

## Article

# Why Comply? An Analysis of Trends in Compliance with Judgments of the International Court of Justice since *Nicaragua*

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*“More than ever before in human history, we share a common destiny. We can master it only if we face it together. And that, my friends, is why we have the United Nations.”*

—Kofi Annan

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## Why Comply? An Analysis of Trends in Compliance with Judgments of the International Court of Justice since *Nicaragua*

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### Introduction

Since *Nicaragua*,<sup>1</sup> the International Court of Justice (“ICJ”) has witnessed substantial compliance with its judgments. As will be discussed in Section II, outright defiance has not been asserted in any case; rather, in cases where total compliance was not achieved, the noncompliance was slight. The following four factors, discussed in Section III, contribute to such compliance: external political influence, the internal need for a definitive solution, the substance of the judgment issued, and internal political influence. Section IV offers a cumulative assessment of the factors’ influence on compliance in four categories of cases: territorial disputes over sovereignty, territorial disputes over boundary lines, criminal procedure issues, and disputes over interpretation. Lastly, Section V offers suggestions for continuing compliance trends.

Because many scholars have labeled *Nicaragua* as the “turning point” in a “series of instances of open defiance and non-appearance,”<sup>2</sup> this assessment considers only those cases that were adjudicated subsequent to that decision. The aggregation of cases arbitrated from 1986 to the present<sup>3</sup> will be referred to herein as “modern era” disputes. This paper evaluates only contentious cases in which the ICJ ordered a judgment on the merits.<sup>4</sup> Neither advisory proceedings nor provisional measures were considered.

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<sup>1</sup> *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), 1986 I.C.J. 14 (June 27).

<sup>2</sup> Aloysius P. Llamzon, *Jurisdiction and Compliance in Recent Decisions of the International Court of Justice*, 18 EUR. J. INT’L L. 815, 825 (2008) (quoting CONSTANZE SCHULTE, *COMPLIANCE WITH DECISIONS OF THE INTERNATIONAL COURT OF JUSTICE* 403 (Philippe Sands et al. eds., Oxford University Press 2004)).

<sup>3</sup> This article was completed in December 2010.

<sup>4</sup> See Appendix A for a list of included cases.

This paper excludes twelve post-*Nicaragua* cases that have not yet procured a judgment on the merits, as well as four cases where compliance with the judgments cannot yet be determined.<sup>5</sup> Four additional cases that were discontinued without any prior judgment on the merits were likewise disregarded, as were two cases that were removed from the Court's list at the joint request of the parties.<sup>6</sup> Further, eighteen cases were excluded in which the claim was rejected on jurisdictional or admissibility grounds, or where there was no positive statement that could possibly imply a duty of acceptance and implementation.<sup>7</sup>

### I. Defining "Compliance"

This assessment defines "compliance" in terms of defiance. "Defiance" refers to the "wholesale rejection of a judgment as invalid coupled with a refusal to comply."<sup>8</sup> In the modern era, there have been no cases of outright defiance where a respective respondent has deliberately, openly, and continuously taken action contrary to a judgment, "vehemently criticizing the Court and challenging the bindingness of its decision[]." <sup>9</sup> Noncompliance, in the sense used here, requires more than initial disapproval; it requires a complete, unceasing refutation of the judgment from which the defiant party has not recanted.

Although no state has been directly noncompliant of a modern era judgment, some decisions "have met with less compliance than others."<sup>10</sup> Initial noncompliant behavior has been observed following a judgment in cases where a party is dissatisfied with the Court's decision and unwilling to accept it at the outset; but such instances are not cases of direct noncompliance because the refusal to comply eventually subsides.<sup>11</sup> Cases of slight noncompliance exist where a party claims to comply with a decision, but does not take action to match its verbal commitment.<sup>12</sup> Such behavior is likewise not directly noncompliant because there is no outward rejection of the decision.

In some cases, implementation problems subsist that render parties unable to sufficiently comply with the Court's judgment, despite *bona fide*

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<sup>5</sup> See Appendix B for a list of cases excluded from consideration.

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

<sup>8</sup> Llamzon, *supra* note 2, at 823.

<sup>9</sup> CONSTANZE SCHULTE, COMPLIANCE WITH DECISIONS OF THE INTERNATIONAL COURT OF JUSTICE 272 (Philippe Sands et al. eds., Oxford University Press 2004).

<sup>10</sup> *Id.* at 436.

<sup>11</sup> See, e.g., Territorial Dispute (Libya/Chad), 1994 I.C.J. 6, at 18-19, 28 (Feb. 3); Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria), 2002 I.C.J. 303, at 6-7, 23 (Oct. 10), available at <http://www.icj-cij.org/docket/files/94/7453.pdf>.

<sup>12</sup> *Id.*

efforts to do so. In these instances, failure to comply does not constitute noncompliance because it is a result of an inability to implement the decision rather than of defiant behavior by either party.

## II. Factors Affecting Compliance

Four factors determine the extent to which compliance will be achieved: external political influence, internal need for a definitive solution, the substance of the judgment issued, and internal political influence. External political influence, such as pressure from the international community, involvement in international organizations, and reputation costs associated with defiant behavior, fosters compliance with ICJ judgments. A second indicator of compliance is the presence of a genuine need for a definitive solution. Whether such a need exists depends primarily on the parties' interests and their relationship with each other. The last two indicators of compliance discussed, and the factors that incite the most problems for implementation, are the substance of the judgment issued and internal political influence. Ambiguity in a judgment acts as a barrier to implementation, but as a result of inability rather than of bad faith. A judgment that is in direct conflict with the self-interest of one or more parties may also be met with resistance, but states tend to comply nonetheless out of deference to the international regime. An exception to this trend may arise where a judgment requires a state to take action that is contrary to domestic policy. The extent to which such internal pressure will impede compliance and implementation depends on the merits of the judgment issued.

### A. *External Political Influence*

External political influence is the extrinsic factor attributable to states' deference to the ICJ. Pressure from the international community and the presence of international organizations contribute significantly to ensuring states' compliance with ICJ judgments. Further, the reputation costs associated with noncompliance, which often result from international affiliations, minimize the risk of defiant behavior.

#### 1. Pressure from the International Community

Pressure from the international community is a significant factor in ensuring compliance with ICJ decisions. International pressure, especially in the modern era of cases, plays a momentous role in the tendency of states to seek resolution of disputes in the ICJ and in ensuring compliance

once judgments are issued. Pressure from the international community is such that, even in instances where a party fails to submit fully to the Court's judgment, the party will outwardly attest to be doing so. The emergence of the international community as a prominent and reputable body in the modern era of the ICJ has acted as a penal force, furnishing consequences for states that fail to comply with the Court's orders.

Pressure to comply can be general or specific. A state's desire for membership within the international community generates pressure to act compliant. Following the ICJ's judgment in the *Kasikili/Sedudu Island* case, for example, the Namibian president stated: "As a law-abiding nation and consistent with our undertaking, I wish to ensure the international community that Namibia will abide by the verdict of the ICJ and respect it fully."<sup>13</sup> Such a statement depicts the propensity that many states have to preserve their effigy in international relations. In some cases, especially those where noncompliance is suggested or anticipated, the pressure on the state to comply is more specific. For example, following Nigeria's disapproval of the Court's judgment in the land and maritime boundary dispute between itself and Cameroon,<sup>14</sup> the United States, France, and the United Kingdom subjected Nigeria to substantial diplomatic pressure to ensure compliance with the decision.<sup>15</sup>

Observation of ICJ judgments as a result of international pressure is further exemplified in matters like the dispute between Libya and Chad regarding the Aouzou Strip,<sup>16</sup> a case that resulted in initial noncompliance. Despite openly criticizing the Court's decision, Libya had few options but to comply, as it could no longer stake a claim to the territory without risking regional and international consequences. Subsequent acceptance of the judgment as legally binding secured peace between Libya and Chad after years of feuding; it affirmatively prevented Libya from claiming sovereignty over the disputed region.<sup>17</sup> Some scholars have posited that Libya's arguably dubious compliance stems from a lack of praise by the international community for Libya as a law-abider in the wake of the judgment.<sup>18</sup> Such an assertion further evidences the momentous influence the international community has on ensuring compliance.

Review of the ICJ's record likewise demonstrates the international system's influence in causing states to rely on the Court's procedure as a

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<sup>13</sup> Christof Maletsky, *Kasikili KO*, THE NAMBIAN (Dec. 14, 1999), available at <http://allafrica.com/stories/199912140122.html>.

<sup>14</sup> Cameroon v. Nigeria, 2002 I.C.J. 303.

<sup>15</sup> Llamzon, *supra* note 2, at 836.

<sup>16</sup> Territorial Dispute (Libya/Chad), 1994 I.C.J. 6 (Feb. 3).

<sup>17</sup> Llamzon, *supra* note 2, at 832.

<sup>18</sup> Colter Paulson, *Compliance with Judgments of the International Court of Justice since 1987*, 98 AM. J. INT'L L. 434, 443 (2004).

valid and necessary means for resolving disputes. A dispute submitted to the Court by Hungary and Slovakia is illustrative.<sup>19</sup> The case revolved around the Gabčíkovo-Nagymaros Project, a project solidified by a treaty between the two states.<sup>20</sup> Hungary abandoned the project;<sup>21</sup> but even so, the implications of the international treaty prompted Hungary to first submit the dispute to the ICJ, rather than baldly defy its obligations under the agreement.<sup>22</sup> Such an act affirms the influence that the international community and the presence of international agreements can have on settling disputes between states.

## 2. Presence of International Organizations

Article 94(1) of the United Nations Charter articulates member states' obligation to comply with ICJ decisions, expressly stating that "[e]ach member of the United Nations undertakes to comply with the decisions of the International Court in any case to which it is a party."<sup>23</sup>

The importance of active involvement in international organizations as a means for ensuring compliance with ICJ decisions is perhaps best shown in the previously mentioned case involving the Bakassi Peninsula.<sup>24</sup> In that case, Nigeria eventually agreed to abide by the Court's decision to award the disputed territory to Cameroon, despite initially rejecting it, largely due to the active efforts of United Nations.<sup>25</sup> Following Nigeria's open disapproval of the Court's decision, the international community exerted substantial pressure on Nigeria to comply, with the British High Commission of the United Kingdom stating to Nigeria: "[ICJ] judgments are binding and not subject to appeal. Nigeria has an obligation under the United Nations charter to comply with the judgment."<sup>26</sup> Through intensive mediation efforts,<sup>27</sup> "the United Nations played a pivotal role in the 'easing of tensions and renewing cordiality between Cameroon and

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<sup>19</sup> Gabčíkovo-Nagymaros Project (Hung./Slovk.), 1997 I.C.J. 7 (Sept. 25).

<sup>20</sup> *Id.* ¶¶ 15-22.

<sup>21</sup> *Id.*

<sup>22</sup> Special Agreement for Submission to the International Court of Justice of the Differences Between Them Concerning the Gabčíkovo-Nagymaros Project (Hung./Slovk.), 7 Apr. 1993, 32 I.L.M. 1293 (1993).

<sup>23</sup> U.N. Charter art. 94, ¶ 1.

<sup>24</sup> *See* Cameroon v. Nigeria, 2002 I.C.J. 303 (Oct. 10).

<sup>25</sup> Sara McLaughlin Mitchell & Paul R. Hensel, *International Institutions and Compliance with Agreements*, 51 AM. J. OF POL. SCI. 721, 725 (October 2007).

<sup>26</sup> Paulson, *supra* note 18, at n. 203 (citing *Agence France-Presse*, Doc. FBIS-AFR-2002-1025 (25 Oct. 2002)).

<sup>27</sup> Press Release, U.N. AFR/1397 (Cameroon), Nigeria Sign Agreement Ending Decades-Old Border Dispute (June 12, 2006).

Nigeria.”<sup>28</sup> At the request of both states, the United Nations set up a commission to “consider the implications of the verdict, protect the rights of the people in the affected areas, and propose a workable solution.”<sup>29</sup>

Likewise, in the dispute between El Salvador and Honduras over their land frontier, the legal status of maritime spaces, and sovereignty over certain islands,<sup>30</sup> each state affirmed its acceptance of the Court’s judgment following the decision and announced its intention to accept and comply with its obligations under Article 94(1).<sup>31</sup> Even when accusations of defiance arose,<sup>32</sup> both states continued to avow acceptance of the Court’s judgment and worked with international organizations to ensure that they achieved satisfactory compliance.<sup>33</sup>

In some cases, the presence of international organizations allows for the resolution of a dispute without a judgment. For example, in the case regarding the binding nature of an arbitral award on the maritime boundaries of Guinea-Bissau and Senegal, a final judgment on the delimitation of the maritime zone in question was never necessary because the parties reached a compromise.<sup>34</sup> An international agency for joint exploitation of the disputed area’s resources was established to assist in the implementation of the states’ agreement and to offer aid in the event that the cooperation was to break down.<sup>35</sup>

Aside from the significance of international organizations in forging compliance with decisions, their presence, like pressure from the international community, is also a significant moving force in validating the legitimacy of such organizations and codifying the authority of the ICJ to arbitrate international disputes. The *LaGrand*<sup>36</sup> and *Avena*<sup>37</sup> cases,

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<sup>28</sup> Kolade Larewaju, *UN Panel on Bakassi Meets Dec. 1*, VANGUARD (LAGOS), Nov. 29, 2002, available at <http://allafrica.com/stories/2002111290035.html>.

<sup>29</sup> Shakirat Abdulmajeed, *Bakassi Committee to Demarcate Border Set Up*, DAILYTRUST (AUJA), Dec. 4, 2002, available at <http://www.allafrica.com>.

<sup>30</sup> Land, Island and Maritime Frontier Dispute (El Sal./Hond.), 1992 I.C.J. 348 (Sep. 11).

<sup>31</sup> *Joint Communiqué of the Presidents of El Salvador and Honduras of 11 September 1992*, 38 Keesing’s Record of World Events AdG 39090 (1992).

<sup>32</sup> Letter dated 22 Jan. 2002 from the Charge’ d’Affaires ad interim of the Permanent mission of Honduras to the United Nations Addressed to the Secretary-General, U.N. Doc. S/2000/1142 (Dec. 1, 2002).

<sup>33</sup> *Id.*; see also Nikki Tait, *El Salvador Falls to Quash Border Ruling*, FINANCIAL TIMES, Dec. 19, 2003, at 11.

<sup>34</sup> Arbitral Award of 31 July 1989 (Guinea-Bissau v. Sen.), 1991 I.C.J. 53 (Nov. 12).

<sup>35</sup> *Protocol of agreement relating to the organization and operation of the agency for management and cooperation between the Republic of Guinea-Bissau and the Republic of Senegal instituted by the Agreement of 14 October 1993*, U.N. LOS BULL., No. 31, 42-58 (1996) (the parties undertook to establish this agency in Article 4 of the 1993 agreement).

<sup>36</sup> *LaGrand* (Ger. v. U.S.), 2001 I.C.J. 4 Judgment (June 27), available at <http://www.icj-cij.org/docket/files/104/7736.pdf>.

<sup>37</sup> *Avena and Other Mexican Nationals* (Mex. v. U.S.), 2003 I.C.J. 12 Judgment (Feb. 3), available at <http://www.icj-cij.org/docket/files/128/8188.pdf>.

concerning the United States' application of the Vienna Convention on Consular Relations,<sup>38</sup> provide examples. Both disputes were initiated and submitted to the ICJ through the Vienna Convention's Optional Protocol on Compulsory Settlement of Disputes, which the parties ratified<sup>39</sup> as a result of membership in the United Nations. Likewise, the recognition of an international tribunal like the ICJ can foster compliance in and of itself, as seen in the Sipadan-Ligitan Case.<sup>40</sup> Following an award of the disputed islands to Malaysia, the Indonesian Embassy announced that it would honor the obligation created by its submission to the Court and accept the decision as final and binding.<sup>41</sup>

The role of international organizations is brought full circle by considering cases like the dispute between Congo and Belgium over the legality of an arrest warrant issued by Belgium against a foreign minister of the Democratic Republic of the Congo.<sup>42</sup> Because the dispute was premised on alleged crimes against humanity and breaches of the 1949 Geneva Conventions and their 1977 Additional Protocols I and II,<sup>43</sup> Member State status accounted for the submission of the dispute to the ICJ. Grounded as a violation of that protocol, the ICJ's decision to validate the international warrant in question was interpreted in light of elucidations employed by international organs. The Court's reasoning in adjudicating the warrant's validity was based primarily on customary international law, as established by the international community and sustained by international organizations.<sup>44</sup>

The case also illustrates how the presence of and pressure from international organs contributes to active implementation of the Court's judgments once ordered. Belgium accepted the Court's ruling, withdrew the warrant, and made the required notifications on the day after the Court delivered its decision interpreting Belgium's obligations under the international organization of which it is a part.<sup>45</sup> Further, in 1993, Belgium

<sup>38</sup> Vienna Convention on Consular Relations, Apr. 24, 1963, 596 U.N.T.S. 261.

<sup>39</sup> Harry S. Clark, III, Note, *Determining the Remedy for Violations of Article 36 of the VCCR: Review and Reconsideration of the Clemency Process After Avena*, 38 GEO. WASH. INT'L L. REV. 131, 149 (2006).

<sup>40</sup> Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/ Malaysia), 2002 I.C.J. 625 Judgment (Dec. 17), *available at* <http://www.icj-cij.org/docket/files/102/7714.pdf>.

<sup>41</sup> Press Release, Minister of Foreign Affairs to the Republic of Indonesia, Following the Decision by the International Court of Justice on the Sipadan-Ligitan Case, (Dec. 17, 2002), *available at* <http://home.xtra.co.nz/hosts/indonesianembassy/PressRelease737-04-xii-2002.htm>.

<sup>42</sup> Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), 2002 I.C.J. 3 Judgment (Feb. 14), *available at* <http://www.icj-cij.org/docket/files/121/8126.pdf>.

<sup>43</sup> Leen De Smet & Frederik Naert, *Making or Breaking International Law? An International Law Analysis of Belgium's Act Concerning the Punishment of Grave Breaches of International Humanitarian Law*, 35 REVUE BELGE DE DROIT INTERNATIONAL 471, 491 (2002).

<sup>44</sup> See Arrest Warrant of 11 April 2000, *supra* note 42, ¶¶ 51-58.

<sup>45</sup> SCHULTE, *supra* note 9, at 269.



made fundamental changes to its laws on universal jurisdiction,<sup>46</sup> complying with its obligations under Article 94(1) and acting in conformity with the Court's reasoning.<sup>47</sup> The ICJ's legitimacy would be compromised absent the coercive power of the international regime as a means for ensuring that judgments are executed.

### 3. Reputation Costs

Reputation costs promote compliance in a manner similar to international community pressure and the presence of international organizations. When states resolve contentious issues with the assistance of international institutions, they are more likely to comply with agreements and orders due to "consideration for their reputation in future bargaining situations."<sup>48</sup> Active involvement with international organizations increases the prospects for compliance by raising reputation costs for reneging,<sup>49</sup> and pressure from the international community threatens reputational injury to states that circumvent ICJ judgments.<sup>50</sup> For example, although Libya initially rejected the Court's judgment in its territorial dispute with Chad, it eventually negotiated with Chad to reach an agreement for implementation.<sup>51</sup> Libya's open support of the Court's decision and accord with implementing it "greatly benefit[ed] Libya's international image and strengthened Libya's ties to other North African countries."<sup>52</sup>

Cases like the dispute between El Salvador and Honduras further exemplify states' cognizance of their perception within the international regime. Honduran allegations of Salvadoran misconduct and continuing border problems have suggested that El Salvador is not "completely fulfilling its obligation to execute the judgment reasonably and in good faith."<sup>53</sup> Notwithstanding that allegation, however, El Salvador has continued to publicly avow its acceptance of and compliance with the Court's judgment. Thus, even if El Salvador had not endeavored to comply with the judgment initially, reputation costs associated with noncompliance provoked the state to at least portray compliance to the international

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<sup>46</sup> *Id.* at 271.

<sup>47</sup> *Id.*

<sup>48</sup> Mitchell & Hensel, *supra* note 25, at 725.

<sup>49</sup> Beth A. Simmons & Daniel J. Hopkins, *International Law and State Behavior: Commitment and Compliance in International Monetary Affairs*, 94 AM. POL. SCI. R. 819, 828 (2000).

<sup>50</sup> Llamzon, *supra* note 2, at 832.

<sup>51</sup> Letter dated 13 Apr. 1994 from the Secretary-General Addressed to the President of the Security Council, U.N. Doc. S/1994/432, (13 Apr. 1994).

<sup>52</sup> *Libya Prepared to Withdraw from Aouzou Strip*, JANA NEWS AGENCY (TRIPOLI), Mar. 10, 1994, available at <http://www.w.ibru.dur.ac.uk>.

<sup>53</sup> Llamzon, *supra* note 2, at 828.

community — a representation that in fact has effectuated compliance with the Court's decision to a considerable extent,<sup>54</sup> even if inadvertently.

The influence of reputation can also be seen in more recent disputes, like that between Bosnia and Serbia regarding the prevention and punishment of the crime of genocide.<sup>55</sup> The Court found that Serbia had failed to prevent genocide and had flouted its obligations under the genocide convention by failing to punish the perpetrators.<sup>56</sup> The Court ordered Serbia to take immediate steps to detain wartime leader Radovan Karadzic and military commander Ratko Mladic for transfer to the United Nations' war crimes tribunal for trial.<sup>57</sup> The European Union announced that Serbia's admission would be withheld until these two perpetrators were detained, amplifying the reputational risks at stake for noncompliance.<sup>58</sup> As ordered, Karadzic was arrested in Belgrade in July 2008.<sup>59</sup> Although Mladic had not been arrested as of October 22, 2010, Belgrade avowed commitment to arresting him in accordance with the judgment.<sup>60</sup> That commitment was honored in May 2011, when Serbian war-crimes officials captured Mladic and delivered him to The Hague to stand trial.<sup>61</sup> The European Council formally made Serbia a candidate for membership in the European Union on March 1, 2012,<sup>62</sup> following President Herman Van Rompuy's announcement that the General Affairs Council had "examined and confirmed Serbia's progress" and recommended that Serbia be granted candidate status.<sup>63</sup>

The recently adjudicated dispute between Malaysia and Singapore over sovereignty of Pedra Branca<sup>64</sup> shows how reputation costs promote compliance, even where the decision is viewed as unfavorable to one or both sides. It further exemplifies the clout of political pressure to instill deference beyond mere ICJ judgments, but also for the ICJ procedure. The

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<sup>54</sup> *Id.*

<sup>55</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), 1996 I.C.J. 595 (July 11).

<sup>56</sup> Alexandra Hudson, *Serbia Cleared of Genocide*, REUTERS (Feb. 27, 2007), available at [http://www.reuters.com/article/2007/02/26/idUSL26638724\\_CH\\_2400](http://www.reuters.com/article/2007/02/26/idUSL26638724_CH_2400).

<sup>57</sup> *Id.*

<sup>58</sup> Dan Bilefsky and Doreen Caravajal, *Europe Tested as War Crimes Suspect Remains Free*, N.Y. TIMES, Oct. 22, 2010, at A1.

<sup>59</sup> *Profile: Ratko Mladic*, BBC NEWS (Jul. 31, 2008), available at <http://news.bbc.co.uk/2/hi/europe/1423551.stm>.

<sup>60</sup> Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/ Malaysia), 2002 I.C.J. 625 Judgment (Dec. 17).

<sup>61</sup> Press Release, Security Council, Security Council Press Statement on Arrest of Ratko Mladic, U.N. Press Release SC/10265 (May 27, 2011); Press Release, U.N. Secretary-General, Secretary-General Calls Mladic Arrest 'Significant Step' Towards Ending Impunity, SG/SM/13601 (May 26, 2011).

<sup>62</sup> Press Release, European Council, Serbia is granted EU candidate status (Mar. 1, 2012).

<sup>63</sup> Presidency Remarks, European Council, Remarks by President of the European Council Herman Van Rompuy after his meeting with President of Serbia Boris Tadic (Feb. 28, 20120).

<sup>64</sup> *Id.*

Court ruled that Pedra Branca is under Singapore's sovereignty. Although both Malaysia and Singapore agreed to respect and accept the Court's decision, the Malaysian Foreign Minister later said that his country had renewed its search for documents that it asserts would allow it autonomy over Pedra Branca.<sup>65</sup> In making the assertion, the Foreign Minister cited to a rule of the ICJ which allows for a case to be reviewed if new evidence is ascertained within ten years of the judgment.<sup>66</sup> This demonstrates the reverence that states have, not only for the judgments the Court hands down, but also for the *modus operandi* that the ICJ employs.

Proactive consideration of reputational effects as a factor in compliance is not limited to concern for international reputation costs alone. Following Indonesia's acceptance of the Court's judgment in the Sipadan-Ligitan case, for example, the Indonesian Embassy expressed hope that its positive reception to the decision would set a precedent in the Southeast Asian region and serve as an example for future interactions among countries in the region.<sup>67</sup> Indonesia's compliance can thus be attributed in part to the recognition of the effect that noncompliance could have in future bargaining situations, not only on itself, but on the region as a whole. Indonesia set a standard for compliance that raised, if not established, the reputation costs of noncompliance in the adjudication and resolution of future disputes by and between Southeast Asian countries.

Factors of external political influence are, more often than not, intertwined. For example, reconsider the previously discussed maritime boundary dispute between Guinea-Bissau and Senegal. Following the award, Senegal demanded compliance by Guinea-Bissau, but was impeded by Guinea-Bissau's contention that the award was unenforceable on substantive and procedural grounds.<sup>68</sup> Despite Guinea-Bissau's objections, however, obligatory pressure derived from the international community and the ubiquity of international organizations heightened the reputation costs

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<sup>65</sup> See *Malaysia, Singapore to accept ICJ's ruling on island*, THE STAR (April 18, 2008), available at <http://thestar.com.my/news/story.asp?file=/2008/4/18/courts/20991877&sec=courts; ICJ's ruling on Pedra Branca delivered on May 23>, CHANNEL NEWSASIA (April 30, 2008), available at <http://www.channelnewsasia.com/stories/singaporelocalnews/view/344623/1/.html>.

<sup>66</sup> *Malaysia not giving up hope on Batu Puteh yet*, THE STAR (June 1, 2008), available at <http://thestar.com.my/news/story.asp?file=/2008/6/1/nation/21421939&sec=nation>.

<sup>67</sup> Press Release, Minister of Foreign Affairs to the Republic of Indonesia, *supra* note 41.

<sup>68</sup> Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/ Malaysia), 2002 I.C.J. 625 at 56-57 ¶ 10 Judgment (Dec. 17).

associated with noncompliance and prompted Guinea-Bissau to initiate further proceedings with the Court, rather than disregard the judgment.<sup>69</sup>

### *B. Parties' Need for a Definitive Solution*

A second factor attributable to states' compliance with ICJ decisions is parties' subjective need to attain a definitive solution. The elements between states that most readily create a need to solve a dispute are shared interests in resolution, close relations, and military conflicts. States are more likely to seek resolution through the ICJ and abide by the Court's judgments if they have a shared policy interest in resolving the dispute or engage in close political or economic relations, or if there are existing or anticipated military conflicts. Judgments under such circumstances have not been met with defiance in the modern era.

#### 1. Shared Interest

In each of the internationally adjudicated disputes in the modern era in which a judgment has been reached, the parties have had some shared interest in settlement. The parties' shared interest often goes beyond a mere mutual interest in resolution. Rather, there exists some mutually collective concern that would benefit from, be addressed by, or be improved upon by dispute settlement. A judgment therefore accommodates both parties with respect to that mutual interest, even if the decision is more favorable to one party than the other.

In the *Kasikili/Sedudu Island* case,<sup>70</sup> for example, the need to resolve the issue of sovereignty over the territory was expedited by Botswana and Namibia's shared interest in preventing poaching in the area — an effort that had been complicated by the dispute.<sup>71</sup> Likewise in the *Gabčíkovo-Nagymaros Project* case, the bi-national venture at issue involved a joint investment by Hungary and Slovakia for the shared purpose of developing energy and navigation and protecting against floods.<sup>72</sup> Another illustrative example is the dispute between Malaysia and Indonesia over the Spidan and Ligitan islands, which are home to ecosystems that contain more than 3,000 species of fish and hundreds of

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<sup>69</sup> *See* *Maritime Delimitation between Guinea-Bissau and Senegal* (Guinea-Bissau v. Senegal) Application Instituting Proceedings (Mar. 12, 1991) *available at* <http://www.icj-cij.org/docket/files/85/6843.pdf>.

<sup>70</sup> *Kasikili/Sedudu Island* (Bots./Namib.), (Dec. 13, 1999) Judgment, *available at* <http://www.icj-cij.org/docket/files/98/7577.pdf>.

<sup>71</sup> SCHULTE, *supra* note 9, at 250.

<sup>72</sup> *Id.* at 240.

species of coral and which represent the “centre of one of the richest marine habitats in the world.”<sup>73</sup> Such ecosystems require administrative actions for their preservation, like the issuance of protective ordinances, which require that sovereignty be established in one state.<sup>74</sup>

Parties may also have a mutually shared interest in preventing a harmful rift in their relations. The case between Argentina and Uruguay regarding the construction of pulp mills on the Uruguay River<sup>75</sup> sought to settle an economic and public relations rift between those states with tourism and transportation industries that were affected.<sup>76</sup> In the territorial dispute between Libya and Chad, the states had shared economic and political interests in avoiding a direct confrontation, as Chad could have lost its economic help from Libya by publicizing Libyan adventurism in the region.<sup>77</sup>

Mutually shared resources also expedite the need for settlement. The dispute over sovereignty in the area between Greenland and Jan Mayen, for example, stemmed from a common interest in obtaining and protecting marine resources relied upon by the populations of Denmark<sup>78</sup> and Norway.<sup>79</sup> This impelled both states to delimitate the continental shelf and fishery zones so that the shared resources could be properly conserved and allocated. Similarly in the Pedra Branca case, Malaysia and Singapore had a shared economic interest in fishing and shipping in the contested territory.<sup>80</sup> Likewise in the dispute between Qatar and Bahrain, shared economic interests in petroleum, gas resources, and tourism in the area incited the need for a definitive solution.<sup>81</sup>

## 2. Close Relations

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<sup>73</sup> Fabio Spadi, *Pulau Ligitan and Pulau Sipadan: New Parameters for the Concept of Dependency in the Maritime Environment? The ICJ judgment of 17 December 2002*, 18 Int'l J. Mar. & Coastal L. 295, 310 (2003).

<sup>74</sup> Press Release, Minister of Foreign Affairs to the Republic of Indonesia, *supra* note 41.

<sup>75</sup> Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment (Apr. 20, 2010), available at <http://www.icj-cij.org/docket/files/135/15877.pdf>.

<sup>76</sup> Helsingin Sanomat, *Pulp mill dispute between Argentina and Uruguay intensifies*, HELSINGIN SANOMAT, INTERNATIONAL EDITION - BUSINESS AND FINANCE (April 12, 2006), <http://www.hs.fi/english/article/Pulp+mill+dispute+between+Argentina+and+Uruguay+intensifies/1135219507760>.

<sup>77</sup> *Id.*

<sup>78</sup> Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway), 1993 I.C.J. 38 (June 14), at 44-46, ¶¶ 13-14.

<sup>79</sup> *Id.* at 71, ¶ 74.

<sup>80</sup> Zakir Hussain, *Both sides agree on aid to ships, fishing: Spore, Malaysia to cooperate on safety and security issues in area, conduct joint survey works*, THE STRAITS TIMES (June 7, 2008), available at [http://www.straitstimes.com/Free/Story/STIStory\\_245192.html](http://www.straitstimes.com/Free/Story/STIStory_245192.html).

<sup>81</sup> Gulf Centre for Strategic Studies, *A New Dawn in Bahrain-Qatar Relations*, BAHRAIN BRIEF, VOL. 2 ISSUE 4 (2001), <http://www.bahrainbrief.gcss-eg.org/english/april-issue2001.htm>.

Where a close relationship exists, whether based on economics, cultural ties, history, or amiability, states are more likely to submit themselves to the ICJ and observe any judgment it devises. For example, during the proceedings over the Kasikili/Sedudu Island, Namibia and Botswana each stressed their commitments to good relations with one other.<sup>82</sup> Because of those good relations, both states were interested in a rapid settlement of the dispute and in removing the conflict as “an irritant of their relations.”<sup>83</sup> Likewise in the Sipadan-Ligitan dispute, bilateral relations between Indonesia and Malaysia prompted the two states to commit to a peaceful dispute settlement.<sup>84</sup> The Indonesian Embassy stated that such a commitment, which was largely attributed to the prompt and effective resolution of the dispute, “reflect[ed] the maturity in the interaction between the two States” and “could only be made possible within a conducive political environment both bilaterally and regionally.”<sup>85</sup> A similar interest existed more recently in the Pulp Mills on the Uruguay River case, where the economic and public relations rift caused by the dispute tainted otherwise amicable relations between Argentina and Uruguay.<sup>86</sup> Prior to the dispute, the parties shared many historical and cultural ties, and both states sought a quick resolution of the issue in order to prevent an unprecedented feud.<sup>87</sup>

This theme is consistent in cases in the modern era, as well as pre-*Nicaragua*. Good relations between disputing states encourage fast resolution and compliance, especially when those relations involve trade, industry, or some other fiscal endeavor. It does not follow, however, that conflicting relations between countries promote noncompliance. In the case of the boundary issue between Qatar and Bahrain,<sup>88</sup> for instance, the boundary dispute had soured the relations between the countries for decades.<sup>89</sup> Rather than promoting noncompliance, the Court’s decision offered a solution to the rift, ushered in a new era of cooperation between the two states, and strengthened ties throughout the region.<sup>90</sup>

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<sup>82</sup> See Statement of Albert Kawana on Behalf of Namibia before the Court on 15 February 1999, CR 99/01; Statement of Molosiwa L. Selepeng on behalf of Botswana before the Court on 22 February 1999, CR 99/06.

18/icjwww/idocket/ibona/ibonacr/ibona\_ocr9906\_19990222.html).

<sup>83</sup> SCHULTE, *supra* note 9, at 253.

<sup>84</sup> Press Release, Minister of Foreign Affairs to the Republic of Indonesia, *supra* note 41.

<sup>85</sup> *Id.*

<sup>86</sup> See Center for Human Rights and Environment, *Paper Pulp Mills*, available at [http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills).

<sup>87</sup> *Id.*

<sup>88</sup> Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Judgment (Mar. 16, 2001), available at <http://www.icj-cij.org/docket/files/87/6995.pdf>.

<sup>89</sup> See 24 Middle East Executive Reports (2002), No. 1, 8, *Qatar-Bahrain Border Dispute ended by World Court ruling*.

<sup>90</sup> SCHULTE, *supra* note 9, at 239.

### 3. Militarized Conflict

Fears of noncompliance often arise in disputes where military clashes are present. In spite of what seems to be substantial grounds for concern, such fears are unfounded.<sup>91</sup> Instead, armed clashes tend to induce the submission of international disputes to the arbitration of the ICJ,<sup>92</sup> and furthermore, the judgments rendered often foster cooperation and friendship between previously feuding states. This was seen in the dispute between Qatar and Bahrain, in which the Court settled a centuries-old dispute between the countries that had been described as one of “the most explosive disputes in the Persian Gulf.”<sup>93</sup>

In the dispute between El Salvador and Honduras over their land frontier, the legal status of maritime spaces, and sovereignty over certain islands, problems in implementation were foreseen from the outset due to hostility and conflict between the countries.<sup>94</sup> Each state, however, instantaneously announced that it would accept the decision.<sup>95</sup> Even as armed conflicts persisted in the Gulf’s waters,<sup>96</sup> both states accepted the Court’s judgment and proceeded to eradicate hostilities and work to implement the decision. Similarly, in the dispute between Libya and Chad, fears that Libya would refuse to remove its military force were also unfounded. Libya withdrew its troops from the area in question, in spite of its initial disapproval of the Court’s judgment.<sup>97</sup> The judgment has since been recognized as an important factor in concluding the widespread military activity that previously existed in the region.<sup>98</sup>

This trend has continued in recent cases. Maritime delimitation in the Black Sea<sup>99</sup> further exemplifies that even where conflict exists or is anticipated, a judgment can not only end the possibility of conflict, but can also foster cooperation and positive relations. Following the Court’s

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<sup>91</sup> *Id.* at 273.

<sup>92</sup> Llamzon, *supra* note 2, at 835.

<sup>93</sup> SCHULTE, *supra* note 9, at 234.

<sup>94</sup> Llamzon, *supra* note 2, at 826.

<sup>95</sup> *Id.*

<sup>96</sup> *See* Application for Revision of the Judgment of 11 Sept. 1992 in the Case Concerning the Land, Island, and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening) (El Salvador v. Honduras), 2003 ICJ Rep 392 (Dec. 18).

<sup>97</sup> *Id.* at 273.

<sup>98</sup> Press Release, Speech by H.E. Judge Rosalyn Higgins President of the International Court of Justice at the United Nations Security Council’s Thematic Debate on “Strengthening International Law,” (June 22, 2006) (“The Judgment of the Court in the Libya/Chad case marked the conclusion of years of military activity.”), *available at* <http://www.icj-cij.org/presscom/index.php?p1=6&p2=1&pr=1273&search=%22cases%22>.

<sup>99</sup> Maritime Delimitation in the Black Sea (Rom. v. Ukr.), Judgment (Feb. 3, 2009), *available at* <http://www.icj-cij.org/docket/files/132/14987.pdf>.

judgment regarding the disputed boundary, Ukrainian President Viktor Yuschenko stated that he considered the ruling “just and final” and hoped “the ruling open[ed] new opportunities for further fruitful cooperation in all sectors of the bilateral cooperation between Ukraine and Romania.”<sup>100</sup>

As these examples illustrate, modern era cases suggest that the presence of military conflict between parties to a dispute poses no threat to compliance, but rather provides for it. Additionally, even in situations where militarized conflict is neither present nor anticipated, a desire to maintain peace and prevent any such conflict from arising can be a factor of effective dispute resolution. Following the Sipadan-Ligitan case, for example, Indonesia expressed relief that the states had “avoided the possibility of an armed conflict and the potential losses resulting from it.”<sup>101</sup> Indonesian officials further commented that the parties’ resolution of the dispute was “a valuable investment in the development of a peaceful and prosperous region.”<sup>102</sup> The threat of armed conflict can thus serve as a motive for compliance, even between countries with a historically amicable relationship.

### C. *Substance of the Judgment*

The third factor affecting compliance, and one of the most significant in achieving it, is the substance of the judgment itself. Elements of the judgment that most readily effect compliance are the determinacy of the decision, the presence of compromise and cooperation, and whether the decision is in conflict with the self-interest of one or more of the parties. In modern era cases, ambiguous judgments or those in discord with a state’s self-interest cultivate the most problems for implementation, but states comply with such decisions nonetheless. On the other hand, judgments that entail compromise or allow for cooperative efforts are generally implemented with ease.

#### 1. Determinacy of Decision

In the dispute between El Salvador and Honduras, the slight noncompliance was largely attributable to the uncertainty left by the Court’s judgment.<sup>103</sup> The jurisdictional boundary mandated by the ICJ was

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<sup>100</sup> Yuschenko: *UN International Court Of Justice's Decision On Delimitation Of Black Sea Shelf Between Ukraine And Romania Just*, UKRAINIAN NEWS AGENCY (February 5, 2009), available at <http://un.ua/eng/article/178853.html>.

<sup>101</sup> Press Release, Minister of Foreign Affairs to the Republic of Indonesia, *supra* note 41.

<sup>102</sup> *Id.*

<sup>103</sup> Llamzon, note 2, at 828.



confused for some time, with both Nicaragua and El Salvador appearing to misinterpret the point at the mouth of the gulf where Honduran waters ended.<sup>104</sup> In considering such obstacles to implementation, especially in cases deemed as encountering noncompliance, it is important to note that delays which are not attributable to bad faith on either side do not constitute noncompliance in a strict sense. In the preceding case, for example, failure to implement the special agreement and demarcate the boundary appears to be more a problem of allocation of resources and practical issues, than of bad faith or resistance by either party.<sup>105</sup>

Another case that is illustrative of ambiguity acting as a barrier to compliance is the Court's decision in the Gabčíkovo-Nagymaros Project case.<sup>106</sup> In its judgment, the Court refrained from making any specific orders and instead imposed a duty on Hungary and Slovakia to negotiate the "modalities" of implementing the judgment in good faith.<sup>107</sup> The ambiguous order "did little to resolve the underlying dispute and arguably left the parties in the same position they were in before the case."<sup>108</sup> Prior to the case, the issue of sovereignty between Indonesia and Malaysia could not be overcome because of inconsistent written legal conventions and state practices handed down from the British and Dutch colonial authorities in 1891.<sup>109</sup> Thus, the inability to resolve the dispute was not caused by a failure to negotiate or cooperate, but rather by the existence of a legal doctrine which was open to various interpretations.<sup>110</sup>

These circumstances are indicative of the problems that confront disputing parties following an ambiguous judgment. The states are often unable to use the judgment to resolve their differences,<sup>111</sup> not because they refuse to comply, but because of a lack of direction on how to do so. As such, assessing compliance in accord with judgments is especially difficult.<sup>112</sup> It does not follow, however, that the presence of the aforesaid issues in implementation are signs of direct noncompliance. Rather, such instances stand for the proposition that determinant decisions cultivate compliance, whereas ambiguous decisions act as an obstacle to it.

While it is possible to procure compliance with a judgment in spite of ambiguity, discontent with this approach has been noted. To settle the

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<sup>104</sup> *Id.* at 828, n. 82.

<sup>105</sup> SCHULTE, *supra* note 9, at 274-75.

<sup>106</sup> *See* Gabčíkovo-Nagymaros Project (Hung./Slovk.), 1997 I.C.J. 7 (Sept. 25).

<sup>107</sup> Special Agreement for Submission to the International Court of Justice of the Differences Between Them Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), 32 I.L.M. (1993) 1293, 144-145 (Apr. 7).

<sup>108</sup> Llamzon, *supra* note 2, at 834.

<sup>109</sup> Press Release, Minister of Foreign Affairs to the Republic of Indonesia, *supra* note 41.

<sup>110</sup> *Id.*

<sup>111</sup> Llamzon, *supra* note 2, at 835.

<sup>112</sup> *Id.* at 834.

dispute between Nicaragua and Honduras over demarcation in the Caribbean Sea, the Court ordered the states to negotiate the course of the line between the existing endpoint of the land boundary in the mouth of the Coco River and the starting point determined in the judgment in good faith.<sup>113</sup> Although compliance has been achieved to date, the Court's decision to require "good faith" negotiations,<sup>114</sup> rather than ruling on the course itself, has met criticism.<sup>115</sup>

## 2. Conflicting Self-Interest Principles

As expected, another challenge to compliance occurs when a judgment is in direct conflict with the self-interest of one or more of the parties involved. Although unfavorable decisions may spur noncompliance initially, the modern era of cases has shown significant state deference to the role of the ICJ as an arbitrator in the settlement of international disputes. The following cases support the premise that states will comply with judgments even when they are contrary to their national interests.<sup>116</sup>

Recall the Bakassi Peninsula dispute between Cameroon and Nigeria. The Lake Chad basin contains significant resources,<sup>117</sup> and the Bakassi Peninsula has been an even greater source of tension because of its vast oil resources.<sup>118</sup> In its judgment, the Court awarded Cameroon the Lake Chad boundary, 30 villages, and the Bakassi Peninsula.<sup>119</sup> The order was incontestably in conflict with Nigeria's self-interest principles, and, not surprisingly, Nigeria issued an official statement following the decision rejecting parts of the judgment as "unacceptable."<sup>120</sup> Both parties acknowledged the substantial economic benefits available to the prevailing party, and the intensity of those benefits required considerably more assistance for compliance. Although coming to an agreement was more onerous, a "comprehensive resolution of the dispute"<sup>121</sup> that relied on the Court's demarcation was nonetheless reached through extensive

<sup>113</sup> Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea (Nicar. v. Hond.) 2007 I.C.J. 659, ¶ 321(4) (Oct. 8).

<sup>114</sup> *Id.*

<sup>115</sup> *Yuschenko: UN International Court Of Justice's Decision On Delimitation Of Black Sea Shelf Between Ukraine And Romania Just, supra* note 100.

<sup>116</sup> SCHULTE, *supra* note 9, at 273.

<sup>117</sup> *International Court Poised to Rule on Nigeria-Cameroon Border Dispute*, AGENCE FRANCE-PRESSE, Doc. FBIS-AFR-2002-1009 (Oct. 9, 2002).

<sup>118</sup> *Nigeria Hands Bakassi to Cameroon*, BBC NEWS REPORT (Aug. 14, 2006), available at <http://news.bbc.co.uk/2/hi/africa/4789647.stm>.

<sup>119</sup> *Cameroon: Bakassi: Why the ICJ Judgment is Unacceptable—Government*, AFRICA NEWS SERVICE (Oct. 24, 2002), available in Lexis, News Library, Allnews file.

<sup>120</sup> *Id.*

<sup>121</sup> See *Cameroon Nigeria Sign Agreement Ending Decades-Old Border Dispute*, UN Press Release AFR/1397 (June 12, 2006).

negotiations by a Cameroon-Nigeria Mixed Commission established by the United Nations. In the “forward-looking spirit of goodwill[,]”<sup>122</sup> eventual compliance was achieved and the Bakassi Peninsula was peaceably transferred to Cameroon, despite Nigeria’s clear self-interest in retaining the land’s resources.<sup>123</sup> United Nations Secretary-General Ban Ki-moon offered praise on the date of transfer, stating that “[t]he case . . . has proven the viability of a peaceful and legal settlement of border disputes, when it is done with the full support of the international community and in a spirit of mutual respect, good neighbourliness and cooperation.”<sup>124</sup>

The Court’s awards of sovereignty in the Kasikili/Sedudu Island case and the Pulau Ligitan and Pulau Sipadan Islands case also created a significant conflict to the self-interest of one of the disputing parties.<sup>125</sup> In each case, both states had an economic interest in developing tourism infrastructure in the disputed area, and neither country could proceed until sovereignty had been decided.<sup>126</sup> In the Court’s judgments, sovereignty over the Kasikili/Sedudu Island was awarded entirely to Botswana, and sovereignty over the Pulau Ligitan and Pulau Sipadan Islands was awarded to Indonesia. Although the awards clearly diverged from Namibia and Malaysia’s interests in the islands, both states nonetheless complied with the Court’s decision.

Another example is the recent case between Romania and Ukraine,<sup>127</sup> in which Romania was awarded a piece of land that contained considerable natural gas and petrol depositories and was significantly larger and more rich in resources than an adjacent piece of terrain awarded to Ukraine.<sup>128</sup> According to Volodymyr Vasylenko, Ukraine’s commissioner in the United Nations International Court, nearly all of the available oil and gas reserves were concentrated in the part of the sea shelf granted to

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<sup>122</sup> Agreement Between the Republic of Cameroon and the Federal Republic of Nigeria Concerning the Modalities of Withdrawal and Transfer of Authority in the Bakassi Peninsula, Cameroon-Nigeria, (Greentree Agreement) UNTS Registration No. I-45354 (June 12, 2006).

<sup>123</sup> *Nigeria Hands Bakassi to Cameroon*, BBC NEWS REPORT (Aug. 14, 2006), available at: <http://news.bbc.co.uk/2/hi/africa/4789647.stm>; *Nigeria hands over control of Bakassi Peninsula*, THE HAGUE JUSTICE PORTAL (Aug. 14, 2008), available at <http://www.haguejusticeportal.net/index.php?id=9635>.

<sup>124</sup> Press Release, UN Secretary-General, Agreement Transferring Authority over Bakassi Peninsula from Nigeria to Cameroon ‘Triumph for the Rule of Law,’ Secretary-General Says in Message for Ceremony, SG/SM/11745 AFR/1737 (Aug. 14, 2008).

<sup>125</sup> Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/ Malaysia), 2002 I.C.J. 625 Judgment (Dec. 17).

<sup>126</sup> SCHULTE, *supra* note 9, at 249-50.

<sup>127</sup> Maritime Delimitation in the Black Sea (Rom. v. Ukr.), Judgment (Feb. 3, 2009).

<sup>128</sup> *EU’s Black Sea Border Set in Stone*, EUOBSERVER (Feb. 3, 2009), available at <http://euobserver.com/24/27525>.

Romania.<sup>129</sup> Nonetheless, the line drawn was considered equitable between both parties and both have thus far complied.<sup>130</sup>

The tendency of compliance in instances where judgments favor one state's self-interest over another's, however, is not left to good manners alone. As discussed in the following section, cooperation is the primary means by which such decisions are eventually implemented.

### 3. Compromise and Cooperation

Decisions that represent a compromise between the wants of both states are more eagerly and easily complied with. In the boundary dispute between Qatar and Bahrain, for example, the countries had a shared economic interest in resolving the maritime and territorial issues. The Court's decision found a solution to the long-standing dispute that amplified both countries' fiscal opportunities.<sup>131</sup> The boundary defined by the Court over the disputed territories was a compromise, and each party considered itself a winner as a result.<sup>132</sup> This ensured compliance, despite the existence of centuries-old feuds between the states.<sup>133</sup> Similarly, in the boundary dispute between Romania and the Ukraine,<sup>134</sup> the Court's judgment allocated a larger portion of the disputed area to Romania, but it divided the marine area of the Black Sea along a line that was between the claims of each country and was therefore seen as equitable and acceptable.<sup>135</sup>

In some instances, a mutual interest between the parties may foster cooperation without an explicit Court order. Recall Malaysia and Singapore's shared interest in fishing and shipping in the dispute over Pedra Branca. The states agreed to establish a technical sub-committee to oversee the conduct of joint survey works to prepare the way for talks on maritime issues in and around the area. The states also agreed that if any incident occurred in and around the waters of Pedra Branca, Middle Rocks and South Ledge, either side would provide humanitarian assistance to the

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<sup>129</sup> *Ukraine gets bulk of oil, gas reserves in delimitation dispute with Romania, says commissioner to international court*, INTERFAX-UKRAINE (Feb. 3, 2009), available at <http://www.interfax.com.ua/eng/main/7163/>.

<sup>130</sup> *EU's Black Sea Border Set in Stone*, *supra* note 128.

<sup>131</sup> Gulf Centre for Strategic Studies, *A New Dawn in Bahrain-Qatar Relations*, BAHRAIN BRIEF, VOL. 2 ISSUE 4 (2001), available at <http://www.bahrainbrief.gcsc-eg.org/english/april-issue2001.htm>.

<sup>132</sup> SCHULTE, *supra* note 9, at 238.

<sup>133</sup> *Id.* at 234.

<sup>134</sup> Maritime Delimitation in the Black Sea (Rom. v. Ukr.), Judgment (Feb. 3, 2009).

<sup>135</sup> Press Release, International Court of Justice, The Court establishes the single maritime boundary delimiting the continental shelf and exclusive economic zones of Romania and Ukraine, (Feb. 3, 2009), available at <http://www.icj-cij.org/docket/files/132/14985.pdf>.

vessels involved.<sup>136</sup> The result of this cooperative effort was a solution that was advantageous to both states, allowing both Malaysian and Singaporean fishermen to continue traditional fishing activities in those waters.<sup>137</sup>

States frequently engage in cooperative efforts through their own initiatives as a means of implementing a decision of the Court. In the case of whether an arbitral award on the maritime boundaries of Guinea-Bissau and Senegal was binding,<sup>138</sup> both states expressed a new willingness to search for a comprehensive solution to the dispute following the Court's judgment.<sup>139</sup> After engaging in new negotiations premised by a desire for cooperation, Guinea-Bissau and Senegal concluded a management and cooperation agreement that provided for joint exploration of a specifically delimited maritime zone,<sup>140</sup> resulting in an equitable compromise that was suitable to both parties.<sup>141</sup> Consider also the case concerning the maritime delimitation of the area between Greenland and Jan Mayen,<sup>142</sup> where Denmark and Norway negotiated their own delimitation coordinates and formally agreed on them, rather than implementing the delimitation coordinates indicated by the Court.<sup>143</sup> Further, the agreement reached post-judgment regulated a sovereignty issue that was not touched on at all by the Court's decision.<sup>144</sup>

The trend in pursuing negotiations as a means to achieve compliance with the Court's orders has continued in cases as recently as the Pulp Mills dispute. Although the judgment was only recently handed down,<sup>145</sup> Argentina and Uruguay have engaged in extensive negotiations in order to effectuate compliance with the Court's judgment, which has led to substantial observance to date.<sup>146</sup>

Post-judgment implementation discussions are not only common, but may be dictated by the judgment itself, as in the recent case regarding the territorial and maritime dispute between Nicaragua and Honduras in the

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<sup>136</sup> Hussain, *supra* note 80.

<sup>137</sup> *Id.*

<sup>138</sup> Arbitral Award of 31 July 1989 (Guinea-Bissau v. Sen.), 1991 I.C.J. 53 (Nov. 12).

<sup>139</sup> SCHULTE, *supra* note 9, at 227.

<sup>140</sup> Management and Cooperation Agreement, Senegal-Guinea-Bissau, 14 October 1993, *available at* [http://untreaty.un.org/unts/120001\\_144071/18/6/00014934.pdf](http://untreaty.un.org/unts/120001_144071/18/6/00014934.pdf).

<sup>141</sup> MAURICE KAMTO, *Le contentieux de la frontière maritime entre la Guinée-Bissau et le Sénégal*, 101 *RGDIP* (1997), *translated in* SCHULTE, *supra* note 9, at 358-74.

<sup>142</sup> Maritime delimitation in the area between Greenland and Jan Mayen (Denmark v. Norway), 1993 I.C.J. 38 (June 14).

<sup>143</sup> SCHULTE, *supra* note 9, at 325-47.

<sup>144</sup> *Id.* at 223 (the exploitation of possible transboundary oil and gas fields).

<sup>145</sup> Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment (Apr. 20, 2010).

<sup>146</sup> Panos Merkouris, *Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay): Of Environmental Impact Assessments and "Phantom Experts"*, THE HAGUE JUSTICE PORTAL (July 15, 2010), <http://www.haguejusticeportal.net/eCache/DEF/11/878.html>.

Caribbean Sea.<sup>147</sup> The Court drew the boundary line and ordered the countries to negotiate in good faith the course of the line between the existing endpoint of the land boundary in the mouth of the Coco River and the starting point determined in the judgment.<sup>148</sup> To date, negotiations have allowed the states to agree on the course.<sup>149</sup> As previously discussed, however, such an open-ended assignment can be troublesome. Recall, for example, the Gabčíkovo-Nagymaros Project case. The parties began implementation discussions immediately following the 1997 judgment,<sup>150</sup> but negotiations broke down when Slovakia asserted that Hungary was not negotiating in good faith.<sup>151</sup>

As these cases demonstrate, a solution that encompasses a compromise between the interests of both parties tends to be obeyed. Whether the compromise is Court issued or agreed upon through prior or subsequent cooperation of the parties is irrelevant. States are always free to modify their rights through agreements, whether confirmed by adjudication or not, and the content of compliance is “first of all determined by the parties themselves.”<sup>152</sup> In response to the subsequent agreement reached between Libya and Chad regarding the Aouzou Strip, ICJ President Mohammed Bedjaoul offered accolades to the parties for “spar[ing] no effort to implement the Court’s Judgment without delay, and in a spirit of friendly understanding.”<sup>153</sup> Thus, one cannot speak of noncompliance in cases where the parties jointly modify their legal relations following a judgment and thereby change a regime adjudicated upon by the Court. Compromise and cooperation attained at any stage in the dispute resolution process serves as a sufficient, and significant indicator of compliance.

As discussed in the preceding section, there are some disputes in which the parties’ self-interests are clearly in conflict. Cooperation is a vital factor in ensuring compliance under such circumstances. Consider Libya’s initial rejection of the Court’s judgment regarding the Aouzou Strip, in which the entire area was awarded to Chad. Parties did not reach an agreement until subsequent negotiations occurred, after which Libya indicated that it would accept the Court’s decision and the countries notified the United Nations that they had reached an agreement on

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<sup>147</sup> Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea (Nicar. v. Hond.) 2007 I.C.J. 659, ¶ 321(4) (Oct. 8).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> Llamzon, *supra* note 2, at 833.

<sup>151</sup> *Id.*

<sup>152</sup> SCHULTE, *supra* note 9, at 274.

<sup>153</sup> Mohammed Bedjaoui, *The Place of the International Court of Justice in the General System for the Maintenance of Peace, as Instituted by the Charter of the United Nations*, I.C.J. YB 211 (1994-95).

implementation.<sup>154</sup> As noted in the foregoing description of the case, a compromise with regard to the autonomy of the disputed land was not reached. Nonetheless, Libya accepted the judgment. Such acceptance relates back to the first factor discussed herein: when all else fails, political pressure will force a state to succumb to a judgment of the Court, even when doing so is less than advantageous.

#### D. *Internal Political Influence*

Internal pressure for a country to defy a judgment is present in disputes where a judgment conflicts with some aspect of the state's political regime. Whether such internal pressure will arise and impede successful implementation depends on the merits of the decision.

##### 1. Political Regime as an Excuse for Noncompliance

In response to the Court's judgment in the land and maritime boundary dispute between Cameroon and Nigeria, Nigeria pled its Constitution's principles of federalism as a reason for noncompliance with parts of the judgment that it found unacceptable, namely, the Court's award of the Bakassi Peninsula to Cameroon.<sup>155</sup> Nigeria argued that its Constitution specified the area as territory of the nation of Nigeria and, as such, the federal government could not give up Bakassi until the requisite national and state assemblies amended the Constitution.<sup>156</sup> This assertion was deemed moot based on the advanced agreement made by both countries to respect any decision ordained by the ICJ.<sup>157</sup>

By contrast, two recent cases involving the United States' application of the Vienna Convention challenged the political regime of the United States and ultimately seemed to circumvent the trend toward compliance. In 2001, the United States executed two German nationals without first informing either of their right to communicate with German consular officials. In response, the ICJ required the United States to give Germany a general assurance that it would observe its obligations under the Vienna Convention going forward and would review and reconsider future convictions and sentences of German nationals sentenced to severe

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<sup>154</sup> Letter dated 13 Apr. 1994 from the Secretary-General Addressed to the President of the Security Council, UN Doc. S/1994/432, 33 I.L.M. 791 (1994).

<sup>155</sup> *Cameroon: Bakassi: Why the ICJ Judgment is Unacceptable—Government*, AFRICA NEWS SERVICE, Oct. 24, 2002. available in Lexis, News Library, Allnews file.

<sup>156</sup> *Id.*

<sup>157</sup> Llamzon, *supra* note 2, at 838.

penalties.<sup>158</sup> Despite having made Constitutional arguments against such obligations, the United States addressed the ICJ decision by setting up programs to promote understanding and observance of the Vienna Convention.<sup>159</sup> Further, the United States Department of State called for “strict compliance by law enforcement officials” and “has extensively coordinated with numerous federal agencies, as well as with states having large foreign populations.”<sup>160</sup>

The ICJ imposed a similar final judgment against the United States three years later. In that case, the Court ordered the U.S. to reconsider the sentences of Mexican nationals being held on death row.<sup>161</sup> The Court’s final judgment further stated that the ongoing program employed by the United States to improve consular notification was adequate.<sup>162</sup> The disposition of the case appeared to set a new tone for U.S. compliance with international obligations.<sup>163</sup> However, the Bush administration subsequently withdrew the United States from the Optional Protocol of the Vienna Convention, on which the ICJ rulings were based.<sup>164</sup> Nonetheless, the Supreme Court granted certiorari in the case of Jose Medellin, a Mexican national who was sentenced to death in the state of Texas without ever having been advised of his right to contact the Mexican consulate.<sup>165</sup> The President then issued a memorandum to the Attorney General ordering that “the United States . . . discharge its international obligations”<sup>166</sup> by granting review to those foreign convicts who were not afforded consular notice in accordance with the Vienna Convention.<sup>167</sup> The Supreme Court ultimately reviewed Medellin’s case and, further confusing the U.S. position, held that neither international treaty nor ICJ decisions are binding domestic law, and that, absent an act of Congress or Constitutional authority, the President of the United States lacks the power to enforce such treaties or decisions.<sup>168</sup>

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<sup>158</sup> Douglass Cassel, *International Remedies in National Criminal Cases: ICJ Judgment in Germany v. United States*, 15 LEIDEN INT’L L 69 (2002).

<sup>159</sup> See Jen Guccione, *On the Law—New Weapon in Defense: Foreign Consulates*, LA TIMES, 16 Nov. 2001, at B2.

<sup>160</sup> Llamzon, *supra* note 2, at 840.

<sup>161</sup> See *Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2003 I.C.J. 12 Judgment (Feb. 3).

<sup>162</sup> See *id.* ¶¶ 144-150.

<sup>163</sup> *Id.*

<sup>164</sup> Adam Liptak, *U.S. Says It Has Withdrawn from World Judicial Body*, NY TIMES, Mar. 10, 2005, at A16.

<sup>165</sup> Llamzon, *supra* note 2, at 842, n. 201.

<sup>166</sup> President George W. Bush, Memorandum for the Attorney General, Feb 28, 2005, *available at* <http://www.whitehouse.gov/news/releases/2005/02/20050228-18.html>.

<sup>167</sup> Llamzon, *supra* note 2, at 842.

<sup>168</sup> *Medellin v. Texas*, 552 U.S. 491, 128 S.Ct. 1346 (2008) (No. 06-984).



The Supreme Court's holding in *Medellin v. Texas* appears, at first glance, to render international obligations all but unenforceable in certain political regimes, like that of the United States. However, the Supreme Court stopped short of any *per se* rule regarding enforcement of international treaties and instead seemed to invoke a "retail level, treaty-by-treaty" approach.<sup>169</sup> Under this approach, treaties and judgments do not have an "*automatic* domestic legal effect,"<sup>170</sup> but may be nonetheless enforceable. In fact, the U.S. Supreme Court's decision appears to create something of a "loophole" in which Congress can pass a law requiring compliance with an international obligation,<sup>171</sup> and perhaps goes so far as suggesting that it do so. Several times, the decision "calls attention to the constructive role of federal implementing legislation," seeming to suggest that implementing such a law would be within U.S. Congressional authority.<sup>172</sup>

It is too soon to tell what the ultimate effect of this holding will have on United States' compliance with international obligations, but it certainly suggests that compliance is not only possible, but desired. The ambiguity and suggested escape route for implementing compliance with international obligations like *La Grand* and *Avena* offers a remedy for the complex predicament in which a state aspires to comply but is bound by its own political regime.

## 2. A Look at the Merits: International v. Domestic

It is important to acknowledge that political regime and related principles of sovereignty do not always result in compliance problems. As seen in the dispute between Cameroon and Nigeria, although political regime and autonomy have been asserted as excuses for noncompliance with judgments in the territorial or interpretive contexts, such claims are generally moot, so long as the state submitted itself to the Court's jurisdiction.<sup>173</sup> Threats to compliance resulting from political regime most often appear in criminal matters, where a judgment issued by the ICJ is in conflict with some procedural aspect of a party's domestic justice system.<sup>174</sup>

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<sup>169</sup> Steve Charnovitz, *Revitalizing the U.S. Compliance Power*, 102(3) AJIL 551 (July 2008).

<sup>170</sup> *Medellin*, 552 U.S. at 1360.

<sup>171</sup> Charnovitz, *supra* note 169, at 559.

<sup>172</sup> *Id.*

<sup>173</sup> *See* Cameroon v. Nigeria, 2002 I.C.J. 303 (Oct. 10).

<sup>174</sup> *See generally* Avena and Other Mexican Nationals (Mex. v. U.S.), 2003 I.C.J. 12 Judgment (Feb. 3); Arrest Warrant of 11 April 2000, *supra* note 42; LaGrand (Ger. v. U.S.), 2001 I.C.J. 4 Judgment (June 27); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), 1996 I.C.J. 595 (July 11).

Internal pressure to defy international judgments arises in matters of criminal procedure because the state's autonomy is directly challenged by an order that requires or prohibits something that unequivocally diverges from requirements of its own legal system. Whether a judgment that conflicts with a state's autonomy will be met with defiance depends on the extent to which the matter is an international affair. Modern era cases suggest that whether a criminal procedure issue constitutes an international matter depends on where the relevant conduct occurred domestically or on foreign soil.

The dispute between Bosnia and Serbia addressed the prevention and punishment of the crime of genocide.<sup>175</sup> The judgment ordered Serbia to arrest and try two of its citizens — an act that Serbia had not chosen to take on its own volition, but which it proceeded with upon order of the ICJ.<sup>176</sup> Although the perpetrators were Serbian, the crimes for which their arrest and trial were demanded took place outside of Serbia.<sup>177</sup> Because the crimes took place on foreign soil, and in light of the seriousness of the allegations, the dispute was undoubtedly international. Similarly, in the case between Belgium and the Democratic Republic of the Congo, the arrest warrant in dispute was issued by Belgium against a Foreign Minister not domiciled in Belgium, for crimes committed outside of its territory,<sup>178</sup> making its issuance clearly an international matter. These cases suggest that judgments that concern primarily international affairs, as opposed to domestic matters, can be adjudicated internationally without the threat of noncompliance.

The disputes presented in *Avena* and *LaGrand*, on the other hand, are not as explicitly international. In both cases, the final judgments imposed by the ICJ required the United States to comply with procedural obligations for prisoners being held in U.S. facilities after being convicted in U.S. courts for crimes committed while on U.S. soil.<sup>179</sup> The ICJ had jurisdiction over these disputes, as evidenced and acknowledged by the United States through its submission to the tribunal. Such judgments pose a much greater threat to state autonomy, however, because they are far more detached internationally than those judgments regarding the crime of genocide or the punishment of individuals who committed crimes and are domiciled on foreign soil. When a judgment presents such a direct

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<sup>175</sup> See Application of the Convention on the Prevention and Punishment of the Crime of Genocide, 1996 I.C.J. 595.

<sup>176</sup> Alexandra Hudson, *Serbia Cleared of Genocide*, REUTERS (Feb. 27, 2007), available at <http://uk.reuters.com/article/idUKL2525037520070227>.

<sup>177</sup> *Id.*

<sup>178</sup> See Arrest Warrant of 11 April 2000, *supra* note 42.

<sup>179</sup> See *Avena and Other Mexican Nationals*, 2003 I.C.J. 12.

challenge to and interference with a state's domestic legal justice system, the risk of noncompliance will be greater.

### III. Assessment

The cases considered in this paper can be divided into four topical categories: territorial disputes over sovereignty,<sup>180</sup> territorial disputes over a boundary line,<sup>181</sup> criminal procedure issues,<sup>182</sup> and disputes over interpretation.<sup>183</sup>

The only interpretation case considered in this assessment — the Arbitral Award judgment issued between Guinea-Bissau and Senegal — resulted in compliance. That outcome was not problematic due to the external political influences and cooperation implicated merely by submitting the issue to the Court for resolution. The act of submitting the case to the ICJ for interpretation following an order demonstrates willingness to comply and recognition of the award's legitimacy. It also reveals an acknowledgement of the reputation costs associated with defying the international community and its organizations. It is no surprise, then, that the ICJ's interpretation of the Arbitral Award was accepted and observed by both parties. Because the submission of a prior award for interpretation to the ICJ recognizes the Court's legitimacy and the need for deference to the international system, compliance in such cases, especially where cooperative efforts between the parties have been made, will be easily achieved.

Territorial dispute judgments issued for the purpose of establishing a boundary line are followed so long as the boundary demarcated is not ambiguous. An ambiguous decision may not affect the likelihood of compliance where the judgment is issued for the purpose of establishing sovereignty over a particular area and sufficient cooperative efforts take place between the states. Likewise, where a sufficiently determinant boundary line is established, cooperative efforts can act as a means for successful enforcement.<sup>184</sup> Cooperation as a means for effectuating an ambiguous delimitation, however, is less practical. Whereas good faith negotiations may act as a means to relieve ambiguities in a sovereignty judgment,<sup>185</sup> the problems for enforcement posed by ambiguity in

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<sup>180</sup> See Appendix C, Table 1, C-1.

<sup>181</sup> See *id.* at Table 2, C-1.

<sup>182</sup> See *id.* at Table 3, C-2.

<sup>183</sup> See *id.* at Table 4, C-2.

<sup>184</sup> See, e.g., *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, 1993 I.C.J. 38 (June 14).

<sup>185</sup> See, e.g., *Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea (Nicar. v. Hond.)* 2007 I.C.J. 659 (Oct. 8).

delimitation orders are often not related to autonomy principles, but rather to uncertainty and misunderstanding.<sup>186</sup> Ambiguous boundaries or instructions leave parties with little guidance as to how to proceed, which acts as a barrier to compliance and to future negotiations, even when proceeding in good faith.<sup>187</sup>

Parties comply with territorial dispute judgments establishing sovereignty over a particular area when the judgment is not in direct conflict with the self-interests of one or more of the parties.<sup>188</sup> It does not follow, however, that awards of sovereignty that directly conflict with a party's self-interest will always pose problems for compliance. Whether a state will disobey an order depends primarily on the relationship of the parties involved. In cases where the parties to the dispute have an amicable relationship and engage in close relations, compliance is not threatened by a conflict of self-interest.<sup>189</sup> Alternatively, where there is a history of hostility and militarized conflict between disputing parties, the party disadvantaged by the award will be resistant to accept it.<sup>190</sup> In each dispute where compliance was achieved despite conflicts to self-interest, there existed good relations and a shared mutual interest that served to be benefited by resolution.<sup>191</sup> A shared mutual interest did not have the same effect in preventing defiance where relations were hostile.<sup>192</sup> Conflicting self-interest principles also do not appear to have an effect on compliance with judgments establishing boundary lines.<sup>193</sup> Parties comply with delimitation decisions, so long as they are unambiguous, regardless of whether they are conflicting in nature.

Internal pressure to defy a judgment emerges when an order conflicts with some aspect of a state's political regime. Political regime and autonomy may be asserted as an excuse for noncompliance with judgments in the territorial or interpretive contexts, but such claims are generally moot where a state submitted itself to the Court's jurisdiction.<sup>194</sup>

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<sup>186</sup> *See, e.g.*, Land, Island and Maritime Frontier Dispute (El Sal./Hond.), 1992 I.C.J. 348 (Sep. 11).

<sup>187</sup> *See, e.g., id.*; Gabčíkovo-Nagymaros Project (Hung./Slovk.), 1997 I.C.J. 7 (Sept. 25).

<sup>188</sup> *Compare, e.g.*, Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment (Apr. 20, 2010), and Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) 2008 I.C.J. 12 (May 23), and Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea 2007 I.C.J. 659 (Oct. 8), with Cameroon v. Nigeria, 2002 I.C.J. 303 (Oct. 10), Territorial Dispute (Libya/Chad), 1994 I.C.J. 6 (Feb. 3).

<sup>189</sup> *See, e.g.*, Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), 2002 I.C.J. 625 Judgment (Dec. 17); Kasikili/Sedudu Island (Bots./Namib.), (Dec. 13, 1999) Judgment.

<sup>190</sup> *See, e.g.*, Cameroon v. Nigeria, 2002 I.C.J. 303; Territorial Dispute (Libya/Chad), 1994 I.C.J. 6 (Feb. 3).

<sup>191</sup> *See, e.g.*, Indonesia/Malaysia, 2002 I.C.J. 625; Kasikili/Sedudu Island (Bots./Namib.), (Dec. 13, 1999).

<sup>192</sup> Territorial Dispute (Libya/Chad), 1994 I.C.J. 6 (Feb. 3).

<sup>193</sup> *See, e.g.*, Maritime Delimitation in the Black Sea (Rom. v. Ukr.), Judgment (Feb. 3, 2009).

<sup>194</sup> *See* Cameroon v. Nigeria, 2002 I.C.J. 303.

Conflicts most often appear in criminal matters, where a judgment issued by the Court is at odds with some procedural aspect of a party's justice system.<sup>195</sup> Whether a judgment which conflicts with a state's autonomy will be met with defiance depends on the extent to which the matter is an international affair. Modern era cases suggest that whether an issue is sufficiently international depends on whether the relevant conduct occurred domestically or on foreign soil. If a judgment is a primarily international affair, as opposed to a domestic matter, it can be adjudicated internationally without threat of defiance.

#### IV. Continuing the trend toward compliance

As this paper demonstrates, the tendency of states in the modern era is to comply with decisions handed down by the ICJ. The risk of defiance arises predominantly in two instances. First, when a sovereignty award that directly conflicts with a party's self-interest is issued under hostile circumstances. Second, when a judgment conflicts with a party's domestic political regime and lacks international ties beyond a party's citizenship status.

##### A. *External Political Influence as an Enforcer of International Judgments*

In the first instance, external political influences will compel an initially defiant state to comply. Pressure from the international community and the presence of international organizations increase reputation costs for defiant states and thus produce compliance, even where an award is in direct conflict with a party's self-interest and where relations between parties are hostile. As demonstrated herein, even in those sovereignty disputes where a state was openly critical or publicly disavowed a judgment, subsequent pressure from the international community forced compliance.

Pressure from the international community raises the risk of consequential penalties, both regionally and internationally, for disobedient states, and leaves parties with few alternatives but to comply. The substantial reputational risks associated with noncompliance force dissatisfied parties to accept judgments, often turning to international organizations as a means for negotiating measures to be taken to satisfy the

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<sup>195</sup> See *Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2003 I.C.J. 12 Judgment (Feb. 3); *Arrest Warrant of 11 April 2000*, *supra* note 42; *LaGrand (Ger. v. U.S.)*, 2001 I.C.J. 4 Judgment (June 27); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro)*, 1996 I.C.J. 595 (July 11).

Court's judgment and achieving as much protection as can be reasonably expected for all parties to the dispute. Pressure from the international community coupled with active efforts by international organizations thus acts as an enforcement mechanism for international judgments by raising the reputation costs of defiance and offering protection and mediation for disputing parties.

These external political influences legitimize international decrees and the power of the international regime. Each time a judgment is issued, whether it is met with compliance or initial noncompliance, the presence of external political influences work to further inaugurate and stabilize the international system. As decisions continue to be implemented, whether independently or in response to external pressure, the international law regime gains authority. Continuing this trend over time will further establish international law, sustain international order, and promote the legitimacy of the international regime.

### *B. Establishing International Boundaries*

In the latter instance, where a judgment regarding a primarily domestic matter is in conflict with a party's own political regime, state sovereignty and autonomy principles will pose problems for compliance. The same risk of defiance does not occur, however, when the issue is sufficiently international. This discrepancy exposes the principal quandary plaguing the international law regime as a whole: the authority of a peripheral body of law to control individually autonomous states.

In cases that are truly international — for example, disputes involving sovereignty over a particular area or the procedure to be followed when engaging in relations that cross state lines — judgments are met with compliance. Despite the implications such compliance has for a state's sovereignty, the matter in dispute is international by its very nature and cannot be settled by the will of one state without the consent or cooperation of the other. It should be no surprise then, that states are willing to forfeit some autonomy to an international tribunal in cases where the tribunal is clearly better suited to arbitrate the dispute and implement a solution. It should likewise be no surprise that a state will be less likely to forfeit its autonomy to an international tribunal when the matter being adjudicated is primarily domestic in nature — for example, orders pertaining to domestic acts that are to be carried out domestically and are in conflict with the domestic system currently in place. External political influence may still provide states with an incentive to comply in such cases and states may, in fact, portray an appearance of compliance for that purpose. However, such a representation will often be unauthentic, as the state is not truly willing to

— or feels procedurally barred from — surrendering its sovereignty to such an extent.

Luckily, international judgments regarding primarily domestic conduct are rare. Most disputes adjudicated by the ICJ are sufficiently international to necessitate international arbitration. Where a matter seems to be questionably domestic, the ICJ should be cautious in its adjudication of the dispute. Impositions on conduct that is not sufficiently international poses a direct conflict to state sovereignty and indirect problems for the international regime as well. External political influences have done much to police international conduct and establish a regime in which international law and order are practical and accepted. The questionable infringements on state sovereignty can act to deter that development by bringing to the forefront the circumstances that pose the largest threat to international authority and make states most apprehensive to submit to the ICJ's jurisdiction.

The international law system is a regime based on the consent of the sovereign, and states are willing to consent to that regime for a price. That is, states are willing to forfeit some sovereignty to an international system, even if not in their best interest, in return for the safeguard of an international body to manage and protect international relations effectively. That exchange is threatened, however, where an international body impedes too far into a state's domestic relations and attempts to regulate that which the state will not — or, under its own legal precepts cannot — consent. In order to maintain the trend toward compliance and to continue establishing the legitimacy of the international regime, the ICJ needs to establish boundaries that conform to international law's oldest principle — *pacta sunt servanda*.

## Conclusion

Decisions of the International Court of Justice have been met with substantial compliance in the modern era. Direct, defiant noncompliance, where a state deliberately and ceaselessly rejects a decision of the Court and refuses to implement its judgment, has not occurred in any case. In cases where noncompliance has been present, the noncompliant behavior has been fleeting or slight.

Pressure from the international community and the presence of international organizations raise the reputation costs associated with noncompliance, thereby minimizing the risk of disobedience with judgments. Defiant noncompliance occurs where a judgment is in discord with a state's self-interest or threatens its autonomous regime. Problems for implementation may also occur where judgments are ambiguous, but

such complications are not a result of defiance. Instances of noncompliance can be cured if the subject matter is sufficiently international and there is ample external political pressure, especially where the presence of a mutually shared interest, a close relationship, or an extant or anticipated military conflict has increased the state's need for a definitive solution. Judgments that entail compromise or allow for cooperative efforts are more easily implemented, regardless of whether the compromise is designated by the Court's judgment or, alternatively, is achieved through subsequent cooperation between the parties.

In order to continue the trend toward compliance, international organizations and the international community must continue to act as enforcers of international decisions by exerting pressure on defiant parties and raising reputation costs associated with noncompliance. Further, the international law regime must remain a system of sovereign states operating on a theory of consent in which a proper balance is achieved between the sovereignty sacrificed and the international safeguards secured as a result.



## Appendix A LIST OF CASES CONSIDERED

| <u>Year</u><br><u>Initiated:</u> | <u>Judgment</u><br><u>Date: (m-d-y)</u> | <u>Claimants:</u>                                  | <u>Subject:</u>  | <u>Category:</u>  |
|----------------------------------|---|--|--|---|
| 2006                             | 04-20-2010                              | Argentina v. Uruguay                               | Pulp Mills on the River Uruguay  | Territorial dispute (sovereignty issue)                   |
| 2004                             | 02-03-2009                              | Romania v. Ukraine                                 | Maritime Delimitation in the Black Sea   | Territorial dispute (boundary line)                       |
| 2003                             | 05-23-2008                              | Malaysia/ Singapore                                | Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge         | Territorial dispute (sovereignty issue)                   |
| 2003                             | 03-31-2004                              | Mexico v. United States of America                 | Avena and Other Mexican Nationals  | Criminal procedure  |
| 2002                             | 07-12-2005                              | Benin/Niger  | Frontier Dispute   | Territorial dispute (boundary line)                       |
| 2000                             | 02-14-2002                              | Democratic Republic of the Congo v. Belgium        | Arrest Warrant of 11 April 2000  | Criminal procedure  |
| 1999                             | 10-08-2007                              | Nicaragua v. Honduras                              | Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea | Territorial dispute (boundary line and sovereignty issue) |
| 1999                             | 06-21-2007                              | Germany v. United States of America                | LaGrand  | Criminal procedure  |
| 1998                             | 10-23-2001                              | Indonesia/ Malaysia                                | Sovereignty over Pulau Ligitan and Pulau Sipadan                                     | Territorial dispute (sovereignty issue)                   |
| 1996                             | 12-13-1999                              | Botswana/ Namibia                                  | Kasikili/Sedudu Island   | Territorial dispute (sovereignty issue)                   |
| 1994                             | 06-11-1998                              | Cameroon v. Nigeria: Equatorial Guinea intervening | Land and Maritime Boundary between Cameroon and Nigeria                              | Territorial dispute (sovereignty issue)                   |
| 1993                             | 09-25-1997                              | Hungary/Slovakia                                   | Gabčíkovo-Nagymaros  | Territorial   |

|      |            |   | Project   |   |
|------|------------|---|---|---|
| 1993 | 07-11-1996 | Bosnia and Herzegovina v. Serbia and Montenegro | Application of the Convention on the Prevention and Punishment of the Crime of Genocide | dispute (boundary line)<br>Criminal procedure |
| 1991 | 07-01-1994 | Qatar v. Bahrain                                | Maritime Delimitation and Territorial Questions   | Territorial dispute (boundary line)           |
| 1990 | 02-03-1994 | Libyan Arab Jamahiriya/ Chad                    | Territorial Dispute   | Territorial dispute (sovereignty issue)       |
| 1989 | 11-12-1991 | Guinea-Bissau v. Senegal                        | Arbitral Award of 31 July 1989  | Interpretation issue                          |
| 1988 | 06-14-1993 | Denmark v. Norway                               | Maritime Delimitation in the Area between Greenland and Jan Mayen                       | Territorial dispute (boundary line)           |
| 1986 | 09-13-1992 | El Salvador/ Honduras: Nicaragua intervening    | Land, Island and Maritime Frontier Dispute  | Territorial dispute (boundary line)           |

## Appendix B

### CASES EXCLUDED FROM CONSIDERATION

| <u>Year</u><br><u>Initiated:</u> | <u>Claimants:</u>                               | <u>Subject:</u>  | <u>Reason for Exclusion:</u>  |
|----------------------------------|---|--|---|
| 2010                             | Burkina Faso/Niger                              | Frontier Dispute   | <i>Case is still pending</i>  |
| 2010                             | Australia v. Japan                              | Whaling in the Antarctic   | <i>Case is still pending</i>  |
| 2009                             | Belgium v. Switzerland                          | Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters                            | <i>Case is still pending</i>  |
| 2009                             | Honduras v. Brazil                              | Certain questions concerning diplomatic relations  | <i>Case is still pending</i>  |
| 2008                             | Germany v. Italy                                | Jurisdictional Immunities of the State   | <i>Case is still pending</i>  |
| 2008                             | Former Yugoslav Republic of Macedonia v. Greece | Application of the Interim Accord of 13 September 1995   | <i>Case is still pending</i>  |
| 2008                             | Georgia v. Russian Federation                   | Application of the International Convention on the Elimination of All Forms of Racial Discrimination | <i>Case is still pending</i>  |
| 2008                             | Ecuador v. Colombia                             | Aerial Herbicide Spraying  | <i>Case is still pending</i>  |
| 2008                             | Peru v. Chile                                   | Maritime Dispute   | <i>Case is still pending</i>  |
| 2006                             | Commonwealth of Dominica v. Switzerland         | Status vis-à-vis the Host State of a Diplomatic Envoy to the United Nations                          | <i>Case is still pending</i>  |
| 2006                             | Djibouti v. France                              | Certain Questions of Mutual Assistance in Criminal Matters   | <i>Judgment is not one in which compliance can be evaluated</i>                                 |
| 2005                             | Costa Rica v. Nicaragua                         | Dispute regarding Navigational and Related Rights  | <i>There has not been sufficient time to adjudge compliance since Judgment on July 13, 2009</i> |
| 2003                             | Republic of the Congo v. France                 | Certain Criminal Proceedings in France   | <i>Case is still pending</i>  |
| 2002                             | Democratic Republic of the Congo v.             | Armed Activities on the Territory of the Congo   | <i>Case was discontinued without any prior judgment</i>   |

|      |   |   |   |
|------|---|---|---|
|      | Rwanda  |   | <i>on the merits</i>  |
| 2002 | El Salvador/Honduras: Nicaragua intervening (El Salvador v. Honduras) | Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute                                     | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i>                   |
| 2001 | Nicaragua v. Colombia   | Territorial and Maritime Dispute  | <i>Judgment is not one in which compliance can be evaluated</i>                                   |
| 2001 | Bosnia and Herzegovina v. Yugoslavia                                  | Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i>                   |
| 2001 | Liechtenstein v. Germany  | Certain Property  | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i>                   |
| 1999 | Croatia v. Serbia   | Application of the Convention on the Prevention and Punishment of the Crime of Genocide   | <i>Judgment has been made regarding jurisdiction, but no Judgment has been made on the merits</i> |
| 1999 | Yugoslavia v. United States of America                                | Legality of Use of Force  | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i>                   |
| 1999 | Yugoslavia v. Spain   | Legality of Use of Force  | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i>                   |
| 1999 | Serbia and Montenegro v. United Kingdom                               | Legality of Use of Force  | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i>                   |
| 1999 | Serbia and Montenegro v. Portugal                                     | Legality of Use of Force  | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i>                   |
| 1999 | Serbia and Montenegro v. Netherlands                                  | Legality of Use of Force  | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i>                   |
| 1999 | Serbia and Montenegro v. Italy  | Legality of Use of Force  | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i>                   |
| 1999 | Serbia and Monténégro v.  | Legality of Use of Force  | <i>Claim was rejected on the basis of lack of jurisdiction</i>                                    |

|      |  |   |   |
|------|--|---|---|
|      | Germany  |   | <i>or admissibility</i>   |
| 1999 | Serbia and Montenegro v. France                        | Legality of Use of Force  | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i> |
| 1999 | Serbia and Montenegro v. Canada                        | Legality of Use of Force  | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i> |
| 1999 | Pakistan v. India                                      | Aerial Incident of 10 August 1999   | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i> |
| 1999 | Democratic Republic of the Congo v. Uganda             | Armed Activities on the Territory of the Congo  | <i>Case was discontinued without any prior judgment on the merits</i>           |
| 1998 | Republic of Guinea v. Democratic Republic of the Congo | Ahmadou Sadio Diallo  | <i>Compliance may not yet be evaluated</i>                                      |
| 1998 | Cameroon v. Nigeria                                    | Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i> |
| 1995 | Spain v. Canada  | Fisheries Jurisdiction  | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i> |

|      |  |   |  |
|------|--|---|--|
| 1992 | Islamic Republic of Iran v. United States of America | Oil Platforms   | <i>Claim was rejected with no positive statement beyond that rejection could possibly imply a duty of acceptance and implementation (the Court's statement did not trigger an obligation of compliance because the Court ultimately did not find a breach)</i> |
| 1992 | Libyan Arab Jamahiriya v. United States of America   | Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie | <i>Case was removed from the Court's list at the joint request of the parties</i>  |
| 1992 | Libyan Arab Jamahiriya v. United Kingdom             | Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie | <i>Case was removed from the Court's list at the joint request of the parties</i>  |
| 1991 | Portugal v. Australia                                | East Timor  | <i>Claim was rejected on the basis of lack of jurisdiction or admissibility</i>  |
| 1989 | Nauru v. Australia                                   | Certain Phosphate Lands in Nauru  | <i>Case was discontinued without any prior judgment on the merits</i>  |
| 1987 | United States of America v. Italy                    | Elettronica Sicula S.p.A. (ELSI)  | <i>Claim was rejected with no positive statement beyond that rejection could possibly imply a duty of acceptance and implementation (the applicant lost on the basis of substantive law)</i>   |
| 1986 | Nicaragua v. Honduras                                | Border and Transborder Armed Actions  | <i>Case was discontinued without any prior judgment on the merits</i>  |

## Appendix C COMPLIANCE BY CATEGORY

**Table 1. *Territorial Disputes (sovereignty)***

| <u>Case:</u>   | <u>Initial:</u> | <u>End:</u> |
|--|-----------------|-------------|
| Argentina v. Uruguay (Pulp Mills on the River Uruguay)   | Yes             | Yes         |
| Malaysia/ Singapore (Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge)           | Yes             | Yes         |
| Indonesia/ Malaysia (Sovereignty over Pulau Ligitan and Pulau Sipadan)                                       | Yes             | Yes         |
| Botswana/ Namibia (Kasikili/Sedudu Island)   | Yes             | Yes         |
| Cameroon v. Nigeria: Equatorial Guinea intervening (Land and Maritime Boundary between Cameroon and Nigeria) | No              | Yes         |
| Libyan Arab Jamahiriya/ Chad (Territorial Dispute)   | No              | Yes         |

**Table 2. *Territorial Disputes (boundary line)***

| <u>Case:</u>   | <u>Initial:</u> | <u>End:</u> |
|--|-----------------|-------------|
| Romania v. Ukraine (Maritime Delimitation in the Black Sea)  | Yes             | Yes         |
| Benin/Niger (Frontier Dispute)   | Yes             | Yes         |
| Nicaragua v. Honduras (Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea) | Yes             | Yes         |
| Hungary/Slovakia (Gabčíkovo-Nagymaros Project)   | Yes *           | Yes *       |
| Qatar v. Bahrain (Maritime Delimitation and Territorial Questions between Qatar and Bahrain)                 | Yes             | Yes         |
| Denmark v. Norway (Maritime Delimitation in the Area between Greenland and Jan Mayen)                        | Yes             | Yes         |
| El Salvador/ Honduras: Nicaragua intervening (Land, Island and Maritime Frontier Dispute)                    | Yes *           | Yes *       |

\*Compliance is difficult to ascertain as a result of ambiguity in the requirements of the decision.

**Table 3. *Criminal Procedure Issues***

| Case:   | Initial: | End: |
|---|----------|------|
| Mexico v. United States of America (Avena and Other Mexican Nationals)  | Yes      | No   |
| Democratic Republic of the Congo v. Belgium (Arrest Warrant of 11 April 2000)   | Yes      | Yes  |
| Germany v. United States of America (LaGrand)   | Yes      | Yes  |
| Bosnia and Herzegovina v. Serbia and Montenegro (Application of the Convention on the Prevention and Punishment of the Crime of Genocide) | Yes      | Yes  |

**Table 4. *Interpretation of Prior Award***

| Case:   | Initial: | End: |
|---|----------|------|
| Guinea-Bissau v. Senegal (Arbitral Award of 31 July 1989) | Yes      | Yes  |



## Appendix D

FIGURESFigure 1. *Influence of Factors by Case*

| <u>KEY</u><br>+ = POSITIVE EFFECT ON COMPLIANCE<br>- = NEGATIVE EFFECT ON COMPLIANCE<br>NE = NO EFFECT ON COMPLIANCE | EXTERNAL POLITICAL INFLUENCE  |                                 |                  | NEED FOR A DEFINITIVE SOLUTION |                 |                      | SUBSTANCE OF THE JUDGMENT |                            |                            | INTERNAL POLITICAL INFLUENCE |
|--|-------------------------------|---------------------------------|------------------|--------------------------------|-----------------|----------------------|---------------------------|----------------------------|----------------------------|------------------------------|
|  | Pressure from Int'l Community | Presence of Int'l Organizations | Reputation Costs | Shared Mutual Interest         | Close Relations | Militarized Conflict | Ambiguous Decision        | Conflicting Self-Interests | Compromise and Cooperation |                              |
| Argentina v. Uruguay (Pulp Mills on the River Uruguay)   |                               |                                 |                  | +                              | +               |                      |                           |                            | +                          |                              |
| Romania v. Ukraine (Maritime Delimitation in the Black Sea)  |                               |                                 |                  |                                |                 |                      | +                         | NE                         | +                          |                              |
| Malaysia/ Singapore (Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge)                   |                               |                                 | +                | +                              |                 |                      |                           |                            | +                          |                              |
| Mexico v. United States of America (Avena and Other Mexican Nationals)   | +                             | +                               | +                |                                |                 |                      |                           |                            |                            | -                            |
| Benin/Niger (Frontier Dispute)   |                               | +                               |                  |                                |                 |                      |                           |                            |                            |                              |
| Democratic Republic of the Congo v. Belgium (Arrest Warrant of 11 April 2000)  |                               | +                               | +                |                                |                 |                      |                           |                            |                            | NE                           |
| Nicaragua v. Honduras (Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea)         |                               |                                 |                  |                                |                 |                      | NE                        |                            | +                          |                              |
| Germany v. United States of America (LaGrand)  | +                             | +                               | +                |                                |                 |                      |                           |                            |                            | NE                           |
| Indonesia/ Malaysia (Sovereignty over Pulau Ligitan and Pulau Sipadan)   |                               | +                               | +                | +                              | +               |                      |                           | NE                         |                            |                              |

|   |   |   |   |   |   |   |  |  |        |        |
|---|---|---|---|---|---|---|--|--|--------|--------|
|   |   |   |   |   |   |   |  |  |        |        |
| Botswana/ Namibia (Kasikili/Sedudu Island)  | + |   |   | + | + |   |  |  | N<br>E |        |
| Cameroon v. Nigeria: Equatorial Guinea intervening (Land and Maritime Boundary between Cameroon and Nigeria)                              | + | + |   |   |   | + |  |  | -      | -      |
| Hungary/Slovakia (Gabčíkovo-Nagymaros Project)  | + | + | + | + |   |   |  |  | -      |        |
| Bosnia and Herzegovina v. Serbia and Montenegro (Application of the Convention on the Prevention and Punishment of the Crime of Genocide) | + | + | + |   |   |   |  |  |        | N<br>E |
| Qatar v. Bahrain (Maritime Delimitation and Territorial Questions)  |   |   |   | + |   | + |  |  |        | +      |
| Libyan Arab Jamahiriya/ Chad (Territorial Dispute)  | + |   | + | + |   | + |  |  | -      | +      |
| Guinea-Bissau v. Senegal (Arbitral Award of 31 July 1989)   | + | + | + |   |   |   |  |  |        | +      |
| Denmark v. Norway (Maritime Delimitation in the Area between Greenland and Jan Mayen)   |   |   |   | + |   |   |  |  |        | +      |
| El Salvador/ Honduras: Nicaragua intervening (Land, Island and Maritime Frontier Dispute)   |   | + | + |   |   | + |  |  | -      |        |

Figure 2. *Prevalence of Factors Effectuating Compliance*

