

# An Examination of the Role of the International Court of Justice (I.C.J) in the Enforcement of Its Own Decisions

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## Abstract

One important issue which forms the basis of the existence and jurisdiction of the International Court of Justice (I.C.J.) is that its decision ought to be binding and enforceable, but there are record of instances and cases where parties to a dispute before the ICJ refuse to obey or comply the court decisions leaving the Court with the dilemma or constraint on the enforcement of its decision to avoid bringing its integrity to question. In the bid to address this issue of the enforcement of ICJ decisions different mechanisms have been suggested as solution to resolving the issue. Therefore, this work examined the role of the International Court of Justice in the enforcement of its own decisions. This work further examines the participation of the I.C.J. in enforcing its decision and the inadequacies inherent in this process. Flowing from this discourse, recommendations were proffered.

**Keywords:** International Court of Justice, Decisions, Enforcement, Treaty, recalcitrant State, United Nations.

## Introduction

It is not in doubt that judicial enforcement of the international judicial decisions as far as professional writings on the subject matter is concerned have received very little attention<sup>2</sup> most especially when compared to the position of writings on judicial enforcement of the judgments of International Court of Justice through the Court itself; it is not in doubt that the position is even more precarious<sup>3</sup> which informs the reason why the Court on its own would take measures to ensure compliance to its judgment.

The lack of interest mentioned may be as a result of the misconception in relation to the role played by the International Court of Justice with respect to enforcement of its judgment which most people see as being too perceived or that they remained a “toothless bull-dog”, especially as they do not play the role which most domestic Courts usually play in the enforcement of their judgments. Those who relied on this contention have stated that the proposition that was found in the report prepared by the Preparatory Commission of the United Nations which right from the beginning had suggested that the issue of the enforcement of the decisions of the Court cannot be said to be the business of the Court itself as the enforcement of the Court’s decisions is left to the other political bodies making up the United Nations.<sup>4</sup>

The above assumption could also be seen when we look at the restricted interpretation that is found in the judgment of the International Court of Justice in *Haya de la Torre <Columbia Vs Peru>*<sup>5</sup>

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<sup>2</sup> Jennings, R. “The Judicial Enforcement of International Obligations” 7 Zao R. V. (1987) pp.3-16 at p.3.

<sup>3</sup> Al-gatani, M. “The Role of the International Court of Justice in the Enforcement of its Judicial Decisions 15 Leiden J. Int’l Law (2002) pp. 781-804

<sup>4</sup> Ajibola, B. “Compliance with Judgments of the International Court of Justice’ in Bulterman, M. K. and Kuijjer, M. (eds) Compliance with Judgments of International Courts, (Martinus Nijhoff Publishers) 1996 pp.9-38 at p.11.

<sup>5</sup> The decision of the Court at page 58 of the said judgment of the Court in the case, states that: “Having thus defined in accordance with the Havana Convention the legal relations between the Parties with regard to the matters referred to in, the Court has completed its task. It is unable to give any practical advice as to the various courses which might be followed with a view to terminating the asylum, since, by doing so, it would depart from its judicial function. But it can be assumed that the Parties, now that their mutual legal relations have been made clear, will be able to find a practical and satisfactory solution by seeking guidance from those considerations of courtesy and good-neighbourliness, which in matters of asylum, have always held a prominent place in the relations between the Latin-American Republics”. Underlined is mine for emphases.

Further, the Court in the said judgment finds that: “on the third Submission of the Government of Peru, unanimously, finds that the asylum granted to Victor RatilHaya de la Torre on January 3<sup>rd</sup> – 4<sup>th</sup>, 1949, and maintained since that time, ought to

It can be posited that what could really be said to paint the Court with the colouration of a “toothless bull dog” is the fact that there exist the absence of an executive arm to the enforcement of the judgment. However, a close scrutiny of the statute of International Court of Justice shows that it is not completely correct to say that the Court do not have an enforcement power.<sup>1</sup> The Court may be said to have an enforcement power at least in some derivative matters as it affects any of its decision pursuant to Article 41, 57, 60 and Article 61(3) which are grounds upon which the Court can participate in the process of the enforcement of its judgment.

There are however attempts to reduce drastically the negative impact of International Court of Justice in the enforcement of its judgment, which has brought about some theories and measures just to stop the appellation against the court of being a toothless bull dog. These theories and measures shall accordingly be analyzed in the course of our discourse.

### **Enforcement of the ICJ Judgments**

There is the notion that the International Court of Justice own perception as it affects enforcement of its decision is that of a *defeatist*; especially with its role and decision in Haya de al Torre case.<sup>2</sup> However, as closely scrutinized, the perception that the International Court of Justice as a defeatist tendency on its role is not completely true. The Court in the case answered the question that was put to it by Columbia and Peru and their inquiry was with respect to the manner for which the Court’s judgment of 20<sup>th</sup> day of November, 1950 should be executed to comply with the said judgment.

The court in answering the question as requested, said it will only confine itself as to defining what the legal relationship of the parties are and that it was not the business of the Court to make choice among other various choices as it concerns how to bring the issue of asylum to a terminable end and that the courses that were opened for compliance with the Court judgment would be based on the facts and possibilities and which substantially the parties are in a position to be aware of; and the Court went further to say that “a choice amongst them could not be based on legal consideration but only on consideration of practicability or of political expediency, it is not part of the Court’s judicial function to make such a choice” what the Court is saying is that it will not indicate any particular or exclusively mode of compliance.

Further, what the Court implied, is that the choice of how to execute the judgment or decision of the Court should be left to the parties. Therefore, the passive position of the Court to all intent and purposes may not be wrong especially when, the parties can by themselves elect to settle the case outside the purview of the Court and thereafter report to the Court, for consent judgment. Thus, the Court finds that the mode of execution of its decision is that of the litigating parties. But, if it is an issue to be left to the party, then the offended party should not have resorted to the Court in the first instance; because by resorting to the Court and the other party responding thereto, the parties anticipate a coercive force of law capable of compelling a performance of whatever decision is reached.

This seeming void can be seen again in the decision of the Court in the Arrest Warrant of 11<sup>th</sup> April, 2000 <Congo Vs Belgium><sup>3</sup>, in this case, the Court found Belgium guilty of the breach of its international

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have ceased after the delivery of the Judgment of November 20<sup>th</sup>, 1950, and should terminate”.

The foregoing position in the view of this study is not appropriate due to the fact that, it is a rule of practice that a Court cannot make an Order which does not avail any of the parties before it. This is amply echoed in the unreported Nigerian Supreme Court judgment of Alhaji Agbaje & Others Vs Chief Slami Agboluaje in suit No. SC/236/67, which was, cited with approval in Abubakar & Others Vs. Ahmadu Smith & Others (1973) 3 ESCL, 543. Further, by virtue of Order 8 Rule 17 of the Supreme Court Rules, 1985 (as amended), the Supreme Court is under obligation to enforce its judgment. Thus, as in the case of the Nigerian Supreme Court, if the ICJ as a Court cannot be firm in the directive as to the enforcement of its judgments, then this amounts to justice denied to the perceived judgment creditor. In the instant case, the Court in its judgment merely advised the parties to “find a practical and satisfactory solution by seeking guidance...” The view of this study is that the powers of a Court also extend to the enforcement of its judgment, for only then can it be said that the judgment of a Court is effective.

<sup>1</sup> This finding is significantly canvassed by, Schachter, O., Internal Law in Theory and Practice, General Course in Public International Law: 178 RDC (1982) pp.1-395.

<sup>2</sup> Full details of the judgment could be obtained from: <http://www.icj-cij.org/docket/files/14/1937.pdf>. visited on the 25<sup>th</sup> December, 2014 and also from ICJ Report (1951), 71.

<sup>3</sup> ICJ Rep (2001) para 76

Facts of the Case: Arrest Warrant of 11<sup>th</sup> April <Congo Vs Belgium>

The case began when on the 11<sup>th</sup> of April 2000, an investigating judge of the Brussels Tribunal of First Instance issued an arrest warrant against the incumbent Minister for Foreign Affairs of the Democratic Republic of Congo (‘DRC’ Congo, Democratic Republic of the Congo), Abdulaye Yerodia Ndombasi for allegedly, inciting racial hatred in various speeches in the DRC in 1998, which contributed to the massacre of several hundred of persons. Since both Congo and Belgium have ratified some Conventions and Protocols he was therefore charged with grave breaches of the Geneva Conventions I – IV (1949); Geneva Conventions Additional Protocol (1977); Geneva Conventions Additional Protocol II (1977), and crimes against humanity. The arrest warrant was transmitted to the DRC and simultaneously circulated through Interpol.

obligations it entered into which has to do with Congo as it issued warrant of arrest against the Foreign Minister of Congo and the Court's consideration was that "Belgium must by means of its own choosing, cancel the warrant in question and so inform the authorities to whom it was circulated" as the international warrant of arrest was circulated to so many countries. Thus, the Court in this case was firm in its directive to Belgium and did not leave the decision in the hands of the parties.

Therefore, from the above decision, it is all not in doubt that although the Court has the burden to enable the parties before it to choose a fairly suitable way to settle their disputes, it is also incumbent on the Court to make definitive pronouncement when occasion demands. This position was given credence in the case of *Burkina Faso Vs Mali*.<sup>1</sup> In this case, the Court's chamber was approached with a view to nominate experts who would give their opinion on how to execute the judgment of the Court. While looking into the case, the Court agreed that it has the power to continue when it comes to the enforcement of its judgment in order to be sure that same is executed and the Court equally stated that "there is nothing in the statute of the Court nor in the settled jurisprudence to prevent the chamber from exercising this power, the very purpose which is to enable the parties to achieve a final settlement of their disputes in the implementation of the judgment which it has delivered."

From the above line of argument, it is clearly understood that the Court judgment is that it can rightly be said that it is not the duty of the Court to direct the parties before it as to how to enforce the Court's decision, but it shows that the Court could and should not fail to participate effectively in the process of making sure there is compliance in the enforcement of its decision and that the Court must maintain an active role in execution of its decision.

As could be seen however, the possibility of the enforcement of international or national judicial decision can only be achieved by filing of a new case before a competent Court in order to give effect to the judgment either directly or indirectly. The consent to jurisdiction, with respect to ICJ under Article 36 of the statute should comprehend jurisdiction over the enforcement of its own decision and also that jurisdiction of the Court with respect to the enforcement is inherent in the Court by virtue of the provision of Article 60 of the statute of the Court which it is the compulsory jurisdiction of the Court to be in a position to construct what its decision was. Under Article 36(2)(b) of the statute of the Court, the possibility of instituting a new proceeding dealing with the implementation and the enforcement of the decisions of the Court is contemplated since non-compliance is an international wrong that is recognized and therefore a justiciable legal question to be dealt with under the international law. However, Judge Weeramantry in his dissenting judgment in the *East Timore Case*<sup>2</sup> gave a contrary and restricted view when he stated that the *raising d'etre* of the Court's jurisdiction is the adjudication and clarification of the law, and not the enforcement and implementation.

Looking at it on the other hand, there is another side to the argument in that; the consensual jurisdiction of the International Court of Justice cannot be the basis of an extension to the enforcement of proceedings especially when such proceedings are new and could also involved new parties before the Court, thus a new consent could be seen as being required in order to give room to jurisdiction and possibility of an enforcement.

Now, apart from the serious arguments canvassed for both the theories and practicabilities about the execution of the judgments of the International Court of Justice by the Court itself, it is definitely not in doubt that the Court itself can and should as a matter of necessity use some form of constraint measures or give effect to its decisions instead of the controversial inherent power with respect to enforcement of its decision which is general in nature.

### **Enforcement on the Basis of Avoidance of Jurisdiction**

The Court is also at liberty to use the form of enforcement or execution of its judgment which is to the extent

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At this time, Mr. Abdulaye Yerodia Ndobasi was not on Belgium territory and none of the victims of the massacres were Belgian nationals. Belgian authorities initiated proceedings under the Belgian Law of 16 June 1993 Concerning the Punishment of Grave Breaches of the Geneva Conventions of 12 August 1949 and Additional Protocols I and II of 8 June 1977 (as amended in 1999), which provided for universal jurisdiction in respect of the crimes for which Mr. Abdulaye Yerodia Ndobasi was sought (Criminal Jurisdiction of States under International Law). The law further provided that immunity attached to the official capacity of a person should not prevent the application of the law. Belgium alleged that it had proposed to the DRC in September 2000 to entrust the case to competent Congolese authorities. Full details could be found in the Max Planck Encyclopedia of Public International Law & <http://opil.ouplaw.com/view/10.1093/law/epil/9780199231690/law-9780199231690-e124?rskey=klJi44result=6&q=&prd=EPIL>. Visited on the 25<sup>th</sup> December, 2014.

<sup>1</sup> Full details of the Judgment could be seen at:

<http://www.cij.org/docket/index.php?sum=359&p1=3&p2=3&case=69&p3=5>. Visited on 25<sup>th</sup> December, 2014.

<sup>2</sup> Full details could be found from the site: <http://www.icj-cij.org/docket/index.php?sum=430&p1=3&p2=3&case=84&p3=5> visited on 2/1/2015.

that the Court can avoid to assume jurisdiction with respect to taking of decision on a particular case or the Court can also decide to handle the case at a very low paste especially when the Court is suspicious that its decisions may not be enforced nor complied with by any of the parties. The proponent of this category of enforcement among others is, Professor Reisman<sup>1</sup> who found that the Court expects a state to perform obligations under the judgment and same time the Court anticipates the likelihood that a judgment creditor state may not carry out the execution or implementation of the judgment. This study thus found that in such cases, the Court creates an opportunity for the parties to exploits possibilities or avenues of compliance by mutual understanding; which becomes a dependant function of many contending interests of the state. It is further found that in most cases the Court clearly or indirectly refuse to exercise the jurisdiction of handling such a case in order to protect its integrity, whereas in some other occasions, the Court may formulate and resolve definite issues respectively or the final judgment may become ambiguous and ineffective.

In the same line of reasoning, Professor Reisman<sup>2</sup> elsewhere suggested that a decision maker may validly examine the possible effects of non-enforcement of a decision on the organized decision process and on the community's public order and the he should treat these matters as factors in his ultimate decision.

Another Scholar and Author who agreed with the above proposition and position in Jonathan Charney<sup>3</sup> and he did not only support the said position but went ahead to suggest that the Court may move the case slowly or even it may issue a judgment that is so ambiguous that it fails to commit the Court to any particular result. It can be seen that these suggestions as state above, are questionable and should be rejected because of their serious consequences. In the first instance, there would be the obstacle dealing with the accuracy of assessment and anticipation of the attitude of the party that is being targeted by the Court.<sup>4</sup> The Court may also not be able to examine definitely and decisively how the parties' minds in the mid or post-adjudicative phases would remain before preliminary objectives are taken.

On the second hand, when the Court avoid to decide to settle International Disputes and to promote international legal order on the basis of international disputes even with respect to cases where its decisions are likely to be resisted, so long as the jurisdiction to handle the case has been validly conferred on the Court, the Court's credibility is questioned. It should be understood that the main purposes of the General Assembly in its Declaration of United Nations Decade of International Law was to promote means and methods for the peaceful settlement of disputes between states, vis-à-vis the resort to and full respect to the International Court of Justice.<sup>5</sup>

The repudiation or avoidance of jurisdiction on its own even though theoretically will amount to a breach of Articles 33(1) and 92 of the United Nations Charter and also Articles 1 and 36 of the statute of the Court. Therefore, the avoidance of jurisdiction will have substantial effect and equally threaten the prestige associated with the Court. In furtherance of this argument, the method of avoidance of jurisdiction will encourage some states to question the credibility of the Court with respect to settlement of disputes, as those states are already even concerned with the workload and the procedural delay, which associated with the said Court.

In Northern Cameroons Case<sup>6</sup>, South West Africa Cases<sup>7</sup>, the Barcelona Traction Case<sup>8</sup> and Nuclear

<sup>1</sup> Reisman, M. Enforcement of International Judgment 63 AJIL(1969) pp. 1-27 at pp. 3-4.

<sup>2</sup> Reisman, M. Nullity and Revision: The Review and Enforcement of International Judgments and Awards, (Yale Univ. Press 1971) pp.149-150.

<sup>3</sup> Charney, J.L. "Disputes Implicating the Institutional Credibility of the Court; Problems of Non-Appearance, Non-Participational Court of Justice at a Crossroads (Transnational Publishers 1987) pp 288-318 at p.306. This work is also referred to in the PhD Thereis of M. M. Al-Qahtani submitted to the University of Glasgow in 2003 on the title of: Enforcement of international judicial decisions of the International Court of Justice in Public international law. Full details of this work can be found in: <http://theses.gla.ac.uk/2487/1/2003Al-QahtaniPhD.pdf>. visited on the 25th December, 2014. It is should be noted that M. M. Al-Qahtani dealt so much on the various ambivalences related to enforcements of judgments of the ICJ as observed in some judgments of the Court.

<sup>4</sup> Gunther, G. "The subtle vices of the passive virtues" A Commentary on Principle and Expediency in Judicial Review 64 Columbia, L. R. (1964) pp: 125 at p.7.

<sup>5</sup> UNGA Res. 44/23, U. N. Doc. A/Res/44/23(1990). It should be pointed that Resolution 44/23 (1990) only made mention of "respect" to the ICJ but remain silent as to the specific nature or type of respect. This ambiguity in the wordings and position of Resolution 44/23 (1990) makes effectiveness of the ICJ judgment an improbable concern.

<sup>6</sup> See ICJ Rep (1963) p.23. Full judgment could be seen at <http://www.icj-cij.org/docket/files/48/5207.pdf>. Visited on 26th December, 2014. It is observed that this judgment draws attention to the fact that the Court cannot allow itself to be influenced by the parties to exceed its jurisdictional mandates. The issue then becomes, should a Court not protect its judicial and social relevance by ensuring the sanctity of its judicial processes and final judgments?

<sup>7</sup> See ICJ Rep (1966) p.6. Full judgment could be seen at <http://www.icj-cij.org/docket/files/46/4931.pdf> Visited on 26th December, 2014. The Court in partially departing from its rules and statute decided to hear the case in the face of an objection to its jurisdictional powers to entertain same. The dissenting judgment of Sir Louis Mbanefo to the effect that once the issue of jurisdiction has been raised; the Court ought to dispose that issue before proceeding to the merits of the *case*.

<sup>8</sup> See ICJ Rep (1970) p.3. Full judgment could be seen at <http://www.icj-cij.org/docket/files/50/5387.pdf> Visited on 26th

Tests Cases<sup>1</sup>, the repudiation of the International Court of Justice in these cases were questioned.<sup>2</sup> However, when we compare this with the scenario where the Court on its own went all out to act in accordance with its mandate to attempt solving the case between Qatar Vs Bahrain<sup>3</sup>, the parties to the dispute were the first to acknowledge the roles played by the Court and accordingly the parties on their own commended the Court with respect to its performance.

The parties in making sure that they appreciate the role of the Court did this, by specifically sending a letter of commendation about the act and this letter of commendation described the Court positively and placed the Court in a position of regarding its integrity as being of a high level.

It should be noted that it is not easy for two rival parties to jointly agree that the Court has performed very well to their expectation.<sup>4</sup> The said letter was dated the 19<sup>th</sup> day of March, 2001 sent to the Registrar of the International Court of Justice from the Agent of Qatar in which they convey their gratitude to the Court for reaching the judgment in the case.

The third reason to justify the rejection of the method called avoidance of jurisdiction by the International Court of Justice is that once there is an allegation of a breach of international obligation, the Court looks at it that it is only one element with respect to the more complicated political situations which may be difficult to sufficiently deal with if it is in an isolated arena from the political context itself.

It is not in doubt that most cases handled by the Court involve political issues. In United State Diplomatic and Consular Staff in Theran Case<sup>5</sup>, Iran deliberately refused to take part in the Court proceedings of 1979 on the ground that since it is only a political question that has been submitted to the Court, the court was ignorant of political context inherent in the case. The court notwithstanding this situation stated that legal disputes between sovereign states by their very nature are likely to occur in political contexts, and this often form only one element in a wider and long standing political dispute.

If it is now said that political implications is usual and inevitable in terms of law and problems of international law, then it can be rightly said that political implications in those disputes would not have any negative effect which would be a ground upon which the Court would refuse jurisdiction in a case or be a justifiable ground for the Court to invoke the principle of judicial retreat by refusing to handle a case.

It can also be said that when the political and judicial organs that are so important within the United Nations structure are at the same time handling a case which requires political solution, and they failed to reach a political solution, just as it was in Aegean Sea Continental Shelf Case, United States Diplomatic and Consular Staff in Tehran Case (supra) and Nicaragua Case<sup>6</sup>. The situation here should not affect the judicial duty of the

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December, 2014. The facts of this case largely dealt with the jurisdiction of the ICJ over a matter for which a state (Belgium) could approach the Court on behalf of commercial interests involving its nationals and the proprietary of the Courts jurisdiction in the face of respondents' inadmissibility of facts. Jus standi and unexhausted local remedies. Thus, the Court assumed jurisdiction and dismissed the preliminary objections of the Spanish Government.

<sup>1</sup> See ICJ Rep (1974) p.271. Full details of the case could be seen at <http://www.icj-cij.org/docket/files/123/8296.pdf> Visited on 26th December, 2014. The judgment finds that, "even if the Court, when seized, finds that it has jurisdiction, the Court is not compelled in every case to exercise that jurisdiction" (ibid., p.27). But in the absence of "considerations which would lead it to decline to give judgments" (I.C.J. reports 1974, p.271, para. 58), The Court is bound to fulfill the functions assigned to it by its Statute.

<sup>2</sup> Gullaume, G. "The future of International Judicial Institutions 44 ICLQ 1995 p.849-862 esp 851. It should be pointed that the central argument of Gullaume, G. borders on the fact that since international and cross boarder peace can be achieved through the instrument of law, then the various regional Courts could be integrated into the ICJ system in such a way that the ICJ acts as a final appellate Court to the regional Courts. Although this proposition is not without problems, it is important to note that it could be used to solve most problems of the ICJ including jurisdiction and effectiveness of judgment, since the regional Courts could be the means of enforcing or enhancing the ICJ judgments.

<sup>3</sup> ICJ Rep (1994), 112 and ICJ Rep (1995) p.6.

<sup>4</sup> See <http://www.ICJ-CLIJ.org>> (11/01/2012) for full details of

<sup>5</sup> ICJ Rep (1980) pp.19-20. It should also be noted that, the case was the first real instance of the Court and the Security Council acting together to bring a crisis to an end. The Court expressed regret that Iran did not appear before it to put forward its arguments. However, the absence of Iran from the proceedings brought into operation Article 53 of the Statute, under which the Court is required, before finding in the Applicant's favour, to satisfy itself that the allegations of fact on which the claim is based are well founded. Thus, the court issued an opinion not on the merits of the case, but rather ordering a preservation of the respective rights and obligations the two countries owed one another pending the final decision of the court. More specifically, the Court unanimously declared that Iran should ensure the restoration of the U.S. embassy in Tehran to U.S. possession, release the hostages, and afford diplomatic officials full protections as afforded by international law. This case indicates that the Court even after delivering its judgments still owes itself and the parties the duty to ensure that its judgments are properly complied with.

<sup>6</sup> ICJ Rep. (1984) order of 10<sup>th</sup> May 1984. Full details of this judgment could be found at <http://www.icj-cij.org/docket/files/70/6455.pdf>. Part of the said judgment (at page 21) supporting the argument of this study reads as follows: "...Nicaragua further denies that these proceedings could prejudice the legitimate rights of any other States, or disrupt the Contadora process; whereas the Agent of Nicaragua referred to previous decisions of the Court as establishing the principle

Court to handle legal issues involving the political considerations, once it is validly brought before the Court.

However, assuming we agree that there is a little value with respect to the use of avoidance of jurisdiction as a form of old style of enforcing the judgment of the Court, then we can say that it is Article 102 of the United Nations Charter that is used as a support base. Under Article 102 of the United Nations Charter, it is categorically stated that no party to any treaty or International agreement, which has not been registered in accordance with the provisions of paragraph of this Article, may invoke that treaty or agreement before any organ of the United Nations. What this means is that, the Court is already an organ of the United Nations and once there is no registration of the said treaty upon which a case was filed in Court, the Court should decline jurisdiction out rightly. However, notwithstanding the position of Article 102 of the Charter mention above, both Bahrain and Qatar did not register their exchange of letters of 1987 and it was on that basis that Qatar invoked the jurisdiction of the Court<sup>1</sup>.

It was later discovered that the Court proceeded with the case on the face of Article 102 of the charter in order to attract states for the purpose of making sure that states solved their problem instead of the Court avoiding to accept the jurisdiction to handle the case. This was done in Qatar Vs Bahrain Case; where initial reaction of Bahrain was not to appear before the Court, for which it seriously contested the jurisdiction of the Court. Though, the position was sufficient for the Court to decline jurisdiction, the Court still went ahead to handle the case.

Furthermore, it is better to say it right away that, it is not a legitimate judicial method of enforcement for the Court to decide that the avoidance of jurisdiction or deliberateness in giving a decision on an issue or to give ambiguous decision would ensure compliance with judgment. This act does not tally with rational thinking with due respect neither can we say it is in line with the law and practice of even the Court as it intends to make mockery of international law and the dignity of the judicial arm of the United Nations which is still managing its image before the comity of nations<sup>2</sup>; in fact rendering ambiguous judgment would even worsen the position of compliance and enforcement.

#### **Enforcement on Basis of Article 60 of the Statute**

Professor Riesman<sup>3</sup> after being convinced that there exist no express or precise statutory authority about the enforcement of the Court judgments had suggested that there should be some minor amendments which should affect the provisions of Articles 56 and 60 of the statute of the Court and his suggestion was that, it should be in the Court's statute that a party who has won a case should be allowed to reapply unilaterally (after a fixed time), to the same Court asking for a declaration of non-compliance and would then be incumbent upon the party that has lost to claim as follow;

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that the Court is not required to decline to take cognizance of one aspect of a dispute merely because that dispute has other aspects, and that the Court should not decline and essential judicial task merely because the question before the Court is intertwined with political questions..."

Underline is mine to reinforce the position of this paper, that the effectiveness of the judgment of the ICJ is significantly dependant on the pre- and post-judgment actions of the Court, intended to maintain the sanctity and efficacy of its judicial processes. Thus, these identified loopholes by the Nicaraguan Agent indicate the reluctance of the Court to take proactive measures aimed at enhancing its pronouncements; especially where it could pick and chose what aspects of the Statute or Rules of Court that apply in particular circumstance. It is the position of this paper, that the where the parties as in this case read into the lackadaisical body language of the Court, effectiveness of its judgment whittles down.

<sup>1</sup> ICJ Rep. (1991) p. 50. Full details of this judgment could be found at: <http://www.icj-cij.org/docket/index.php?sum=443&p1=3&p2=3&case=87&p3=5>. This study found that unlike the Nicaraguan case above, the Court on the basis of exchange of letters between Bahrain and Qatar, assumed jurisdiction stating that the letters imply international agreements which confer jurisdiction on the Court. Though the agreements of the parties during pre-action negotiation indicate that the said transaction must be registered with the Court and admissibility of documents that are not in compliance with the terms of the parties' agreement, but lost. This case thus reinforces the argument of this study that, the Court's approach is ambivalent and selective in nature and thus weakens the effectiveness of its decisions. The extended effect being that the parties would be unwilling to comply, without extra measures which the Court in turn is not willing to invoke.

<sup>2</sup>Jenks, C.W; *The Prospects of International Adjudication*, Stevens & Sons, 1964 p. 667

The position of Jenks, C.W., is that such ambivalence in judicial attitude implies a process of growth of international law. This view is succinctly stated at page 184 of the book as follow:

"...In every legal system, law and procedure constantly react upon each other. Changes in substantive law call for new procedures and remedies; new procedures and remedies make possible changes in the substantive law. So it is in international law; if we wish so to develop the law as to respond to the challenge of our times, our procedures and remedies must be sufficiently varied and flexible for the purpose..."

Though this position is not all together faulty, but suffices it to state that it does not enhance the effectiveness of the Court.

<sup>3</sup> Riesman, M. *Nullity and Revision; the Review and Enforcement of International Judgment and Awards*, Yale University press, New Haven, 1971 pp. 671-672

1. Claim that it has complied with the Court Judgment
2. State the necessary reasons it has which has caused the delay and that he should apply for an extension of time within which to comply with the judgment
3. It should seek compliance by substituted means in the form of a counter-claim.

It is better to say outrightly, that the above suggestion is untenable because even though it tends to look as if it could force a defaulting state party to actually comply; but in reality and practicability, it seems to be more advantageous to a defaulting state party to easily capitalize on this opportunity and refuse comply by buying more time for non-compliance with the judgment of the International Court of Justice.

Furthermore, once an amendment in this regard is allowed it may open the floodgate for amendment of the Statute of the Court which can be amended pursuant to Article 108 and 109 of the United Nation Charter, especially as the statute of the Court is part of the United Nation Charter. There is likelihood of so many unrequired amendments that may be brought. Now in comparison, one can realize that ideal guides on these issues are, the Treaty of the European Union<sup>1</sup> and the Treaty on creation of an Economic Union of the Commonwealth of the Independent States of 1993<sup>2</sup> and Articles 23-29 of the statute of the Court of Justices of African Community.

It is of important note, that pursuant to Article 226 of the EU Treaty, a legal action may be filed before the European Court of Justice (E.C.J.) by the Commission itself against any of the members of EU asking for a declaration that the said state has failed to carry out the execution of the judgment under the treaty including compliance with the community law. It is not in doubt that based on Article 226, once the Commission considers that the violation of the unity law has taken place; a reasoned opinion on this matter shall be delivered by the Court after the defaulting state must have been heard. If after the opinion must have been delivered and the defaulting state still refuses to comply within the time stipulated for compliance, the commission is still at liberty to bring the matter of non-compliance before the court, the ECJ would then order how much the defaulting party should pay in lump sum or penalty to be paid to the member state who is a winning party.

By the same provision as stated above, if the defaulting state still refused to comply with the penalty and the first penalty fails to force compliance, the commission would take a fresh action and if the ECJ conclude that the defaulting state still does not comply with the judgment it will impose another lump sum penalty.

Notwithstanding the obscurity of Article 228 of the European Treaty, the interpretation of the treaty becomes flexible which makes it more effective leading to compliance with the community law called European Treaty especially the judgment of the Court based on the law of the European Union<sup>3</sup>.

Also, a close look at Article 31 of the Treaty on the Creation of an Economic Union of the Commonwealth of Independent States of 1993 provides room for compliance with the Court judgment when it states that if the Economic Court finds that a member state of an Economic Union has failed to fulfill an obligation under the present treaty, the state shall be required to take all the necessary measure to comply with the judgment delivered by the European Court<sup>4</sup>.

It should also be noted that the sanctions in this regard is ambiguous because the lump sum or penalty payment which Article 228 of the treaty provides for and the mode of the measures provided for the determination and application of same should have been provided for after taking into account the surrounding circumstances affecting the judgment debtors.

The Statute of the Andean Court have provided more important, sophisticated procedures for judicial and institutional enforcement of its judgment as under section 2 of the Andean Court statute, which is entitled "on the Action to declare non compliance", there are nine (9) Articles commencing from 23-31 which deals with the issue of non-compliance with the decisions of the Court. The Treaty creating the Court of Justice of Cartagena Agreement was amended by the Cochabamba Protocol. This amending protocol to the Treaty creating

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<sup>1</sup> Article 228

<sup>2</sup> Article 31

<sup>3</sup> Theodossiou. M., An Analysis of the Recent Response of the Community to Non-Compliance with Court of Justice Judgments of Article 228(2) EC" 27ELR (2002), pp. 25-46 at p. 31

<sup>4</sup> Article 31(1) of the 1993 Treaty provides that "the contracting parties pledge to resolve their disputes in respect to interpretation and implementation of the present Treaty by means of negotiations or through the Economic Court of the Commonwealth of Independent States." The ambiguity occasioned by this provision became a critical issue and the Economic Court attempted to reconcile Articles 31(1) and 31(4) in its Opinion No. C-1/19-96.22, where the Court emphasized that under Article 31 states parties to the 1993 Treaty on Creation of an Economic Union "have no rights to resort to other international judicial organs without first turning to the Economic Court. "The implication of this provision is that the effectiveness of the Economic Court significantly lies on the compellability of member states to maintain the spirit and purpose of the Court before a resort to any other international judicial organ.

Further details could be seen in the work of Professor Gennady M. Danilenko at: <http://www.pict-pecti.org/publications/PICArticles/JILP/Danilenko.pdf>. visited on the 25th December, 2014

the Court of Justice of the Andean Community was signed at Cochabamba, Bolivia<sup>1</sup> on May 28, 1996 and it came to force in August 1999. From the position of the Treaty mentioned above, it can be seen that the General Secretariat of Andean Community is given the primary duty to scrutinize whether a member state has failed to comply with the decisions of the Court vis-à-vis its obligations under the provisions of the convention which includes the legal system of the Andean Community<sup>2</sup>.

Should the General Secretariat discover the failure of compliance and continuation of non-compliance in respect of the claim, the General Secretariat shall be at liberty to request for the Court decision on the issue of non-compliance. If the General Secretariat refuses to issue out a decision on its verification or apply to Court for decision within 60 days, after the claim was filed, the judgment creditor is at liberty to appeal directly to the Court for a decision without necessarily awaiting for the General Secretariat any further. Once the Court hold the view that the judgment debtor ought to have compliance with the judgment, then it would order compliance within a period of not more than 90 days after notice of the order.

Furthermore, if the member state still refuses to comply with the judgment, the Court shall summarily, especially after hearing from the General Secretariat, order the limit or suspend the benefits of the disobedient state party as those benefits may be so stated under the Cartagena Agreement. The Court is however entitled on its own to adopt other measures that are necessary to ensure compliance if the restriction of benefits under the Cartagena Agreement worsen the position of the defaulting state or if it is not effective<sup>3</sup>.

In addition to the foregoing, the statute of the Andean Court allows a defaulting state to petition the Court that the imposition of restriction of benefits under the Cartagena Agreement would worsen its condition and that there should be suspension of the judgment<sup>4</sup>. Any of the party may apply for review of the judgment which is the result of non-compliance if any new fact would convince the Court to review the judgment which said new fact was unknown to the party applying as at the time the case was presented and the application for review must be made 90 days after date of discovery of the fact and within a year after the judgment would have been delivered.

It should be pointed that after reviewing the position of the European Union and the Andean Court under the Cartagena Agreement, it is better to suggest that the International Court of Justice in enforcing its judgment and ensuring compliance can alternatively make use of Article 60 of the Statute of the Court just as it stands in relation to enforcement process of its decisions without any need for amendment as suggested by Professor Riesman (supra) which said suggestion has been seen as highly questionable.

The importance of Article 60 can be gathered if we look back to its usage by both Republic of Benin and Niger when they entered into a special agreement on 15/6/2001 in Cotonou which came to force on 11/4/2002 and which they notified the ICJ on 3/5/2002 of a special agreement with respect to a boundary dispute between the two nations. For ease of reference, Article 7 of the special agreement states thus;

- (i) The parties accept as final and binding upon them the judgment of the Chamber rendered pursuant to the present special agreement.
- (ii) From the day on which the judgment is rendered, the parties shall have 18 months in which to commence the works of demarcation of the boundary.
- (iii) In case of difficulty in the implementation of the judgment, either party may access the Court pursuant to Article 60 of its statute<sup>5</sup>

A cursory look at Article 60 of the statute of the Court shows that it is adequate for the implementation of the decisions of Court depending on how the parties before the Court perceived the said Article 60 which has been shown as implementable by the above case between Niger and Benin.

A party to the Agreement Pursuant to Article 60 can approach the Court for the interpretation or

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<sup>1</sup> Hamilton, R.P. "A Guide Researching the Caribbean Court of Justice" xxvii, Brooklyn, J. Int'l (2000) pp. 531-542 and full details of this treaty could found at: [http://wits.worldbank.org/GPTAD/PDF/annexes/Caragena %20justicetreaty.pdf](http://wits.worldbank.org/GPTAD/PDF/annexes/Caragena%20justicetreaty.pdf). Visited 26th December, 2014.

<sup>2</sup> Articles 23 of the Statute of Andean Court,

Article 23: If the General Secretariat considers that a Member Country has failed to comply with its obligations under the provisions or Conventions comprising the legal system of the Andean Community, it shall submit its observations to that Member Country in writing. The Member Country must respond to those observations within a period set by the General Secretariat in keeping with the urgency of the case, which shall not exceed sixty days. Once the report has been received or the term has expired, the General Secretariat shall issue an administrative ruling, which must include its reasoning, regarding the state of compliance with those obligations.

If the General Secretariat decides that the Member Country has failed to comply with its obligations and it continues with the behavior that was the subject of the observations, the former shall request a decision from the Court as soon as possible. The Member Country affected by that noncompliance can join the General Secretariat in the action.

<sup>3</sup> Article 24 of the Statute of Andean Court

<sup>4</sup> Article 28 of the Statute of Andean Court

<sup>5</sup> Press release of 2002 of 3/5/2000 at <<http://www.icj.org>> 12/1/2012



implementation of the agreement entered into on the basis of Article 60 of the statute of the Court and the Court would now give an elaborate interpretation of the enforcement of its judgment. The interpretation does not mean the judgment would lose the basis of the principle of res-judicata “since the judgment already acquired the status of res-judicata. The interpretation of the Court judgment in this regard is only meant to re-enforce the integrity of the Court and that the Court would not make itself ineffective. We do concede that this approach may not be able to actually, totally eradicate the problem of non-compliance with the judgments of the Court but it is good a way of making sure the judgment debtor comply with the judgment of the Court especially as psychological public pressure would have been exerted on the said judgment debtor.

It is equally suggested that even where the ICJ is not being requested to make pronouncement on particular point, it should be able to do so on its own by insisting that its judgment must be complied with and also sounding a note of warning to the judgment debtor that the failure to carry out the judgment will be met with the appropriate sanctions. This was partly done in the case of Land and Marine Boundary Case <Cameroon and Nigeria> (2002), it was the observation of the Court in the case that the two parties were duty bound to make sure that the judgment of the Court is carried out to the latter and that the benefit of compliance is for peaceful existence and maintenance of security especially during the time Nigeria was withdrawing its administration and military forces from the disputed areas.

Therefore, it could not be denied that the psychological pressure on the judgment debtor by the highest judicial arm of the United Nations is important and adds integrity to the court. This also affects and brings pressure on a recalcitrant state that may have the mind not to comply with the final decisions of the Court.

### **Enforcement on a Recalcitrant State**

It is a fact that the statute of ICJ is very much silent as to what should happen or what to do when any of the party to the dispute before the Court becomes recalcitrant to the enforcement and compliance with the judgment of the Court.

It is understood that even on the face of the lacuna in the statute of ICJ, with respect to the involvement of the Court in the implementation of its judgment, a painstaking usage and interpretation of both the statute of the ICJ<sup>1</sup> and Article 99 (5) of the Rules of the Court 1978 is capable of filling the lacuna created at least to a large extent.

Article 61 (3) of the statute of ICJ states that the Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.<sup>2</sup> This same provision is complimented by Article 99 (5) of the Rules of the Court 1978, which stated that if the Court decides to make the admission of the proceedings in revision condition on previous compliance with the judgment, it shall make the order accordingly.

Hudson gave a little in-sight into the legislative history of Article 61 (3) of the statute of ICJ which he stated that it was inserted by the Advisory Committee of jurists after envisaging the fear that there is the possibility that a party who want to delay the execution of the Court judgment may use the application for revision of the judgment to achieve its aim<sup>3</sup>. The analogy that can be drawn is that the substance of Article 61 (3) of the statute of the Court is seen as being common to judicial practice of some municipal judicial and legal system; wherein a party may be denied the right of appeal on the ground that he actually refused to comply with the judgment of the lower Court, as was the case in *Hadkinson Vs Hadkinson*<sup>4</sup>, *National Union of Marine Cooks and Stewards Vs Arnold*<sup>5</sup>.

<sup>1</sup> Article 61 (3) of the statute of I.C.J

<sup>2</sup> Article 61 (3) of the statute of I.C.J is important especially as it is a ground to say that a contemnor of the decision of the Court cannot be asking the Court for a sympathetic consideration of its application placed before the Court

<sup>3</sup> Hudson, O.M., *The Paramount Court of International Court of Justice 1920-1942* (Macmillan 1943) p. 209

<sup>4</sup> (1952) All ER p. 567 part of the judgment Per Denning L.J. states: “... The fact that a party to a cause had disobeyed and order of the court was not of itself a bar to his being heard, but if his disobedience was such that, so long as it continued, it impeded the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it might make, then the court might in its discretion refuse to hear him until the impediment was removed. The present case was a good example of a case where the disobedience of the party impeded the course of justice...”

<sup>5</sup> 348 US 37 (1954). Full text of the judgment can be found at <http://www.law.cornell.edu/supremecourt/text/348/37>. Visited Part of the lead judgment per Mr. Justice BURTON reads as follows:

“The question before us is whether a state appellate court violates either the Due Process or the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States when it dismisses an appeal from a money judgment as a reasonable measure for safeguarding the collectability of that judgment. For the reasons hereafter stated, we hold that it does not and that the dismissal of the appeal in the instant case.”

Justice Burton further strengthen the position of the Court by drawing attention to a similar situation in the case of *Hovey v. Elliot*, 167 U.S. 409, 17 S. Ct. 841, 42 L.Ed. 215, where the Supreme Court of the District of Columbia deprived a defendant of his right to answer the suit brought against him, struck out his claims and entered judgment against him as punishment for his refusal to deliver to a court-appointed receiver certain funds which were the subject matter of the litigation.

Therefore, it can be advanced as an argument that the ICJ under the provisions of Article 61 (3) of the statute of the Court and Article 99 (5) of the Rules of the Courts insisted that an Applicant for the revision of the Court judgment must first of all comply with the judgment of the Court before being heard. This was what happened in the Application for Revision of the Judgment of 11<sup>th</sup> day of September 1992 in the Case Concerning the Land, Island and Maritime Frontier Dispute <El-Salvador/Honduras><sup>1</sup>. It should however be noted that the members of the Court have important role to play individually in the enforcement of the judgment of the Court which cannot be left to the Court alone as a whole. The role of the members of the Court would be discussed in the next paragraph.

### **Enforcement by Avoidance of Dissenting Judgments**

The issue of dissenting judgment in international dispute settlement have been treated in various ways by authors and scholars which explains what it is all about<sup>2</sup>. It is of importance to note that in the setting up of the Inter-Allied Committee in 1944 and 1945, respectively, the International Committee of Jurists sat and looked into the future of the International Court. Their decision unanimously was that they favoured the maintenance of the practice of the Permanent Court of International Justice members giving their individual opinions in a judgment. On the issue of dissenting judgments, their decision was that it does not weaken the sanctity and the authority of such decision<sup>3</sup>. However, notwithstanding what has been said based on the above Committee decision, we should bear in mind that individual judges' separate and dissenting opinions are part and parcel of the judicial process on the first part and it, or they also constitutes part of the judgment of the Court on the second part.

Furthermore, it is not also in doubt that a broadly supported judicial decision by members of the panel of judges may easily increase the authority of the Court amongst others including the formal and moral authority. The formal authority refers to the Court's power to be able to give effect to its decision and make the recalcitrant party accepts its judgment. The moral authority in its own case refers to the prestige of the Court in terms of what the Court is all about; as the upholder of moral standard of what is good as distinguishable from what is bad<sup>4</sup>.

On the other hand, lengthy, well elaborated and individual alternative legal argument given by that individual minority who are very strong and respected as judges is very much likely going to affect the authority of the Court. The likely effect of the judgment is that it would negatively affect the compliance with the enforcement of the Court judgments vis-à-vis its decisions.

It can therefore be contended that a modification and softening of the ICJ's practice of allowing dissenting judgments should be utilized. In other words, what it meant is that dissenting judgments should no longer be lengthy or elaborate in order to avoid a situation where it may weaken the majority judgment decision which may ultimately affect the execution of the judgments as the recalcitrant state may rely on the dissenting judgment to avoid the execution of the judgment of the Court.

Some important legal luminaries have argued against our contention above insisting that dissenting judgment should not be allowed especially since that is what is being practiced by the European Court of Justice<sup>5</sup> which actually prohibits any dissenting judgment and to keep their deliberations secret. Argument has been preferred that the ECJ's practice as CJ<sup>6</sup> and that if the doors are allowed to be opened and dissenting opinions of judges are allowed, it would not promote any unity or homogeneity, worse is expected as far as the European union members are concerned<sup>7</sup>.

It is also important to note that although the fact that the judges of European Court of Justice are no allowed to make dissenting opinions/judgments may be good for a regional Court, there are obvious disadvantages of this procedure for an International Court especially the International Court of Justice which is different from a Regional Court. The difference is not what can be overlooked as the cases handled by the ECJ are limited in nature to the cases adjudicated upon by the ICJ. Furthermore, the ECJ was established as entirely a new regional judicial organ meant to deliver decisions that are unambiguous and unequivocal judgments<sup>8</sup>. This

<sup>1</sup> ICJ Rep (2003) para 22. Full judgment can be found at: <http://www.icj.org/docket/files/75/6671.pdf> visited 28th December, 2015

<sup>2</sup> Anand, R. P. "The Role of Individual and Dissenting in International Adjudication: 14 ICLQ (1965) pp. 788-808

<sup>3</sup> Hussein, I. Dissenting and Separate Opinions of the World Court (Martinus Nijhoff) 1984 p. 39

<sup>4</sup> Lauterpacht, H., "The Development of International Law by the International Court (Stevens and Sons – 1950) pp. 66-70

<sup>5</sup> Dijk, P.V. "For better or for worse? Comments in Bloed, Jurisdiction, Equity and Equality (Europe Instituut Utrecht 1998) pp. 25-34 at p. 32

<sup>6</sup> Schemers, H. G. Judicial Protection in the European Communities 4<sup>th</sup> Ed (1987) pp. 456-451

<sup>7</sup> Bridge, J.W. "The Court of Justice of the European Communities and the Prospects for International Adjudication" in Jonis M.W. International Courts for the Twenty-First Century, 1992, 87

<sup>8</sup> Schemers, H.C. , Judicial Protection in the European Communities 4<sup>th</sup> Ed. Cklawer Law and Taxation Publisher, 1987 pp. 450

implies that if dissenting opinions are allowed, they would affect the objectives of the European Union as stated above.

Furthermore, a scrutiny of the record of compliance of the decisions of ECJ in comparison with those of ICJ will automatically show the judgments of ICJ are better complied with than those of ECJ. Therefore, it can be seen that the attitude of not allowing judges of ECJ to reach dissenting judgment vis-à-vis opinions does not necessary become a safeguard neither does it lead to any necessary compliance with the decision rendered by the ICJ.

Looking at it from another angle, there are other arguments, which are in favour of the maintenance of the practice of the use of dissenting judgment/opinions even the negative political effect and implications of such decisions remains apparent.<sup>1</sup> One of those in support of this contention is Sir Robert Jennings, Jennings although was of the view that a dissenting opinion could also weaken, instead of adding to the strength of the judgment; it was his belief that it gives room for opinions to function as a means of expression of alternative legal arguments or ort conclusions/position. In effect, Jennings' position confirm the seeming ideology that, the judges should be allowed to express their opinions in line with today's civilization and the changing trend of the legal systems, which directly or indirectly is shaped by a combination of factors ranging from, social conditions, equity, fairness, sovereignty, etc; to every complex incidental issues that borders on nation states diplomatic status, economic buoyancy and cultural/anthropological connotations among others.

Though, the findings of this study is not subversive to the contentions above; it implores a condition that is incumbent on the ICJ bench to the extent that a support for dissenting judgment ought to take cognizance of public accountability and perception, especially when there may be no consensus among members of the bench. Therefore, it is of note that once there are elaborate dissenting opinions known to the members of the public, the opinion of the members of the public is likely to be that there exists no unity in the decision of the Court. The impact of this perception on the public can adversely affect the enforcement of such judgment. This is because public confidence in the judicial apparatus is the key to effective adjudication.

In furtherance of the forgoing arguments, there is the need to show a distinction between a dissenting judgment that is part of the case decided and a dissenting opinion/judgment which is published. Generally speaking a strong and persuasive dissenting opinion of the Court in a decision rendered represents a good way of drafting decision making process. However, once the publication of the dissenting opinion is made, such may lead to different effects among which is, weakening the likelihood of compliance with the Court's judgment.

Meanwhile, it is pertinent to state that the background to the political situation has its own effect, especially in the case of Nicaragua<sup>2</sup>, where Nicaragua lodged a complaint to the Security Council that the United States has concluded not to comply with carrying out the execution of the exanimation.

The judgment contained dissenting judgment opinions of minority, members of the Court. It should be noted that the fact occurred when it was shown that the United States, based on the dissenting judgment of the minority, started distributing copies of the said judgment among the delegates as it relies on the dissenting judgment.

### **Conclusion/Recommendations**

The notion of whether or not the International Court of Justice on its own is capable of enforcing its decision was examined which shows that out of so many ways to enforce the judgment of International Court of Justice, enforcement through the Court itself is one of such methods. However, the effectiveness of this kind of methods have been shown in so many ways as being inadequate.

It is accordingly recommended that the Court should be given the power to cite for contempt of Court with respect to anyone disobeying its decision so that the Court can be effective in enforcing its decision.

It is further recommended that there should be more sensitization as to the importance of the decisions of ICJ and the need for compliance with its decision. This will put more fear in the mind of recalcitrant states who will in turn be ready to comply with the ICJ decisions.

The Court should on its own in delivering its decisions, extend its jurisdiction to cover being able to supervise and give directions to both the Security Council and General Assembly which must be binding and enforceable against the Executives of the United Nations.

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<sup>1</sup> See Sir Robert Jennings presentation "Contributions of the Court to the Resolution of International Tensions in Peck C. and Lee R. S. (eds), increasing the Effectiveness of International Court of Justice: Proceedings of ICJ/UNITAR colloquium to celebrate the 50<sup>th</sup> Anniversary of the Court (Martinus Nijhoff Publishers 1977) pp. 76-85, at p. 79

<sup>2</sup> ICJ Rep (1986) p. 4 and full details of judgment can be found at: <http://www.icj-cij.org/docket/?sum=367 & p1=3 & p2=3 & case=70 & p3=5>. Visited on the 28<sup>th</sup> December, 2014.

It should be noted that the Court found in its verdict that the United States was "in breach of its obligations under customary international law not to use force against another State", not to intervene in its affairs", not to violate its sovereignty ", "not to interrupt peaceful maritime commerce", and "in breach of its obligations under Article XIX of the Treaty of Friendship, Commerce and Navigation between the Parties signed and Managua on 21 January 1956".

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It is recommended further that, even where the I.C.J. is not being requested to make pronouncement on a particular point, it should be able to do so on its own, by insisting that its judgment must be complied with and also to sound a note of warning to the judgment debtor that the failure to carry out the execution of the decision or resistance to the carrying out of the court decision, would be met with appropriate sanctions.