforcement or unilateral action by regional organizations. This explanation is a buttressed by the provision of Article 52(1) of the UN Charter which emphasize the issue of competence of regional organizations to deal with matters relating to the maintenance of international peace and security as may

¹ Halderman, J. W., “Regional Enforcement Measures and the United Nations” 52 *Geo L.J* (1963) pp. 89-118

² Brohmer J. and Ress O. “Article 53” in Simma, B. et al (eds). *The Charter of the United Nations: A commentary*, (Oxford Univ. Press 2002) pp. 854-890, 860-861.

³ Kelsen, H. *The Law of the United Nations: A critical Analysis of its Fundamental Problems*, (Stevens & Sons Limited 1950), P. 326,

be appropriate for regional action.

Even though the United Nations Charter does not specifically provide for a particular time when a regional action could be said to be appropriate, it is not in doubt that it talks about regional action without the imposition of certain conditions.

Also regional organizations have been found to use their sense of judgment to convince a member state who is a party to the case to comply with the obligation in respect of which, the said regional organizations may have imposed sanctions. For example a close look at Article 53(2) of the United Nations Chapter shows that, it stipulates that members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional agencies referring them to the Security Council.

Also, notwithstanding the collective use of force as far as self-defence is concerned by virtue of Article 52 of the UN Charter, which is not within the scope of this work, the definition of enforcement include any enforcement action that is taken by regional organizations once it is not in breach of Article 2(4) of the UN Charter, such as a threat or use of force against the territorial integrity and the political independence of the state who is in default. Therefore, it can be said that the definition action is linked on to the nature and quality of measures taken and does not involve the mandate under which they were taken.¹

Under general international law, it can be validly argued that from the aspect of practicability, states can decide to serve diplomatic relationships, they can impose economic sanctions against another state and the consequence of these actions in certain circumstance may even be more devastating than the action that may be taken by regional organizations.² Therefore, the same liberty to impose sanctions on a defaulting state should be allowed to states, whether the states are in the form of groups or they are within such states covered by their particular regional organization. What it means, is that regional organizations are allowed to exercise the rights of regional enforcement of action against a defaulting state once such action is found to be taken within the precincts of the legal framework of the United Nations Charter and within the doctrine of the recognized implied powers.

The measures referred to above, can be taken by the regional organizations and may include the denial of the recalcitrant state from voting, denial from speaking at the meetings; it may include the suspension of such a state or expulsion. It can even include the withdrawal of financial aids vis-à-vis other economic and commercial sanctions in order to achieve compliance. Therefore, there exist no basis to seek the Security Council approval for sanction or sanctions on these grounds because to insist on the need for approval of the Security Council will mean trying to undermine the integrity and concept of regional organizations; it will also mean that the ability of the regional organizations to ensure compliance with international obligations will be affected coupled with political interference in the affairs of regional organizations.³

Enforcement through International Regional Organization

As a result of member states political interactions in any particular international organization, there is bound to exist friction, crisis and disputes and this natural phenomenon of event is recognized by both the regional and international institutions who made provisions in the instrument establishing them for an amicable resolution of international disputes.

Some other international regional organizations have moved a further step in achieving amicable resolution of their conflict by establishing judicial institutions and various commissions to resolve their disputes. Therefore, we will give some attention to the relationship between dispute settlement methods which are available as far as regional organizations are concerned on the one part and the issue of enforcement action vis-à-vis the measures which can be utilized when the case has to do with non-compliance with an international obligations by a recalcitrant state, on the other part; whether or not it arose from regional or international legal instruments or from regional or international decisions, judicially given.

Emphasis will be given to some regional organizations such as league of Arab states, European Community, European Union, Organization of American States, Council of Europe, the African Union vis-à-vis Organization of Islamic Conference. From the available facts and historical antecedents, no consistent practice could actually be established among the regional organizations as we could not establish consistency her in the practices among regional organizations. This however may be due to political differences, incompatible structures as well as incomparable practices.

¹ Brohmer J. and Ress C. (Ibid) p. 861

² Akehurst M. (Ibid) pp. 16, 195-196.

³ Combacau, J. "Sanctions" in R. Bernhardt (ed), 9 EPLL (North-Holland Elsevier Science Publisher, 1986 p. 329. Klein E. "Sanctions by International Organizations and Economic Communities" 30 Adv (1992) pp. 101-122.

League of Arab States (LAS)

It is no gainsaying that the League of Arab States constitute one of the oldest international regional organizations that were founded immediately after the Second World War and the said League of Arab States was formed as a political organization¹ and of a blessing to the League is its comprehensive claims as could be found under Article 2 of the Pact of the Arab League².

As could be understood among the main objectives of the League of Arab States is that there should be a peaceful settlement of disputes among member states. By virtue of the provision of Article 5 of the Pact of the Arab League; it is incumbent on member states not to resort to the use of force when it comes to the issue of settlement of disputes among the members of the League. The member nations under Article 5 agreed that once they submit themselves to the jurisdiction of the League to determine their disputes, then the decision of the League will be binding notwithstanding the fact that member states do not accept compulsory jurisdiction of the council of the League of Arab States.

The League of Arab states even without the formal acceptance of the Council's jurisdiction by some member states, has mediated with respect to some disputes successfully, pursuant to Article 5 of the Pact, whereas on some other issues of disputes it recorded failure in settling such dispute³. This imply that the ICJ utilizing the League for purposes of dispute settlement in terms of enforcement of ICJ judgments may not yield the expected compliance level and by extension the effectiveness of the court.

As a result of the situation of realization by the members as to the inadequacy of the regional arrangement in respect of dispute settlement by the Arab League, the members of the Arab League have to resort to utilization of other regional organizations against the use of judicial bodies. The good example in this regard was when Morocco refused to accept the competence of the council of the League of Arab States to handle its 1963 conflict with Algeria. In the circumstance, Morocco proffered the involvement of the Organization of African Unity with respect to the dispute⁴.

Instead of League of Arab States to handle some disputes between some other Arab States, they resorted to international adjudication especially through the International Court of Justice, where Libya and Tunisia for instance, referred the dispute between them in relation to their continental shelf in order to declare the principles and the rules of international law as being applicable to the delimitation of their boundary.

In the Continental Shelf (Tunisia Vs Libya)⁵, also in Maritime Delimitation and Territorial Questions (Qatar Vs Bahrain)⁶, Qatar took its dispute with Bahrain to the International Court of Justice as it concerns maritime delimitation and territorial questions in 1991 for determination.

Notwithstanding the fact that many of the disputes are referred to and solved through the International Court of Justice; some other disputes were resolved through close door arrangements between the parties and the regional institutions, based on the need for dispute resolution through political solutions. In this case, the disputes resolved were regional political achievements not specifically based in any legal reason or aim⁷.

By the provision of Article 19 of the League of Arab States, the door was opened for an amendment of the Pact to allow for the creation the Arab Court of Justice, and that this should be of priority. The attempt to establish the court has been successful. As soon as a decision of the League of Arab States is taken and it is a unanimous decision, its enforcement pursuant to Article 7 of the Pact of the League of Arab States shall be enforced in each member state according to its respective laws. The statement under Article 7 still lead to the problem of how effective the decision of the Council of the League of Arab State will be because as it is, the

¹ 70 UNTS (1950) pp. 237-263

Pursuant to the foregoing report, Article 5 of the Arab League states as follows:

“the recourse to force for the settlement of disputes between two or more member States shall not be allowed. Should there arise among them a dispute that does not involve the independence of a State, its sovereignty or its territorial integrity, and should the two contending parties apply to the Council for the settlement of this dispute, the decision of the Council shall then be effective and obligatory”.

In this case, the States among whom the dispute has arisen shall not participate in the deliberations and decisions of the Council. The Council shall mediate in a dispute which may lead to war between two member states or between a member state and another state in order to conciliate them.

The decisions relating to arbitration and mediation shall be taken by a majority vote

² 70 UNTS (1950) p. 237

³ Hoassouna, H., “*The League of Arab States and Regional Disputes; A study of Middle Conflicts* (Oceania Publication) 1975 p. 122. Hoassouna made very critical observation with respect to the applicability of Article 5 of the Charter of the League and concluded that certain practical limitations can impose restrictions to the applicability of the that provision.

⁴ Wild, P. B. “The Organization of African Unity and Algeria-Morocco Border Conflict, 20 L. O. (1966), pp. 18-36.

⁵ I.C.J Rep (1982) p. 18. Full details of this report can be accessed at: <http://www.icj-cij.org/docket/files/68/9577.pdf?PHPSESSID=d6bfcde045ed3d3fc73635f896457894>. Visited on the 30th December, 2014

⁶ I.C.J Rep. (2001) p. 40, full details of this report can be found at: <http://www.icj-cij.org/docket/files/87/7027.pdf>. Visited on the 30th December, 2014.

⁷ Pogany I. “*The Arab League and Regional Peacekeeping*” 34 NILR (1987) pp. 54-74 at 74

member states have discretion as to whether it should comply with the decision under their respective domestic laws or not.

The league of Arab States, however have the constitutional sanction to expel a member from the League once it is guilty of going contrary to the Pact pursuant to Article 18 of the said Pact which was given credence to, by the League of Nations Covenant which states that when any member of the League places itself outside the purposes and principles of the league, it can be expelled from the league by a decision taken by a unanimous vote of all the states except the delinquent state.

The Pact does not provide for suspension, it provides for expulsion. When Egypt was suspended from the League because it signed a Peace Treaty with Israel, the headquarters of the body was moved from Egypt to Tunisia; and Egypt was suspended from all Arab diplomatic activities including, the suspension from subsidiary bodies such as Organization of Arab Petroleum Exporting Countries and Arab Monetary Fund.¹

Egypt contested the decision to be suspended from the body on the ground that the Pact did not provide for suspension and it was believed also by some persons that the decision is seriously questionable and the argument is true as the Pact actually did not provide for suspension but under the doctrine of implied powers, the suspension can be said to be implied.²

Conclusively, the view in some schools of thought that the enforcement of the ICJ decision through the League of Arab States has made meaningful impacts remains a dilemma, especially as the unconstitutional attitudes of the Council of the League of Arab States in the suspension of Egypt can only lead to the conclusion that the unconstitutionality of an enforcement action or any measure that is taken against a recalcitrant state, may be overcome in exceptional circumstances once the measures adopted are in line with the United Nations Legal framework and necessary for the discharge of the League's duties.

Organization of American States

There exist three treaties with respect to inter-American system which are;

- (i) The inter-American Treaty or Reciprocal Assistance popularly called the "Rio Treaty of 1947".
- (ii) The Charter of the Organization of the American States (OAS) of 1948.
- (iii) The American Treaty of Pacific Settlement popularly called "Bogota Treaty of 1948".

Even though there exist complexities with respect to the workings of the above bodies, their main aim is to have a network of organizations, agencies and sub-agencies with the purpose of expanding the rule of law and peaceful co-existence throughout America by way of establishment of compulsory third party settlement mechanisms and the imposition of concrete sanctions against any of the member state who is in breach of its obligations recognized under the international law. These three bodies mentioned above forms the basis of an elaborate and robust regional system as far as the enforcement of international law is concerned.³

Further, as far as the organization of American States is concerned, its supreme organ is the General Assembly pursuant to Article 54 of the OAS Charter. In addition, part of its principle powers is the strengthening and co-ordination of the co-operation with the United Nations and its specialized agencies including, the consideration of the reports of the Meeting of Consultation of Ministers of Foreign Affairs vis-à-vis the observations and the recommendations presented by the permanent council members in relation to the reports; that ought to be represented by the other organs and entities in line with Article 91(f) and the reports of any organ which is required by the General Assembly.

Under Article 84 of the Charter any party to dispute in which none of the peaceful procedures provided for in the Charter is utilized, may approach the Permanent Council to obtain the opportunity of its good offices. Also by virtue of the provision of Article 86 of the Charter in the exercise of its functions and with the consent of the parties to the dispute, the Permanent Council may establish what is known as ad-hoc committee. Furthermore, the ad-hoc committee shall have the membership and mandate that the Permanent Council agrees upon in each individual case with the approval of the parties to the dispute.

By the provision of the Pact under Article 16, of the Organization of American States, the said provision states that a commission of investigation and conciliation is established.

Under Article 28 of the Pact, the report of the commission is merely recommendatory but in case a report is unable to solve the dispute, then Article 31 makes provision for the compulsory jurisdiction of the International Court of Justice. Should the International Court of Justice realize that it has no jurisdiction, then, both parties are expected by the provision of Article 33 of the Pact, to submit whatever is their dispute for arbitration.

The need for compulsory enforcement of the decision of the International Court of Justice vis-à-vis the

¹ Clements, F. A., *Arab Regional Organizations* (Clio Press; Oxford, 1992).

² Shihab, M., "The League of Arab States" in Benardt, R., (ed) I EPIL, (Amsterdam, North Holland 1992), pp. 202 at p. 203

³ Dolzer, P., "Enforcement of International Obligations through Regional Arrangements: Structures and Experience at the OAS". 47 *ZaoR*(1987) pp. 113-133 at p. 114.

decision of the Organization of the American States (OAS) was clearly stated under Articles 50 of the OAS Pact which is thus:

If one of the High contracting parties should fail to carry out the obligations imposed upon it by a decision of the International Court of Justice or by an arbitral award, the other party or parties concerned shall before resorting to the Security Council of the United Nations, purpose a Meeting of Consultation of Ministers of Foreign Affairs to agree upon appropriate measures to ensure the fulfillment of the judicial decision or arbitral award.¹

The Charter and Pact of Organization of American States however becomes silent on the nature and scope with respect to the appropriate measures which member states could utilize in order to make sure that there is compliance with the ICJ decision or arbitral awards. However, there exist a lee-way pursuant to Article 8 of the Rio Treaty which shows the appropriate measures that can be taken where there exist a conflict between two or more member states and it states thus:²

For the purposes of this treaty, the measures on which the organ of consultation may agree will comprise one or more of the following: recall of chiefs of diplomatic missions, breaking of diplomatic relations, breaking of consular relations, partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, and radiotelephonic or radiotelegraphic communications and use of armed force.

The importance of the above provision as could be seen above can be appreciated by the provision of Article 20 of the Rio Treaty which states that a decision of the competent organ of OAS in imposing one or more sanctions as mentioned can be made. The OAS took action against the Dominican Republic whose activities against the Government of Venezuela includes the attempted assassination of Venezuela's President. It was on this basis that led the OAS to impose diplomatic and economic sanctions in the form of arm embargo vis-à-vis petrol and trucks. The embargo remained in force until 1961 when General Trujillo was assassinated.

In another vein, the OAS in January 1962 at a Meeting of Consultation of Ministers of Foreign Affairs passed a resolution which suspended Cuba as a member of OAS. This action was taken because when Fidel Castro took over power in 1959, he proclaimed a Marxist Policy which said policy contradicts the inter-American system (representative democracy)³. Subsequently under Article 8 of the OAS Pact, the organization went ahead to impose economic and diplomatic sanctions against Cuba as a result of the intervention of Cuba in Venezuela territory.⁴

Another good example in this regard was, the pressure put on Peru which allowed Haya de la Torre to leave Peru for Mexico in 1954. In this matter both Columbia and Peru were unable to find a good political solution to the problem over the asylum granted by the Columbian embassy in Peru in favour of Haya de la Torre who was a Peruvian Refugee and equally the that should it refuse to comply with the ICJ judgment, the matter will be placed before the tenth inter-American conference to discuss and proffer solution to the problem dealing with how to implement the judgments of the International Court of Justice in relation to the dispute⁵. The Inter-American Peace Committee had earlier warned Peru.

In the Arbitral Award made by the King of Spain between Honduras Vs Nicaragua, it was the Inter-American Peace Committee who helped the two countries to demarcate their boundaries. The problem between the two countries here was caused as a result of the failure of the two countries to comply with the Arbitral award of 1906. This was what led to military tension between the two countries. The parties in 1957 agreed to enter into the Washington agreement which allow the parties to refer their matter to the International Court of Justice for a final decision.

Upon the matter coming up before the ICJ, the decision was that the 1906 Award was binding and that Nicaragua was expected to comply with the award⁶. It was even Nicaragua that asked the Inter-America Committee to assist in complying with the ICJ judgment pursuant to Article 50 of the OAS Pact, the Honduras – Nicaragua Mixed Commission was inaugurated.

From what we have seen as it concerns the above cases cited, it is not in doubt that regional organizations especially the Organization of American States have played important role in the enforcement of the ICJ judgments.

A critical examination of the role of OAS with respect to the enforcement of the judgments of ICJ shows that the positive role played was limited to several developments most importantly before the 80's because as at 1980's, the role of OAS and IAS started becoming negative. This can be understood because United States started dictating the pace of regional systems and US became a "dictator" and could only approve

¹ 30 UNTS, p. 102

² Article 7 of the Rio Treaty, 21 UNTS, 99

³ 56 AJIL (1962) pp. 610-612

⁴ 3 ILM (1964) p. 977

⁵ ICJ Rep (1950), p. 395, ICJ Rep (1951)

⁶ ICJ Rep (1960) p. 192

what it likes and not what it does not like, no matter how good it is.

For a good illustration, in Falkland Island, Island Malvinas which was in dispute between Britain and Argentina, the US supported Britain; the US also intervened in Grenade while also using military to occupy Nicaragua vis-à-vis, Panama which it invaded in 1980.

To show that there was an erosion of the IAS role in the effort to stabilize the region as far as the role of IAS was concerned members started relying more on less tedious or less formal arrangements as could be seen from the Contadora Group established in 1983, which aim was to put an end to the tense situation in the Central America vis-à-vis, between Nicaragua and the United Nations.

EC and EU Nations

Both the European Economic Community (EC) and the European Union (EU) are said to be seen as one of the most effective methods in relation to the enforcement of the ICJ judgments. It can be observed that a fundamental characteristic of both the EC and EU which makes them unique when compared to other regional international regional organizations can be understood from the fact that member nations have donated substantial powers and jurisdiction to these organizations.

Furthermore, another uniqueness of EC and EU is the fact that they have economic strength and this is important once there is economic and financial sanctions against a recalcitrant state whether such state is a member of the community or not.¹

The important statutory provision which allow easier enforcement and co-operation as it relates to ICJ judgments can be seen from the provision of Article 177(3) of the EU Treaty which is to the extent that the community and the member states shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organizations. As far as this provision is concerned, it is more like a community law as EU members see themselves as under the compulsory obligation to comply with the ICJ judgments.

In line with the reasoning above, there is the assumption that, since, the establishment of the European Economic Community which was established by the Treaty of Rome², that the member states are to ensure that there is compliance with the law of the European Economic Community most especially the one dealing with international judicial decisions as rendered, including those of European Court of justice ((ECJ). There exist no provisions for sanction incase of non-compliance. Consequent on the foregoing, Professor Gormley's view³ for the non-provision for sanction in this regard is that the EC was attempting to develop a more reliable legal system that is to stand on ground in the observance of law and justice in order to replace the imposition of coercive acts of enforcement resulting from political disputes⁴. Therefore, there is more reliance on the moral force of the decisions which can lead to compliance than sanctions.

The effectiveness of this system was found to be exaggerated when the Treaty establishing the European Coal and Steel Community (ECSC) is scrutinized. The deficiency inherent in the Treaty was realized by the EC on their own in ECSC vis-à-vis the Treaty of Rome of the European Economic Community. There has been serious move to fill the gap of this deficiency especially for the enforcement of the ECJ and also to give more opportunity for the sanctioning of a member state that is in breach by giving more executive and judicial co-operation to this effect.

Therefore, by the provision of Article 226 and 227 of the Treaty of Paris, after a reasonable time, and after the opportunity for a defaulting state to correct its step under the Treaty of European Union (T.E.U) said defaulting state can be sanction. Article 226 states that if the commission considers that a member state has failed to fulfill an obligation under the treaty, it shall deliver a reasoned opinion on the matter after giving the state concerned the opportunity to observations. If the state concerned does not comply with the opinion within the period laid down by the commission, the latter may bring the matter before the Court of Justice.

Under Article 227 however, before bringing an action against that member state, it shall bring the matter before the commission. When the commission fails to follow the procedure stipulated under Article 226 or to produce its reasoned opinion within three months of the date on which the matter was brought before it, the injured state may bring directly the matter before the E.C.J.

Notwithstanding that the two Articles talk about the situation of non-compliance with the decision under the Treaty, it can be said that they indirectly cover a situation of non-compliance with the I.C.J Judgments especially if it affects the community law as applicable⁵. Because the case brought before the E.C.J has to do

¹ Article 164 of European Atomic Energy Community (EAEC or Euratom), 298 UNST, P. 218.

² 298 UNTS

³ Gormley, W. P. "The Status of the Awards of International Tribunals; Possible Avoidance Versus Legal Enforcement" *O HLJ*. (1964) pp. 33-107 esp at p. 92

⁴ The term 'political dispute' may include all disputes, whether or not they involve legal questions, which a State refuses to submit to judicial settlement either in accordance with the *lex lata* or *lege ferenda*.

⁵ Dashwild, A. & White R., Enforcement Actions under Articles 169 and 170 EEC. 14 EL. Rev. (1989) pp. 388-412 esp at

with the issue of non-compliance with the decision of I.C.J. in most instances, the integrity of the I.C.J. is not threatened nor jeopardized. It is also a fact that in order to give credence to the integrity of the I.C.J. the E.C.J. cannot venture into examining the merits of the dispute before it; the concentration therefore, is on the issue of whether the Judgment debtor is in breach of its obligation as stipulated in the law governing the community.

The whole essence of going into the matter by the E.C.J is to make a declaration to the effect that the recalcitrant state is in breach of its obligation as stipulated in the Treaty which could be found in Article 228 (ex 171) of the said Treaty and which provides that member state shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

On a serious perusal of this law, it can be seen that this provision of the law alone is not enough to create a law which can be uniformly applied by the member states including the institutions that are under the EC. What this connotes is that there exist the need to maintain a robust system of integration which will be based on concrete sanctions in contradistinction to only relying on the moral force of the law as postulated by Professor Gormley. Because the provision under discussion is ineffective, it led to the EU realizing this by amending the Article by adding paragraph 228(2) to the TEU.

Pursuant to Article 228(2) of the TUE, a new judicial power of imposition of penalty was given to the ECJ and was given in order to provide sanction against non-compliance with its judgments as may have been brought pursuant to Articles 226 and 227 of the Treaty and not as a response to a specific obligation under the Treaty. Also, the Commission is equally given some discretionary powers in relation to the question as to whether there exists the violation of the judgment rendered by the E.C.J.

Thus, should the Commission agree that there have been a violation of the judgment, then the Commission is limitedly arm-tied due to the fact that the discretionary power of the commission is not wide. All that the Commission will do is to deliver its opinion indicating the areas where the recalcitrant state has failed with, as far as the judgment is concerned.

From the above explanation, what it means is that the recalcitrant member state will have the opportunity to formally defend itself and to retrace itself back from its act of non-compliance. Looking at the issue from the other perspective, the provision aforementioned delimits the issue of infringement. The Commission's discretion as could be seen is restricted to finding out whether or not a recalcitrant state may have complied with the measures it was directed to follow as contained in the judgment delivered by the court as at first instance¹. The commission again may bring the case of non-compliance to the E.C.J. against a member state which fails to comply with the necessary measures stipulated within the time limit given for compliance. The Commission shall specify the amount of the lump sum or penalty to be paid by the recalcitrant member concerned which the Commission considers appropriate in the circumstance.

Once this is done by the Commission, the E.C.J "may" not impose a lump sum or penalty payment on the member state once it is satisfied that there is non-compliance with its judgment as rendered². From the provision of Article 228(2) of the Treaty, the word "may" connote the discretionary power whether or not to impose sanction. Furthermore, it could also be said to mean that the E.C.J. is not under any compulsion to accept the same amount of lump sum or the penalty that the Commission may have indicated in the case of non-compliance before it.

It can therefore be said that, even in a situation where the Commission did not specify any lump sum or penalty it wants to impose on the recalcitrant state, the E.C.J. can on its own decide on what should be the necessary lump sum or penalty or payment to be imposed against the recalcitrant state once the matter is referred to it.

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¹ Theodossiou, M. "An analysis of the recent response of the Community to non-compliance with Court of Justice Judgments" 27 *E. L. Rev* (2002) pp. 25-46 esp pp. 27-29

² Article 228(2) of the EU Treaty

Article 228 reads as follows:

1. "If the Court of Justice finds that a Member State has failed to fulfill an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.
2. If the Commission considers that the Member State concerned has not taken such measures it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgment of the Court of Justice.

If the Member State concerned fails to take the necessary measures to comply with the Court's judgment within the time limit laid down by the Commission, the latter may bring the case before the Court of Justice. In so doing, it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances. If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article 227"

It is imperative to state that this community styled measure is to some extent limited to money judgment. Thus, at other times, enforcement by this means may not be applicable.

In addition to the foregoing, it should however be appreciated that the E.C.J. have no power to, on its own, initiate any action against a defaulting state especially in relation to the issue of imposition of sanction. Thus, the Court has to statutorily assume jurisdiction when matters of non-compliance are referred to it, by the creditor country. There have been some measures of the use of enforcement of international obligations by the EC on the realm of judicial decisions rendered by the International Court of Justice whether such action was commenced by the judgment creditor who is a member of the EC or a judgment creditor who is not a member of the EC.

This situation occurred in the United States Diplomatic and Consular Staff in Tehran Case¹ and also in the same case referred to as United States Diplomatic and Consular Staff in Tehran Case (Judgment on the Merit)². In these cases, Iran refused to release the American diplomats hostages in Tehran in breach of the compliance with the International Court of Justice order of provisional measures and subsequently; still in defiance of the order, Iran refused to comply with the judgment after the case was decided on the merit.

The United States approached the European Community to impose appropriate sanctions against Iran which will lead to the compliance with the ICJ judgment. The European Community eventually took a decision which suspended all contracts concluded with the Iranian Government after the date of the seizure of the American Embassy and its staff in 1979. This action was taken because it was the view of the EC member Nations that the Iranian Government action is a threat to world peace and security³ especially as the ICJ judgment was difficult to execute through the Security Council because Soviet Union vetoed any action to be taken against Iran. What an irony of life because, the US is always the one using veto power to render ICJ judgments incapable of being complied with; now that Soviet Union uses its power, it now decide to look for alternate way to compel compliance with the ICJ judgment.

The Organization of Islamic Conference (OIC)

There exists an important avenue of enforcing compliance with ICJ judgments as the enforcement of the compliance with international obligations can be secured through the organization of Islamic Conference (OIC) which is an international inter-governmental organization founded on the 4th day of March, 1972 and its Charter came to existence on the 28th day of February, 1973⁴.

Because the organization of Islamic Conference spreads over three continents, and is the only inter-governmental organization that was founded on religious basis, it derives much importance and significance on the basis of this geographical spread across the world.

The IOC can equally be described as a political organization even though it was formed on the basis of religion. The basis of this political background can be implied when one considers the idea behind Article 6(5) of the OIC Charter which provides that the Headquarters of the organization shall remain in Jeddah, Saudi Arabia until the Liberation of Jerusalem is achieved. Further colouration to this political agenda of the OIC can be gathered from its agenda, contents of its communiqué and its declaration and its declaration vis-à-vis resolution from its summits.

With respect to the organization, of significant importance is the enforcement of international obligation and the application of Islamic law (Shari' ah) among the member nations or through the International Islamic Court of Justice (IICJ). Pursuant to Article 27(1) of the statute of the International Islamic Court of Justice, it is stated that Islamic Law (Shari' ah) is the fundamental basis of its law and that is the law which will be applied by the IICJ in matters brought before it. Now, a cursory look at the Holy Quran which serves as a major source of Shari' ah Law, will reveal that it completely requires every individual to carry out his or her contractual obligations most especially those that have been entered into in the form of pacts or agreement among individuals.

The essence of this, is, that the said obligations equally binds Islamic States/Nations who are obliged to enforce not only the Shari' ah but also both international and regional obligations in line with the Quranic injunctions which is held in high esteem by Muslims⁵.

Furthermore, it is pertinent to quote from some of the Quranic verses which support the fact of compliance with international obligations. In the verses of the Holy Quran specifically, Al-Birr and Al-Taqwa and in Al-Birr it talks about "Help one another". In Al-Taqwa it talks about (virtue, righteousness and piety); but do not help one another in sin and transgression⁶ and "except those of the Mushrikin (Polytheists) with whom

¹ ICJ Rep (1979) p. 7. Full details of this report can be found at: <http://www.icj-cij.org/docket/files/64/9545.pdf>. Visited 31st December 2014

² ICJ Rep (1980) p. 3. Full details of this report can be found at: <http://www.icj-cij.org/docket/files/64/6291.pdf>. Visited 31st December, 2014

³ Frowein, J. "Collective Enforcement of International Obligations" 47 *ZaoR*(1987) pp. 67-79 esp at p. 75.

⁴ 914 UNTS pp. 111-116

⁵ Mahmassani, S, *The Principles of International Law in the Light of Islamic Doctrine*, 117 *Rd*(1965) pp. 201

⁶ Surah 5 Al-Maidah, part 6, verse 2

you have a treaty and who have not subsequently failed you in aught, nor have supported any one against you, so fulfill their treaty to them to the end of their term ...¹ and “fulfill the covenant of Allah when you have covenanted, and do not break the oaths after you have confirmed them ...²

There is the incorporation of the general principles of international law into the Charter guiding the OIC including the IICJ statute because of the practice known as “*Siyar*”; also known as Islamic International Law which use the Shari’ ah to control the international relationships of members of OIC and non OIC Nations³.

From what can be deduced above, it is no gain-saying that non-Islamic states may approach the OIC to enforce compliance with the ICJ judgments on the basis that an Islamic state is in breach of its religious obligations as recognized under the Quran and *Siyar* which is obligatory in Islam. Also, a close look at the OIC Charter will reveal that the member nations have agreed to be committed to comply with the purposes and principles of the United Nations. For example under Charter 1(one) of the OIC, as could be found in Article 2(8)(A)(4), its main objectives is the achievement and maintenance of International Peace and Security including the pacific settlement of disputes among members of the OIC.

In furtherance of the postulations above, Article 2(B)(4) of the OIC Charter, States that, member nations are to settle any conflict that may arise by peaceful means such as negotiation, mediation, reconciliation, or arbitration. Going further into this issue is the fact that under Article 12 of the Charter, it is provided that any dispute that may arise in the interpretation, application or implementation of any Article in the present Charter shall be settled peacefully and in all cases through consultations, negotiations, reconciliation or arbitration.

A constricted but community reading of Article 2(B)(4) and Article 1 of the Charter, does not mention any alternative for which judicial settlement is required, hence, as far as the Charter is concerned, and in relation to dispute settlement, it does provide the other arms of the OIC , the rights to deal with any particular dispute settlement mechanisms in a situation where this modes of settlement fails.

In this vein, the failure to maintain “Judicial Settlement” in the OIC Charter which is also the case in Article 5 of the Pact of the LAS, whose members influence the OIC as members of the OIC may be said to be the reason why there exist negative behaviours among the members of OIC as it concerns the important strategy when it has to do with disputes settlement⁴. Instructively, the OIC during the 1980s appreciated the method of Pacific settlement which cannot be overlooked. What the OIC did was to bring into existence the International Islamic Court of Justice (IICJ); which was not instituted only for dispute settlement among members; but also to indicate that the IICJ is the judicial organ of government of the OIC.

Therefore, the IICJ Article 3 provides that the International Islamic Court of Justice shall exercise its functions in accordance with the statute establishing it, which is annexed to the Charter and which forms a complimentary part of the Charter.

Also, a comparative consideration of Article 38 of the statute of the OIC Charter, and Article 59 of the ICJ Charter, reveals that the judgments of the Court are binding only upon the party, only in respect of that particular case. However, this position is further reinforced under Article 39(A), which particularly stipulates that the judgments of the Court are binding only upon the parties and in respect of that particular case for which the parties have called upon the court to hear.

The significance of this position of the OIC is more appreciated in view of the unambivalent provision of Article 39(A), which asserts that the judgments of the Court are binding without appeal. While Article 39(C) on its own provides that, if a party to a dispute fails to comply with the judgment of the Court, the Matter shall be referred to the Conference of the Foreign Ministers.⁵

The statute as identified above has been accepted only by few of the members of OIC. The Charter of the OIC does not provide for any sanction such as suspension, expulsion or any enforcement actions. Notwithstanding the reality of the fact in this regard, it is still a fact that practically, the organization of Islamic Conference has actually suspended Egypt before now at the Islamic Summit Conference in January of 1981, because Egypt took part in the Camp David Agreements alongside Israel.

Thus, by virtue of the interpretation of the doctrine of implied powers, it is not in doubt, that, the Camp David involvement of Egypt was the basis upon which the country was successfully suspended, against the provisions of the OIC Charter. As a result of the suspension Egypt was not only suspended from diplomatic relationship with OIC members, but was politically and economically sidelined.

¹ Surah 9 At-Tauba, part 10, verse 4

² Surah 16 An-Nahl, part 14, verse 91

³ Khaadduri, M. “*War and Peace in the Law of Islam*” John Hopkins Press, 1955, p. 47

⁴ Moinuddin, H., “*The Charter of the Islamic Conference and Legal Framework of Economic Cooperation Among its Members States* (Clardon Press, Oxford 1987 p. 96)

⁵ Lombarddini, M “The International Islamic Court of Justice. Towards an international Islamic legal system” 14 Leiden, J. Int’L L (2001) pp 665-680.

Council of Europe

This Council which takes care of the interest of most of the European Nations is very important to the continent of Europe. The European Convention for the Peaceful Settlement of Disputes 29th April 1957 is what is usually resorted to once there exist dispute on whether any of the members of the Council of Europe is in breach of its international obligations, including the issue of non-compliance with international judicial decisions including arbitral awards especially in relation to the ICJ judgments.

By virtue of the statute of the Council of Europe,¹ and also because the undertaking of members of the Council of Europe pursuant to the United Nations Charter,² members have vowed to comply with any decision rendered by the ICJ.

Furthermore, where there exist a situation for which any of the parties fails to fulfill its obligation in line with the judgment of ICJ, the other party to the dispute may decide to appeal against the decision as stated under 39(2) of the Convention to the executives of the Council. If the Committee of Ministers of the Council of Europe agrees, they may take decisions based on two-thirds of the majority of the Committee of the Ministers of the Council of Europe by recommending that the defaulting party should comply with the judgment of court it willingly submitted itself to.

There is superfloxy in the above provision, this is because, all it does was to repeat the provision of Article 94 of the United Nations Charter, because as stipulated in that Article, the statute of the Council of Europe gave power to the council of Europe to make their recommendations by ensuring there exist compliance with the ICJ judgment. Furthermore, Article 39 of the European Convention restricts the Council to just making recommendations about what to do in order to enforce compliance.

Under Article 3 of the statute of the Council of Europe, the non-compliance with the judgment of the International Court of Justice amounts to a breach as the said Article 3 states that all member of the Council are to agree with the principles of the rule of law and must ensure that the aim of the Council of Europe is realized as stipulated in Chapter 1, of Article 1 of the statute³. This provision requires that the aim of the Council of Europe is:

- (a) to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress.
- (b) this aim shall be pursued through the organs of the council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realization of human rights and fundamental freedoms.

It further states that the participation of the Council of Europe shall not affect the collaboration of the members in the work of the United Nations and of the International organization or unions to which they are parties. However, matters relating to national defence do not fall within the scope of Council of Europe.

Where serious contravention of Article 3 occurs, the Committee of Ministers is empowered by virtue of Articles of the statute of Europe to place suspension on the recalcitrant member with respect to the right of representation in the Council of Europe. Any member of the Council is at liberty to withdraw its membership while, by the provision of Article 8, the Committee of Ministers of Europe may request a recalcitrant state to withdraw its membership. Further, if the recalcitrant state refuses to comply with the action taken on suspension, then the Committee of the Council of Ministers may take a decision that the recalcitrant state is no longer a member of the Council.

African Union (AU)

Over the last decades, it can be clearly seen that Regional Organizations have developed in Africa consistently⁴. The Organization of African Unity (OAU) thus became the first important African organization with the power to handle African affairs vis-à-vis its disputes. It can therefore, be appreciated that one of the principal objective of the organization was to maintain peaceful resolution of crisis among the members of the organization by virtue of Articles III, IV, and XIX of the OAU charter⁵.

¹Article 39(1)

²Article 94

³5 E.Y.B. (1959) p. 36

Professor Richard Plender observed in his work on: "Rules of Procedure in the International Court and the European Court" that it is on good authority that the Rules of Procedure of the Court of Justice of the European Coal and Steel Community, which matured into those of the Court of Justice of the European Communities, and that they had their origin in the Rules of Procedure of the International Court of Justice. Indeed, the most casual reading of the two sets of the rules confirms that this is the case, even though both have been amended since the rules of the International Court were first used as a model for the European Court.

⁴Sands, P. Klein, *Bowett's Law of International Institutions* (Sweet & Maxwell 2001) p. 243

⁵Elias Teslim O. "The Charter of the Organization of African Unity" 59 AJIL (1965) p.243

There exist the misconception that rather than the countries of Africa to look forward to resolving their conflicts by bringing the matters before the international judicial bodies, they would rather avoid it by making sure that there is no ratification of any statute which will make it compulsory for any judicial resolution on the basis of the African Charter or any other third party resolution.

The above position could be taken if we consider the issue in line with what was apparent within the first three decades of the existence of the OAU; this is because numerous challenges were experienced around this time, dealing with peace and security traceable to internal crisis during the decolonization process. It is gratifying to say that the OAU recorded successes in the settlement of disputes. The organization has mediated in so many crises.¹

For example in the armed hostilities that occurred Burkina Faso and Mali as at 1974, the Presidents of Republic of both Senegal and Somalia made appeal for the resolution of the crisis and as at that 1974, the Somalia President was the OAU President. With the good offices of the President of Togo, the parties agreed to set up a Mediation Commission which will include representatives of Togo, Guinea, Niger and Senegal. In 1957, they set up Military Sub Committee including a legal Sub-Committee. Mali initially did not co-operate but after much pressure, the parties eventually settled by entering into a special agreement and the ICJ was approached to completely solve the problem. The case became known before the ICJ as the Frontier Dispute (Burkina Faso/Mali)² while the case was pending, killings continued unabated whereas OAU members directed the parties to have a cease-fire and withdraw their forces. The ICJ delivered judgment on 22/12/1986.

In the case between Libya Vs Chad, the parties approached the ICJ in order to resolve their territorial dispute. Two months after the ICJ decision on the boundaries between the two parties and in collaboration with the OAU there was a resolution by way of an agreement as to how the court judgment was to be complied with³. The troops of the two parties were withdrawn while the representatives of the UN Security Council supervised the withdrawal of troops. The member states rather than taking the cases to OAU preferred to approach the ICJ directly or any other Arbitral body.

The OAU held a meeting of the African Union, on the 26th day of May 2001, the AU became a reality. Upon formation, the AU primary duty is to promote peace, security and stability in the continent as far as they are to continue to agree for peaceful resolution of conflicts among member states. In a case of non-compliance, by the provision of the AU especially with international obligation, the AU can intervene to ensure compliance. Also in the provision of Article 4 of the Charter, member states have the power to apply for intervention by the AU in order to resolve peace and security.

There is the establishment of the Court of Justice of the Union which is a significant achievement. The introduction of sanction is also a significant instrument for compliance. Under Article 23(1) of the AU Charter, it is stated that the Assembly shall determine the appropriate sanctions to be imposed on any member state that defaults in the payment of its contributions to the budget of the Union. Those sanctions stated are denial of the right to speak at meetings, to vote, to bring out a candidate to contest any position in the Union or to benefit from any activity or commitments of the Union. This provision however has been criticized for being unduly too harsh notwithstanding the fact that it is important in ensuring a specific stipulation concerning the consequence of default in the payment of financial contributions⁴.

Furthermore, under Article 23(2) of the Act establishing the Union, the Assembly is to use discretion on imposition of sanctions against any member state which fails to comply with the decisions and policies of the Union. These categories of sanctions could be in the form of denying the recalcitrant state of transportation and communication links with other member nations or other measures that may be political or economic in nature, as shall be determined by the Assembly. In the afore-mentioned Article, notwithstanding that it did not state what is meant by political and economic sanctions which is to be taken against the recalcitrant state, it could be appreciated that they include the sanctions of suspension, expulsion including other economic sanctions which could be found in paragraph 1 of that particular Article. It could therefore, be seen that with the stated measures, a recalcitrant state is likely to turn a new leaf by accepting compliance with the decision of the ICJ.

International Specialized Agencies

There is no doubt that International Specialized Agencies are established by intergovernmental agreements and have a lot of international obligations to fulfill. Notwithstanding that those agencies are particularly connected internationally to the United Nations; the United Nations has a legal personality of its own. The context dealing with international specialized agencies is that a number of them have direct statutory duties as far as the power of

¹ Ofusu-Amah, G.K, A. "Regional Enforcement of International Obligations" 47 *ZAo, RV* (1987) pp. 80-94 at p. 86

² ICJ Rep (1986) p. 554. Full details of this case could be found at: <http://www.icj-cij.org/docket/index.php?sum=359&p1=3&p2=3&case=69&p3=5>. Visited on the 30th December, 2014

³ ICJ Rep (1994) p. 6. Full details of this case could be found at: <http://www.icj-cij.org/docket/index.php?sum=442&code=qb&p1>. Visited on the 30th December, 2014

⁴ Magliveras, K. D. & Naldi, G. J. "The African Union – A New Dawn for Africa" 51 *ICLQ* (2005) pg 415-425 esp at 423.

sanction is concerned and they can impose such sanctions in order to ensure compliance with the ICJ. This area of work will look at the available enforcement machines as could be found. Among the International Specialized Agencies are, International Labour Organization, International Atomic Agency, International Civil Aviation, World Bank and IMF, other specialized Agencies in this regard.

The International Civil Aviation

It is on record that the Chicago Conference on Civil Aviation in 1944 was what led to the creation of what is known as International Civil Aviation Organization (ICAO). This organization can be seen as being responsible for creating international standards, recommendations of the practices and procedures with regards to the safety and security of international civil aviation. The instrument establishing the body which is called the “Chicago Convention” was signed in 1947 with enthusiasm.¹

It is Chicago Convention which gave birth to settlement of disputes on the hand between the contracting parties and on the other hand, the enforcement procedure of its outcomes. The extensive judicial functions in relation to the settlement of disputes were given to the Council of ICAO as far as contracting parties are concerned²

A close look at Article 84 of the Convention referred to states that, the Council is given the power to decide any dispute between the contracting states connected to the interpretation or application dealing with the convention and agencies connected with the issue of the ratification, for which settlement cannot be by way of negotiation. This Article was utilized by the US in the year 2000 which led to the settlement of dispute between 15 members of the European Union in relation to the adoption of a resolution which restricted the operation of the Article within Europe of certain aircraft fitted to it, “hushkit” noise reduction equipment and those that the engine were worked upon by using engines of a particular designs.

The US say the idea behind the “hush kit” regulation as being discriminatory against the US companies and amounts to the violation of Convention that was signed. The US withdrew the complaint lodged against the European Union states with the exception of Belgium. This was as a result of the repeal of the “hush kit” regulation in all the EU countries except Belgium which refused to completely repeal the law but adopted a decree which restricted the operation of some specific aircraft to enter Belgium airports.

The attitude of Belgium was accordingly looked upon as a means to keep in perpetuity those discriminatory part of “hush kit” regulation as was applicable to the EU Nations before it was repealed. The Council reach decision on matters before it by majority votes cast of only Council members, but those parties who have brought their case to the court are exempted from taking part in the voting exercise.

The decision taken by the council is binding on all members of the organization; but members are at liberty to appeal against the decision to an ad hoc tribunal that may be set up, or the same appeal may be taken to the International Court of Justice (ICJ) and the decision of the ICJ shall remain final and equally binding on the parties to the dispute under Article 86 of the Convention³.

The case to buttress the above principle in this regard is the case of Appeal Relating to the Jurisdiction of the ICAO Court (India Vs Pakistan)⁴. This case, following the diversion of Aircraft belonging to India to Pakistan, India suspended a Pakistani flight over its territory. Pakistan was not happy with this action as it looks at the action taken as a breach of Convention. Accordingly, it presented a complaint to the ICAO Council, India raised objection to the jurisdiction of ICAO Council to decide the dispute. The objection was overruled and India then proceeded to the ICJ. Pakistan raised the issue of competency of the court to hear the appeal against the

¹Downs, G & Jones, M “*Reputation, Compliance and International Law*” XXXI ILS (2001) pp.595-5114

The argument of Downs and Jones in their work centered on the position of their abstract which state as follows:

“Increasingly skeptical about the efficiency and effectiveness of formal multilateral enforcement mechanisms, a growing number of international relations theorists and international lawyers have begun to argue that states’ reputational concerns are actually the principal mechanism for maintaining a high level of treaty compliance. This essay argues that there are a number of empirical and theoretical reasons for believing that the actual effects of reputation are both weaker and more complicated than the standard view of reputation suggests. While states have reason to revise their estimates of a state’s reputation following a defection or pattern of defections, they have reason to do so only in connection with those agreements that they believe are (1) affected by the same or similar sources of fluctuating compliance costs and (2) valued the same or less by the defecting state. Among the implications of this is that all but the newest states maintain multiple reputation.

² Hingorani, R. C. “*Dispute Settlement in International Civil Aviation*” 14 AJ(1959) p. 14

³ Chicago convention Article 86 – on Appeals states as follows:

Unless the Council decides otherwise any decision by the Council on whether an international airline is operating in conformity with the provisions of this Convention shall remain in effect unless reversed on appeal. On any other matter, decisions of the Council shall, if appeal from, be suspended until the appeal is decided. The decisions of the Permanent Court of International Justice and of an arbitral tribunal shall be final and binding.

⁴ ICJ Rep (1972) 46. Full details of this case could be found at: <http://www.aviationlaw.eu/international-law/case/>. Visited 30th December, 2014

ICAO decision. The ICJ decision was that the ICAO was competent to hear the case. The appeal was accordingly dismissed against the Indian.

Where the ICJ delivers judgment and there exist non-compliance under Article 84, a cursory look at the Convention shows that there exist two types of sanctions that can be imposed and this can, in the first instance involve denial to the Airline of defaulting access to air space including landing rights. This is under section 87 of the Convention. The second sanction has to do with cases of non-compliance by the airlines of a contracting state itself under the provision of Article 89 of the Convention which states that the Assembly shall suspend the voting power of the recalcitrant state in the Assembly and in the court.

We should try to identify the type or the nature of the judicial decision rendered by the International Court of Justice which can be taken to the Council and what type of sanctions are necessary which will ensure compliance with the judgment of the ICAO. Most of the writers who have written on the problems associated with the judgment of ICJ and the actions to be utilized to enforce compliance, through the international specialized agencies, failed to put into consideration the importance of the judgment which can be enforced including the mode of the application of the ICAO Convention as considered above¹. Those writers suggest that there should be no precise qualification or further argument when Articles 87 and 88 are being applied.

From what has been observed, Articles 87 and 88 of the Convention can only be applicable to those decisions of the Council which has been taken up before the International Court of Justice in the form of an appeal by a member state pursuant to Articles 84 and 86 of the said Convention and which the ICJ might have decided upon. Therefore, it can be understood further that Article 87 and 88 of the same Convention will be applied only if it will have substantial connection between the provisions invoked and the judgment rendered and not that it has application which is artificial or of remote importance.

In some particular instances, the non-compliance with the International Court of Justice decision could mean that, there is a threat to international civil aviation or unlawful acts which includes unlawful seizure of aircraft which may be a violation of the ICJ judgment. The ICAO may take up a particular case pursuant to the convention and then penalties will be imposed even if not relevant as at then.

Even the Council of the ICAO may take alternative measure by condemning some actions on the issue that is relevant to international aviation. Another alternative measure which can be taken to enforce compliance with the ICJ judgment is too actually direct the members of ICAO to do certain acts in a particular manner and under a particular provision of the law applicable to the ICAO.

The International Monetary Fund (IMF)

The Bretton Woods Agreement gave rise to the emergence of the International Monetary Fund (IMF) and International Bank for Reconstruction and Development (IBRD) which is popularly known as World Bank. The whole essence of this is that the World Bank can be a necessary tool for the enforcement of the ICJ judgments.

Further, because the contracting members have asset with the IMF and the World Bank, the said IMF and the World Bank have serious control on contracting members in order to ensure compliance with the ICJ judgment and there exist also the possibility of withholding the credit of the contracting members. However, it must be stated that the purpose for the establishment of the IMF and the World Bank is the promotion of international monetary stability, co-operation² and the development of contracting member nation; and there is the question as to whether or not such sanction against contracting members will not amount to the contradiction of the aims and purposes for the establishment of this international Financial institution. Another questions is, is it no possible that such type of sanction (which is non-economic in nature) would affect the institution's credibility, which it is noted for?

It is further posited that the purpose for the establishment of the World Bank³ means that by implication, the IMF and the World Bank do not serve any political role when the issue has to do with the enforcement of the judgment of the ICJ because any action taken which does not fall in line with the purpose for which IMF was established will be referred to as being *ultra-vires* the power of the IMF. The ICJ has generally indicated as a rule that, when an appropriate action is taken by an organization one among the purposes for which the organization was established then it is presumed that it cannot be said that the organization has gone *ultra-vires* its power. Therefore, it is important for the IMF and the World Bank to create a good image that has to with economic objectives and it is only when this is done, that member nations can have absolute trust and confidence which was the basis for the establishment of the agencies⁴.

There have been some practical actions which has to do with sanctions carried out by the IMF since its

¹ Reisman, M. "The role of the Economic Agencies in the Enforcement of International judgment and Awards" 19.1.0 (1965)

² Article 1 of the IMF Articles of Agreement

³ Article 1 of the World Bank Articles of Agreement

⁴ Reisman, M. *Nullity and Revision. The Review and Enforcement of International Judgment and Awards* (Yale Univ. Press. 1971) p. 739

establishment¹. A close look at the “Third Amendment of the IMF Articles of Agreement, of 11/11/92” states that there are three ways the new sanctions can be imposed which are thus:

- (a) If a member fails to fulfill any of its obligations under the agreement, “the Fund may declare the member ineligible to use the general resources of the Fund”.
- (b) If after the expiration of a reasonable period following a declaration of ineligibility under (a) above, the member persists in its failure to fulfill “any of its obligations under this Agreement, the Fund may, by a seventy percent majority of the total voting power, suspend the voting rights of the members”²

In the words of the Learned Scholar, Sir Joseph Gold, he stated³ that as far as the IMF is concerned, the “obligations” are not restricted to those of a financial character alone. What that invariably means is that the term “obligation” can be widened to extend to the other international obligations and responsibilities and if assessed, then the international obligations will include making sure the judgment of the International Court of justice is complied with. Therefore, it is necessary to now consider the new third sanction which states thus:

- (c) The fund may, by a seventy percent majority of the total voting power, suspend voting rights of the member if, after the expiration of a reasonable period following a decision of suspension under (b) above, the member persists in its failure to fulfill “any of its obligations under this Agreement”. The said member may be required to withdraw his membership from the Fund through a decision of the Board of Governors carried by a majority of the Governors having eighty five percent of the total voting power⁴.

It is appreciated that the main powers of the Bank remains with the Board of Governors, comprising one Governor each appointed by members of the Bank⁵, if any member fails to fulfill any of its obligations to the Bank, the Board of Governors may suspend its membership through a majority of the voting members decision.

Therefore, the member that is suspended will cease to be a member for a year, the date of suspension will begin to run from the date of suspension except majority of the members decide to recall the suspended member. When a member is under suspension, he cannot exercise any right as a member and he remains subject to all obligations. However, he has a right to call it quit with the Bank⁶.

The Executive Directors of the Bank shall be in the position to take a decision on any disagreement on the issue of the interpretation of the provisions of the Agreement between any member of the Bank and the Bank or between the members of the Bank⁷. The Executive Directors decision is still subject to the final decision of the Board of Governors of the Bank, once an appeal is brought before them⁸, but the Bank can act on the Executive Directors decision until the Board of Governor takes a final decision on the matter.

Assuming there is disagreement between the Bank and a particular country, who is no longer a member of the Bank, or in respect of the Bank and a member country who is on a permanent suspension from the Bank, the disagreement with respect to this issue will be taken to an Arbitration Tribunal whose members shall be three (3), comprising one person from the Bank, one person from the country who is involved in the case and a neutral umpire.

It should be noted that once the parties agree, on who shall be appointed by the President of the International Court of Justice or any other body as may be mentioned by the banking regulation, then the Tribunal is fully constituted, after the appointment. The question of which process to be adopted shall be decided by the umpire that is appointed⁹.

When an enforcement of the ICJ judgment is done by way of the attachment of the asset of a member in the Bank, the action will not connote any breach of the principles of the IMF and the World Bank by the provision of Article 9(3) of the Fund Agreement. It is true that it stated that the Fund, its property and its assets wherever it is located and by whomsoever custody it is held, the property shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

With respect to Articles 9(4) of the Fund Agreement, it states the property and assets of the Fund wherever they are located and by whomever it is held, shall be immune from searches, requisition, confiscation,

¹ Gold, J., “*The Sanctions of International Monetary Fund*” 66 *AJIL* (1972) pp. 737-762)

² Article xxvi(2) of the World Bank Agreement

³ Gold, J., “The IMF Invents New Penalties” in Blokker and S. Muller (eds), *Towards More Effective Supervision by International Organizations* (Martinus Nijhoff Publishers, Dordrecht 1994)

⁴ Article xxxvi(2) of the World Bank Agreement

⁵ Article 5(2)(a) of the World Bank Agreement

⁶ Article 6(2) of the World Bank Agreement

⁷ Article 9(a) of the World Bank Agreement

⁸ Article 9(b) of the World Bank Agreement

Full details of this Statute can be found at: <https://www.imf.org/external/pubs/ft/aa/>. Visited on the 31th December, 2014

⁹ Article 9(c) of the World Bank Agreement

Full details of this Statute can be found at: <https://www.imf.org/external/pubs/ft/aa/>. Visited on the 31th December, 2014

expropriation, or any other form of seizure by the Executive or Legislative action. While Article 9(6) of the Fund Agreement states that, to the extent of whatever is necessary to carry out the activities provided for in the agreement, all the properties and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.

Notwithstanding these regulations, the IMF which is also referred to as the Fund or the World Bank are not disallowed from effectively participating in the enforcement process of the International Court of Justice judgments once there is the necessity to enforce compliance with the ICJ judgment or judgments.

If we are to have a contrary view that the IMF or World Bank will not assist in the enforcement of the ICJ judgments, because of the provisions of Article 9(3), 9(4) and 9(6) as discussed above; then those Articles would become contradictory to the provisions of the United Nations Charter which are so important to member Nations who themselves are mostly members of World Bank and IMF.

It should be understood that the UN Charter is supreme and there exist obligations on members of the UN to ensure compliance with the provisions of the UN Charter, especially Article 103 of the UN Charter which states that the Charter envisages a comprehensive and elaborate robust network of international institutions co-operation. Furthermore, by the provision of Article 5 of the UN Charter, there is the requirement that the UN specialized Agencies are to be brought into relationship with the United Nations which will fall in line with the provision of Article 63 of the UN Charter. A close look at Article 63(2) of the UN Charter shows that, there is the need to bring about a coordinated relationship through the activities of specialized agencies, and that it has to be done by way of coordination with such agencies and the recommendations to such specialized agencies. Further, that the said recommendations will be carried out through the UN General Assembly and through the members of the United Nations in order to achieve the desired result.

The International Atomic Energy Agency (IAEA)

When the International Atomic Energy Agency was established and when the IAEA Statute came into force on 29/7/1957, one of the important purposes for its establishment was to increase and enlarge the contribution of atomic energy to world peace, world health and world prosperity. The aims among others was to assist as far as possible in making sure that “atomic energy” is not used in furtherance of any military activities dangerous to world peace¹.

Further, in considering another primary purpose for the establishment of the International Atomic Energy Agency, it is discovered that it involves the encouragement and rendering of assistance in respect of and for the purpose of the development and practical application of atomic energy for peaceful uses all over the world and also to establish and administer the safeguards stipulated to ensure that special fissionable and other materials, services, equipment, facilities, and information provided through the Agency or upon its request, supervision or control are not in furtherance of any military purpose².

Further, by the provision of Article IV(c) of the IAEA Statute, it is no gainsaying that the relationship between the rights and obligations of membership of IAEA are recognized and it states that, member states will only enjoy the rights and benefits resulting from membership when they fulfill in good faith the obligations assumed by them in accordance with the statute. It is important however to know that any question or dispute dealing with the interpretation or application of the statute which is not resolved by way of negotiation shall be referred to the International Court of Justice pursuant to Article XVII of the IAEA except the parties involved decide to use another mode of resolving their dispute.

Once there is a violation of the obligations stipulated and the purpose of the statute establishing the IAEA vis-à-vis, the non-compliance with the provision of Article XVII of the IAEA statute; which touch on the non-compliance with the ICJ judgment is observed; this will bring up the application of Article XIX(B) of the IAEA statute which is, that a member which has persistently violated the provisions of this statute or any agreement entered into by it, pursuant to the statute may be suspended from the exercise of the privileges and rights of the membership by the General Conference who can take decision, two third majority of the members present at the meeting and who are eligible to vote upon the recommendation of the Board of Governors. Therefore, the application of Article xix(B) after the ICJ would have given its judgment, would depend upon whether the state in accordance with Article xxvii failed to give effect to the judgment rendered by the ICJ. The IAEA statute can be seen as not containing any direct enforcement of the ICJ judgment.

But a critical look at Article XII of the statute of IAEA shows that the Agency is clothed with a wide power which will take care of the above inadequacy pointed out in the preceding paragraph because according to Article XII(c) where a member fails to comply with the statute of the IAEA, or the provisions to safeguard the agreements made under the IAEA statute, the Board of Governors shall report the non-compliance to all members and to the Security Council and the General Assembly of the United Nations.

¹ Article II of the IAEA Statute

² Article III (A) (3) & (4) of the I.A.E.A Statute

Where there is failure of the recipient state or states to take corrective action fully or as a whole, within a reasonable time, it will be incumbent upon the Board to take one or both of the following measures which are; direct curtailment or suspension of assistance being provided by the Agency or by a member and call for the return of materials and equipment made available to the recipient member or group of members.

Before the above measures are taken or is taken, there is the need for the defaulting state to co-operate, it can therefore, be said that these measures seems to be limited in its applicability. The only important and real sanctions that can easily be carried out are those carried out by the Security Council or by the General Assembly of the United Nations based on the report that may be submitted to them by the Board of Governors pursuant to Article xii(c)¹.

Other International Specialized Agencies

It can be appreciated that the formation and the establishment of International Specialized Agencies which have affiliated across the globe is encouraged by the activities of the functionalist theories with the aim to put paid to the politicization of economic and social cooperation. This theory as novel as it was became affected by the important reality of public international law with legal issues given the cover-up of political dimension².

It can be seen that apart from the practice of such organizations like International Labour Organization (ILO), IACO, IMF, World Bank, and IAEA, there are other specialized international Agencies or put in another way, International Specialized Agencies like World Health Organization (WHO), Food and Agricultural Organization (FAO), United Nations Educational, Scientific and Cultural Organization (UNESCO) and International Telecommunication Union (ITU) among others which aims are to achieve cooperative approach as distinct from the normal functionalist theory approach in a global world.

In other exceptional circumstances, international specialized agencies have taken the issue of possibility of the voting privileges and services of members as necessary in order to achieve compliance on a particular matter notwithstanding their power, also to suspend the voting rights of members who are not meeting up their financial commitments³.

A good example could be seen, where, about 1964, over 30 African and Arab states brought up a draft resolution in the 17th session of the World Health Organization which is to the effect that Article 7 of the WHO constitution should apply to South Africa because of its racial policy and to also amend the Constitution to allow the suspension and expulsion of any of the member nation who violate the principles and objectives of the World Health Organization⁴. The Western Countries did not support the draft resolution on the ground that the term “exceptional circumstances” may indiscriminately be interpreted against the interest of member nations whose policy may not be appreciated by the majority of the members of the World Health Organization, especially as the majority decision will be followed⁵.

It should be noted that in 1964, South Africa withdrew from WHO and also from Food and Agricultural Organization (FAO) in December 1963 pursuant to Article 19 of the FAO Constitution. In 1965, South Africa was expelled from the International Telecommunication Union, which is called the ITU.

Further, in respect of Portugal, the UNESCO through its Executive Council refused Portugal to attend its meeting in May, 1965 until the decision of the study on the educational activities of the African territories under its administration was complied with⁶.

From our observation however, the above international specialized agencies can be useful when it comes to the enforcement of the ICJ judgments but the urgent and exceptional circumstances of each case and what the judgment is all about will show effectiveness or otherwise of going through this agencies to effect compliance⁷.

Summary/Conclusion

The study critically examined the role regional organizations and specialized agencies play in the enforcement of ICJ decisions. The study reveals that there exist various forms of limitations in the involvement of regional

¹ Boulanger, W. “Decisions and other measures” in Schwebel S. M., “*The effectiveness of International Decisions*” (A. W. Sijhoff, 1971) pp. 285-289 at p. 288

² Klein E. *United Nations Specialized Agencies*” in Bernhardt, R. (ed) 4 PIL (North-Holland, (2000) pp. 1172-1193 at p. 1189

³ Article 7 of the WHO Constitution

⁴ UNYB (1964) pp. 509-510

⁵ Konstantions, D. M. *Expulsion from participation in International Organizations: The Law and the Practice Behind Member States' Expulsion and Suspension of Membership* (Kluwer, 1999) p. 137 at p. 152

⁶ UNYB (1965) p. 775

⁷ This situation arises where the statute or initiating instrument of such organization may require additional procedures particularly specific for that organization. In this case, the use of such organization may not expedite the compliance required to give effectiveness of the judgment of the ICJ based on these international organizations may not yield the desired effectiveness.

organization and specialized agencies in the enforcement of ICJ decisions. These problems range from the need to secure security council approval before taking certain enforcement sanctions; and acting ultra vires the aims and objective and provisions of the Article of regional organizations and specialized agencies, etc. There is also the problem of religious sentiments depending on the religious affiliation and affinity of each states or regional organizations.

There is no doubt that in spite of the challenges linked to the enforcement of ICJ judgment through regional organizations and specialized agencies, there are opportunities for improvements particularly with firm commitment by member States to ensure they enforce valid decision of the ICJ.

This Article identified a number of provisional limitations contained in the Articles of regional organization and specialized agencies in their role in the enforcement of ICJ decisions; this suggests that recognized negative impacts which represent constraints demands attention.

The promotion of the enforcement of ICJ decision through regional organization and specialized agencies requires the addressing of the fundamental difference in the regional philosophy and ideology made manifest in the insipid to enforce ICJ decision against member state of different regions. This situation have given rise to the pursue of regional interest as against the overall global interest and the promotion of actions which boost global security and world peace.

It is possible that improved success can be recorded in the enforcement of ICJ decisions through regional organization and specialized agencies through co-operation anchored on good faith. The expunging of provisional and regulatory limitations contained in the Articles of these organizations and specialized agencies can help in the enforcement of ICJ decisions through such bodies

Recommendations

From our observations and analysis of the topic sentence, some revelations featured which occasioned the suggestion of the recommendations necessary for improving the enforcement of ICJ decisions and advancement of the cooperation among member States towards the pursuit of global interest.

These way forward includes, but not limited to:

Reliance and emphasis should be placed on the moral essence and force for state compliance with ICJ decision which avails every state/regions benefit of the reproduction and sustenance of a reciprocal gesture and reception when it comes to the turn of another state/ regional organizations and specialized agencies which upholds and promotes the enforcement of ICJ decisions.

The use of non military sanctions such as suspension and expulsion of member states should be encouraged by regional organization and specialized agencies in the enforcement of ICJ decisions.

Regional organizations through the Presidents of member states or council of Head of States or any other organ of the regional organizations or specialized agencies should serve as a medium to put pressure and persuade member States to obey and comply with the decisions of the ICJ.

The promotion of cordial relationship and friendship between member States of the United Nations and various regional organizations and specialized agencies will help in the enforcement of and compliance with ICJ decisions.

Member States of regional organizations and specialized agencies should only be allowed to enjoy rights and benefits arising from the membership organizations and agencies only on their compliance with ICJ decision.

Use of an amicable resolution of issues/conflicts through the establishment of judicial institutions, commissions, conflict resolution ad-hoc committee or the adoption of alternative dispute resolution approach can be a resourceful avenue for the peaceful resolution of conflicts instead of resorting to litigation.

The finding and use of political solution to conflict resolution and securing of compliance to ICJ decision is one veritable means of the enforcement of ICJ decisions.

The denial of voting right, opportunity to speak at meetings, to recalcitrant member States, and other measures such as economic and commercial sanctions, withdrawal of financial aids, breaking of diplomatic relations and ties/pacts, partial or complete interruption of international facilities exchange link and access and breaking of trade agreements, etc., are possible actions that can be used to ensure the enforcement of ICJ decisions.

The condition of the authorization of the United Nations, Security Council before the taking of enforcement action by regional organization or specialized agencies may not be necessary in all cases, especially where there is an obvious and continuous violation of the ICJ decision and if the mode of the enforcement of such decisions involves a non-military action in the interest of the promotion of global peace and security.