1. GENERAL INTRODUCTION

The history of the international adjudication largely confirms the view that once the States accept the jurisdiction of a Court and agree to appear before it for the settlement of their disputes, they as a matter of fact accept its judgment even if it is adverse to their interest.

Oscar Schacter points out:

“There are not more than a few cases out of many hundreds, which have involved the refusal by the losing party to give effect to an award rendered”.¹

In numerous cases no information is available about the compliance or non-compliance with international awards and no effort has thus far been made to fill this void. There is nothing to substantiate the general assumption that most of these decisions have been accepted and executed.

According to Schacter:

“Should there be a wider acceptance of compulsory jurisdiction-as through compromissory clauses in treaties or declarations under Article 36, para 2 of the Statute-the chances of non-performance would almost certainly increase, for it is evident that a State would not then be as prepared to accept an adverse decision as where it had agreed to the submission of a particular dispute”.

What the States have done towards execution of the judgments rendered and the measures that are available for the enforcement of the judgments is mainly the subject matter of analysis in this Chapter.

2. VERDICTS AND THEIR IMPLEMENTATIONS

2.1 Some significant Contentious Cases

(i) Corfu Channel Case

This dispute, which gave rise to three judgments by the Court, arose out of the explosions of mines by which some British Warships suffered damage while passing through the Corfu Channel in 1946, in a part of the Albanian waters which had been previously swept. The Court found that Albania was responsible under international law for the explosions that had taken place in Albanian water and for the damage and loss of life which had ensued. Albania, for its part, had submitted a counter-claim against the United Kingdom accusing the latter having violated Albanian Sovereignty by carrying out mine sweeping operations in Albanian waters after the explosions. The Court found that mine sweeping had violated Albanian Sovereignty because it had been carried out against the will of the Albanian Government. In a further judgment the Court ordered Albania to pay £844,000 as amount of reparation.

The United Kingdom had no Albanian Assets in their territory which could be attached in partial satisfaction of the Corfu damages. All efforts of the United Kingdom to recover the judgment having been unsuccessful because of all its attempts to reach an agreement with Albania through private negotiations, having failed, the United Kingdom sought the help of France and the United States in obtaining certain monetary gold, claimed by Albania, as partial satisfaction of the judgment.

(ii) Anglo-Norwegian Fisheries Case

In 1935 Norway enacted a decree by which it reserved certain fishing grounds situated off its northern coast for the exclusive use of its own fishermen.

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The question at issue was whether this decree which laid down a method of drawing the baselines, from which the width of the Norwegian territorial water had to be calculated, was valid as per international law. The Court found that, contrary to the submissions of the United Kingdom, neither the method nor the actual baselines stipulated by the 1935 decree were contrary to international law.

The British representative declared, “The decision which the Court has given is in favour of Norway on all the points in dispute. The Government of the United Kingdom will accept as binding on itself and will legally abide by the decision of the Court.... as it would have accepted a decision in its favour.”

United Kingdom stood to consider the effect of the decision as a precedent of general application.

(iii) Asylum Case

The granting of asylum in the Colombian embassy at Lima to a Peruvian National Victor Raul Haya de La Torre, a political leader accused of having instigated a military rebellion, was the subject of a dispute between Peru and Colombia, which the parties agreed to submit to the Court. The Court held that Colombia was not entitled unilaterally to decide whether it was a political offence or a common crime and that the territorial State was not bound to afford the necessary guarantee to enable the refugee to leave the country in safety. The Court also found that asylum was granted in violation of Havana Convention.

On the very day on which the Court delivered the judgment, Colombia filed a request for interpretation, seeking a reply to the question of whether the judgment implied an obligation to surrender the refugee to the Peruvian authorities. The Court declared the request inadmissible.

(iv) Haya-de la Torre Case

This case was instituted by means of a fresh application. Immediately after the judgment of 1950, Peru had called upon Colombia to surrender Mr. Haya de La Torre. Colombia refused to do so. The Court in its judgment declared that

although the Havana Convention expressly prescribed the surrender of common criminals to the Local authorities, no obligations of the kind, existed in regard to political offenders, while confirming that asylum had been irregularly granted and that on this ground Peru was entitled to demand its termination, the Court declared that Colombia was not bound to surrender the refugee.

After the judgment of the Court Peru demanded the surrender of Haya de la Torre for trial on charges of armed rebellion and refused mediation by friendly Governments. The Colombian Embassy, remained under siege in order to prevent the escape of the political refugee. Resultantly Haya de la Torre was detained as a virtual prisoner and exile in his own Country, this made the life of the Colombian Embassy officials in Peru extremely complicated and difficult. The relations between the two Countries also deteriorated greatly. Colombia decided to defend the institution of unilateral asylum and Peru after long delay and protracted negotiations and under the weight of World public opinion agreed to give safe conduct to Haya de la Torre.

(v) Rights of Nationals of United States of America in Morocco

By a decree of 30 December, 1948, the French authorities in the Moroccon Protectorate imposed a system of licence control in respect of imports not involving an official allocation of currency, and limited these imports to a number of products indispensable to the Moroccon Economy. The United States maintained that this measure affected its rights under treaties with Morocco and contended that no Moroccon law or regulation could be applied to its nationals in Morocco, without its previous consent. The Court held that the import controls were contrary to the treaty between United States and Morocco and they involved discrimination in favour of France against the United States. Soon after this judgment was delivered, French Government rescinded the decree which had been impugned by the Court.

(vi) Anglo-Iranian Oil Co (United Kingdom v. Iran)\(^9\)

In 1933 an agreement was concluded between the Government of Iran and the Anglo-Iranian Oil Company. In 1951, laws were passed in Iran for the nationalization of the oil industry. These laws resulted in a dispute between Iran and the company. The United Kingdom took up the company’s case and instituted proceedings before the Court. Iran disputed the Court’s jurisdiction. In its Judgment of 22 July 1952, the Court decided that it had no jurisdiction to deal with the dispute. Its jurisdiction depended on the declarations by Iran and the United Kingdom accepting the Court’s compulsory jurisdiction under Article 36, paragraph 2, of the Court’s Statute. The Court held that the declaration by Iran, which was ratified in 1932, covered only disputes based on treaties concluded by Iran after that date, whereas the claim of the United Kingdom was directly or indirectly based on treaties concluded prior to 1932. The Court also rejected the view that the agreement of 1933 was both a concessionary contract between Iran and the company and an international treaty between Iran and the United Kingdom, since the United Kingdom was not a party to the contract. The position was not altered by the fact that the concessionary contract was negotiated through the good offices of the Council of the League of Nations. By an Order of 5 July 1951, the Court had indicated interim measures of protection, that is, provisional measures for protecting the rights alleged by either party, in processing already instituted, until a final judgment was given. In its judgment, the Court declared that the Order had ceased to be operative.

(vii) Nottebohm (Liechtenstein v. Guatemala)\(^10\)

In this case, Liechtenstein claimed restitution and compensation from the Government of Guatemala on the ground that the latter had acted towards Friedrich Nottebohm, a citizen of Liechtenstein, in a manner contrary to international law. Guatemala objected to the Court’s jurisdiction but the Court overruled this objection in a Judgment of 18 November 1953. In a second Judgment, of 6 April 1955, the Court held that Liechtenstein’s claim was

\(^10\) I.C.J. Reports 1953, p.41.
inadmissible on grounds relating to Mr. Nottebohm’s nationality. It was the bond of nationality between a State and an individual which alone conferred upon the State the right to put forward an international claim on his behalf. Mr. Nottebohm, who was then a German national, had settled in Guatemala in 1905 and continued to reside there. In October 1939, after the beginning of the Second World War, while on a visit to Europe, he obtained Liechtenstein nationality and returned to Guatemala in 1940, where he resumed his former business activities until his removal as a result of war measures in 1943. On the international plane, the grant of nationality was entitled to recognition by other States only if it represented genuine connection between the individual and the State granting its nationality. Mr. Nottebohm’s nationality, however, was not based on any genuine prior link with Liechtenstein and the object of his naturalization was to enable him to acquire the status of a neutral national in time of war. For these reasons, Liechtenstein was not entitled to take up his case and put forward an international claim on his behalf against Guatemala.

(viii) Right of Passage over Indian Territory Case

The Portuguese possessions in India included the two enclaves of Dadra and Nagar Haveli, which in mid-1954, passed under an autonomous local administration. Portugal claimed that it had a right of passage to those enclaves and between one enclave and the other to the extent necessary for the exercise of sovereignty and subject to the regulation and control of India, it also claimed that, in July 1954 contrary to the practice previously followed, India had prevented it from exercising that right and that situation should be redressed. The Court found that Portugal had in 1954 the right of passage claimed by it but that such right did not extend to armed forces, armed police, arms and ammunition, and that India had not acted contrary to the obligation imposed on it by the existence of that right.

Portugal in this case considered itself victorious since its right of passage was allowed by the Court and India felt triumphant because the Court disallowed passage to Portuguese armed forces and ammunition to pass over its territory. It got the opportunity to integrate these enclaves at a later date, into its Union which it did also.

(ix) Sovereignty over Certain Frontier Land

The dispute in this case related to the Sovereignty over two isolated plots of land, situated like small islands within Dutch territory, near the boundary of the Netherlands and Belgium. The matter was submitted to the Court by special agreement concluded between the parties in 1957. The Court decided that, according to the Boundary Convention of 1843, between the two Countries, the two points belonged to Belgium. With the judgment in the case a dispute of over a Century long standing was brought to an end, and the issue of Sovereignty was resolved.

(x) Case Concerning the Arbitral Award Made by the King of Spain on (23 December, 1960)

There was a convention between Honduras and Nicaragua of 1894, for the demarcation of the limits between the two Countries, one of the Articles of which provided that, in certain circumstances, any points of boundary line which were left unsettled should be submitted to the decision of the Government of Spain. In October 1904 the king of Spain was asked to determine the part of the frontier line. The king gave his award on 23 December, 1906. Nicaragua contested the validity of the award. Both the countries submitted the dispute to the Court on this matter. Honduras claimed that failure by Nicaragua to give effect to the arbitral award constituted a breach of an international obligation and asked the Court to declare that Nicaragua was under an obligation to give effect to the award. The Court held that the award was binding and that Nicaragua was under an obligation to give effect to it.

Despite its strong dislike of the award Nicaragua made an immediate declaration of its preparedness to comply with the Court’s decision. It took steps towards demarcation of the territory and settlement of the rights concerning acquired private property in the erstwhile disputed area and transfer of the inhabitants, who did not want to come under the jurisdiction of Honduras, to Nicaraguan territory by holding bilateral negotiations with Honduras. In a short time boundary markers were erected along the separating line and thus a long and bitter border dispute was peacefully settled on definitive basis.

(x) The Temple of Preah Vihear Case

Cambodia complained that Thailand occupied a piece of its territory surrounding the ruins of the Temple of Preah Vihear, a place of pilgrimage and worship for Cambodians, and asked the Court to declare that territorial sovereignty belonged to it and that Thailand was under an obligation to withdraw the armed detachment stationed there since 1954. In its judgment on merits the Court found that Thailand was under an obligation to withdraw any military or police force stationed there and to restore any objects removed from the ruins since 1954.

Thailand felt that the Judgment of the Court had not done justice to it. It also complained that its allies the United States, France and United Kingdom had voted against it. However, this did not obstruct the execution of the Judgment and Thailand peacefully handed over the temple to Cambodia in 1963. In return Cambodia gifted the Statues and other religious relics to Thailand and declared that it permitted the Thais to visit and worship at the Shrine without any border formalities or hindrance. Ever since the relations between the two Countries are on way to improvement and the dispute has not shown signs of reappearance.

(xii) North Sea Continental Shelf Case

These cases concerned the delimitation of the continental shelf of the North Sea as between the Netherlands and the Federal Republic, and were submitted to the Court by special agreement. The Court rejected the contention that the

The delimitation in question had to be carried out in accordance with the principle of equidistance as defined in the 1958 Geneva Convention on the continental shelf. The Court took account of the fact that the Federal Republic had not ratified that convention and held that the equidistance principle was not inherent in the basic concept of continental shelf rights and that this principle was not a rule of customary international law.

In spite of their differences with the judgment given by the Court the parties honoured it and agreed to abide by it.

(xiii) JCAO Council Case\textsuperscript{16}

In February 1971, following an incident involving the diversion to Pakistan of an Indian Aircraft, India suspended over flights of its territory by Pakistan Civil Aircraft. Pakistan took the view that this action was in breach of the 1944 Convention on International Civil Aviation and International Air Services Transit Agreement and complained to the Council of International Civil Aviation organization.

India raised preliminary objections, but these were rejected and India appealed to the Court. Pakistan contended interalia that the Court was not competent to hear the appeal. The Court found that it was competent to hear the appeal and that the Council had jurisdiction to deal with Pakistan’s case.

By the decision of the Court to refer back the case to ICAO Council for a decision, the parties and the Organization were guided for coming together and resolving the problem amicably.

(xiv) Pakistani Prisoners Case\textsuperscript{17}

In May 1973, Pakistan instituted proceedings against India concerning 195 Pakistani Prisoners of war whom, according to Pakistan, India proposed to hand over to Bangladesh, which was said to intend trying them for acts of genocide and crimes against humanity. India stated that there was no legal basis for the Court’s jurisdiction in the matter and the Pakistan’s application was without legal effect. Pakistan having also filed a request for the indication of interim measures of

\textsuperscript{16} India v. Pakistan, I.C.J. Reports 1972, p.46.
\textsuperscript{17} Pakistan v. India, I.C.J. Reports 1973, p.347.
protection the Court held public sittings to hear observations on this subject, India was not represented at the hearings. In July 1973, Pakistan asked the Court to postpone further consideration of its request in order to facilitate negotiations. Before any written pleadings had been filed, Pakistan informed the Court that negotiations had taken place and requested the Court to record discontinuance of the proceedings. Accordingly the case was removed from the list by an order of 15 December, 1973.

The time made available by the trial enabled subsidization of the problem and with the signing of the “Simla Agreement of 1972” the entire dispute was satisfactorily resolved.

(xv) Fisheries Jurisdiction Cases

On 14 April and 5 June, 1972 respectively, the United Kingdom and the Federal Republic of Germany instituted proceedings against Iceland concerning a dispute over the proposed extension by Iceland, as from 1 September, 1972 of the limits of its exclusive fisheries jurisdiction from a distance of 12 to a distance of 50 nautical miles. In a Judgment given on 2 February, 1973, the Court found that it possessed jurisdiction, and in judgments of 25 July, 1974, it found that the Icelandic Regulations constituting a unilateral extension of exclusive fishing rights to a limit of 50 nautical miles were not opposable to either the United Kingdom or the Federal Republic, that Iceland was not entitled unilaterally to exclude their fishing vessels from the disputed area, and that the parties were under mutual obligation to undertake negotiation in good faith for the equitable solution of their differences.

(xvi) Nuclear Tests Cases

On 9 May, 1973 Australia and Newzealand each instituted proceedings against France concerning tests of nuclear weapons which France proposed to carry out in the atmosphere in the South Pacific Region. At the Request of Australia and Newzealand, the Court indicated interim measures of protection to the effect, inter alia, that pending judgment France should avoid nuclear tests

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causing radioactive fall-out on Australia or Newzealand territory. In its judgment the Court found that the applications of Australia and Newzealand no longer had any object and that it was therefore not called upon to give any decision thereon.

During the currency of the case announcement by French President abandoning nuclear testing in the atmosphere, provided the Court an opportunity to declare the case moot and this brought the conflict between France and Australia and Newzealand to resolution without further incidents.

(xvii) Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)\(^\text{20}\)

On 23 September 1958, Belgium instituted proceedings against Spain in connection with the adjudication in bankruptcy in Spain, in 1948, of the above-named company, formed in Toronto in 1911. The application stated that the company’s share-capital belonged largely to Belgian nationals and claimed that the acts of organs of the Spanish State whereby the company had been declared bankrupt and liquidated were contrary to international law and that Spain, as responsible for the resultant damage, was under an obligation either to restore or to pay compensation for the liquidated assets. In May 1960, Spain filed preliminary objections to the jurisdiction of the Court, but before the time-limit fixed for its observations and submissions thereon Belgium informed the Court that it did not intend to go on with the proceedings. Accordingly, the case was removed from the List by an Order of 10 April 1961.


Belgium had ceased pursuing the aforementioned case on account of efforts to negotiate a friendly settlement. The negotiations broke down, however, and Belgium filed a new application on 19 June 1962. The following March, Spain filed four preliminary objections to the Court’s jurisdiction, and on 24 July 1964 the Court delivered a Judgment dismissing the first two but joining the others to the merits. After the filing, within the time-limits requested by the parties, of the

pleadings on the merits and on the objections joined thereto, hearings were held from 15 April to 22 July 1969. Belgium sought compensation for the damage claimed to have been caused to its nationals, shareholders in the Barcelona Traction, Light and Power Company, Ltd., as the result of acts contrary to international law said to have been committed by organs of the Spanish State. Spain, on the other hand, submitted that the Belgian claim should be declared inadmissible or unfounded. In a Judgment delivered on 5 February 1970, the Court found that Belgium had no legal standing to exercise diplomatic protection of shareholders in a Canadian company in respect of measures taken against that company in Spain. The Court accordingly rejected Belgium’s claim.

(xix) Frontier Dispute (Burkina Faso v. Mali) 22

On 14 October 1983 Burkina Faso (then known as Upper Volta) and Mali notified to the Court a special agreement referring to a Chamber of the Court the question of the delimitation of part of the land frontier between the two States. This Chamber was constituted by an Order of 3 April 1985. Following grave incidents between the armed forces of the two countries, both parties submitted parallel requests to the Chamber for the indication of interim measures of protection. The Chamber indicated such measures by an Order of 10 January 1986. The oral proceedings took place in June 1986, and the Chamber delivered its judgment on 22 December 1986 which fixed the frontier line between Burkina Faso and Mali in the disputed area accepting the line as defined in the Special Agreement of 16 September 1983. By an Order of 9 April 1987 the Chamber pursuant to Article IV, paragraph 3, of the Agreement, nominated three experts to assist the Parties in the operation of their frontier demarcation as indicated in the judgment. Both the parties welcomed the decision and are implementing the judgment.

(xx) The Nuclear Test (New Zealand v. France) 22 Sept.1995

In this case the court observed the conclusion that that Judgment dealt exclusively with atmospheric nuclear tests; that consequently it is not possible for the Court now to take into consideration questions relating to underground nuclear

tests; and that the Court cannot, therefore, take account of the arguments derived by New Zealand, on the one hand from the conditions in which France has conducted underground nuclear tests since 1974, and on the other from the development of international law in recent decades—and particularly the conclusion, on 25 November 1986, of the Noilmea Convention—any more than of the arguments derived by France from the conduct of the New Zealand Government since 1974. It finally observes that its Order is without prejudice to the obligations of Sties to respect and protect the natural environment, obligations to which both New Zealand and France have in the present instance reaffirmed their commitment.

(xxi) KasikiliI-Sedudu Island (Botswana v. Namibia) 3 December 1999

The Court notes that under the terms of Article I of the Special Agreement it is asked to determine the boundary between Namibia and Botswana around KasikiliSedudu Island and the legal status of the Island "on the basis of the Anglo-German Treaty of 1 July 1890 and the rules and principles of international law". After summarizing the arguments advanced by each of the Parties the Court observes that they agree between themselves that acquisitive prescription is recognized in International law and that they further agree on the Conditions under which title to territory may be acquired by prescription, but that their views differ on whether those conditions are satisfied in this case. Their disagreement relates primarily to the legal inferences which may be drawn from the presence on KasikiliSedudu Island of the Masubia of Eastern Caprivi: while Namibia bases its argument primarily on that presence, considered in the light of the concept of "indirect rule", to claim that its predecessors exercised title-generating State authority over the Island, Botswana sees this as simply a "private" activity, without any relevance in the eyes of international law.

(xxii) Aerial Incident (Pakistan v. India) 10 August 1999, Judgment of 21 June 2000

In its judgment in the case concerning the Aerial Incident of 10 August 1999 (Pakistan v. India), by a vote of fourteen to two, the Court declared that it
had no jurisdiction to adjudicate upon the dispute brought before it by Pakistan against India.

Thus the final decision of court in this regard Finally, the Court recalls that its lack of jurisdiction does not relieve States of their obligation to settle their disputes by peaceful means. The choice of those means admittedly rests with the parties under Article 33 of the United Nations Charter. They are nonetheless under an obligation to seek such a settlement, and to do so in good faith in accordance with Article 2, paragraph 2, of the Charter. As regards India and Pakistan, that obligation was restated more particularly in the Simla Accord of 2 July 1972. Moreover, the Lahore Declaration of 21 February 1999 reiterated “the determination of both countries to implementing the Simla Agreement”. Accordingly, the Court reminds the Parties of their obligation to settle their disputes by peaceful means, and in particular the dispute arising out of the aerial incident of 10 August 1999, in conformity with the obligations which they have undertaken.


On 10 September 2002 the Republic of El Salvador (hereinafter “El Salvador”) submitted a request to the Court for revision of the Judgment delivered on 11 September 1992 by the Chamber of the Court formed to deal with the case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (I.C.J. Reports 1992, p. 351). In this case the court’s the Chamber states that it agrees with El Salvador’s view that, in order to determine whether the alleged “new facts” concerning the avulsion of the Goascorán, the “Carta Esférica” and the report of the El Activo expedition fall within the provisions of Article 61 of the Statute, they should be placed in context, which the Chamber has done. However, the chamber recalls that, under that Article, revision of a judgment can be opened only by “the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence”. Thus, the Chamber
cannot find admissible an application for revision on the basis of facts which El Salvador itself does not allege to be new facts within the meaning of Article 61. The full text of the dispositif (para. 60) reads as follows:

“For these reasons, THE CHAMBER, By four votes to one, Finds that the Application submitted by the Republic of El Salvador for revision, under Article 61 of the Statute of the Court, of the Judgment given on 11 September 1992, by the Chamber of the Court formed to deal with the case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), is inadmissible.

(xxiv) Maritime Delimitation in the Black Sea (Romania v. Ukraine) 16 Sept. 2004

Regarding this case Romania filed an Application instituting proceedings against Ukraine in respect of a dispute “concern[ing] the establishment of a single maritime boundary between the two States in the Black Sea, thereby delimiting the continental shelf and the exclusive economic zones appertaining to them”. In its Application Romania states that on 2 June 1997 Ukraine and itself signed a Treaty on Relations of Co-operation and Good-Neighbourliness, as well as an Additional Agreement, by which the two States committed themselves to finding agreement on the above-mentioned matters. Both instruments entered into force on 22 October 1997. Romania contends that negotiations held since 1998 have been inconclusive.

Finally in this case, The Court, Unanimously, Decides that starting from Point 1, as agreed by the Parties in Article 1 of the 2003 State Border Régime Treaty, the line of the single maritime boundary delimiting the continental shelf and the exclusive economic zones of Romania and Ukraine in the Black Sea shall follow the 12-nautical-mile arc of the territorial sea of Ukraine around Serpents’ Island until Point 2 (with co-ordinates 45° 03' 18.5" N and 30° 09' 24.6" E) where the arc intersects with the line equidistant from Romania’s and Ukraine’s adjacent coasts. From Point 2 the boundary line shall follow the equidistance line through Points 3 (with co-ordinates 44° 46' 38.7" N and 30° 58' 37.3" E) and 4 (with co-ordinates 44° 44' 13.4" N and 31° 10' 27.7" E) until it reaches Point 5 (with co-
ordinates 44° 02' 53.0" N and 31° 24' 35.0" E). From Point 5 the maritime boundary line shall continue along the line equidistant from the opposite coasts of Romania and Ukraine in a southerly direction starting at a geodetic azimuth of 185° 23' 54.5" until it reaches the area where the rights of third States may be affected.

(xv) Certain Questions concerning Diplomatic Relations (Honduras v. Brazil) Case removed from the Court’s List at the request of Honduras on October 28, 2009

The Republic of Honduras filed a case in the International Court of Justice against the Federative Republic of Brazil.

Honduras alleged that Brazil has been housing Mr. Zelaya, President of Honduras until his removal by the military in June 2009, in the Brazilian embassy in Tegucigalpa since September. Honduras further alleged that Brazil was allowing Zelaya and his followers to use the embassy as a platform to spread political propaganda that threatened the peace in Honduras, at a time when Honduras was preparing for presidential elections. The application also claimed that the Brazilian embassy staff were allowing Mr. Zelaya to use the embassy premises and resources to evade the jurisdiction of the Brazilian authorities. Honduras asked the Court to find that Brazil did not have the right to allow the embassy premises to be used by Honduran citizens for illegal activities in violation of Article 2(7) of the U.N. Charter regarding the principle of nonintervention in the domestic affairs of another State and in violation of the 1961 Vienna Convention on Diplomatic Relations. Honduras reserved the right to ask for provisional measures as well as damages for breach of Brazil's international obligations.

We did not think much of this legal challenge against Brazil. Brazil, for its part, never even responded.

Apparantly Honduras has now concluded that it would not have won its case against Brazil, or perhaps it simply had no further reason to pursue the litigation.
In a letter received by the International Court of Justice on May 3, 2010, the Minister for Foreign Affairs of Honduras informed the Court that the Honduran Government was “not going on with the proceedings” against Brazil and that “in so far as necessary, the Honduran Government accordingly [was] withdraw[ing] this Application from the Registry. After noting that the Brazilian Government had not taken any step in the proceedings in the case, the President of the ICJ he recorded the discontinuance by Honduras and ordered that the case be removed from the Court’s list of cases.


The Court begins by recalling that, on 29 September 2005, the Republic of Costa Rica (hereinafter “Costa Rica”) filed in the Registry of the Court an Application instituting proceedings against the Republic of Nicaragua (hereinafter “Nicaragua”) with regard to a “dispute concerning navigational and related rights of Costa Rica on the San Juan River”. Finally in this case, Judge ad hoc Guillaume agrees with the Court’s Judgment when it recognizes that Nicaragua has the power to regulate Costa Rica’s exercise of its right of free navigation, and in particular to require that Costa Rican vessels and their passengers stop at Nicaraguan border posts. However, he differs from the Court as regards the issuing of visas; unlike the Court, he takes the view that Nicaragua remains free to make access to its territory conditional on visas being issued. He notes that the Court has acknowledged that Nicaragua has the right to refuse access for reasons connected with the maintenance of public order or protection of the environment. But he considers it to have been necessary to go further by recognizing the lawfulness of a visa system which is organized in practice so as not to prejudice free navigation on the river.


On 9 January 2006, the Republic of Djibouti (hereinafter “Djibouti”) filed in the Registry of the Court an Application, dated 4 January 2006, against the French Republic (hereinafter “France”) in respect of a dispute: “concerning the
refusal by the French governmental and judicial authorities to execute an international letter rogatory regarding the transmission to the judicial authorities in Djibouti of the record relating to the investigation in the Case against X for the murder of Bernard Borrel, in violation of the Convention on Mutual Assistance in Criminal Matters between the [Djiboutian] Government and the [French] Government, of 27 September 1986, and in breach of other international obligations borne by [France] to . . . Djibouti”. As regards the final submissions of the Republic of Djibouti on the merits,

(a) Unanimously, Finds that the French Republic, by not giving the Republic of Djibouti the reasons for its refusal to execute the letter rogatory presented by the latter on 3 November 2004, failed to comply with its international obligation under Article 17 of the Convention on Mutual Assistance in Criminal Matters between the two Parties, signed in Djibouti on 27 September 1986, and that its finding of this violation constitutes appropriate satisfaction;

(b) By fifteen votes to one, Rejects all other final submissions presented by the Republic of Djibouti.


The Court observed that, on 5 June 2008, the United Mexican States (hereinafter “Mexico”) filed in the Registry of the Court an Application instituting proceedings against the United States of America (hereinafter “the United States”), whereby, referring to Article 60 of the Statute and Articles 98 and 100 of the Rules of Court, it requests the Court to interpret paragraph 153 (9) of the Judgment delivered by the Court on 31 March 2004 in the case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (I.C.J. Reports 2004, p. 12) (hereinafter “the Avena Judgment”). The Court concludes that it “cannot accede to Mexico’s Request for interpretation”. However, the Court observes that “considerations of domestic law which have so far hindered the implementation of the obligation incumbent upon the United States, cannot relieve it of its obligation”. It points out that “[a] choice of means was allowed to the
United States in the implementation of its obligation and, failing success within a reasonable period of time through the means chosen, it must rapidly turn to alternative and effective means of attaining that result”.

(xxix) Obligation to Prosecute or Extradite (Belgium v. Senegal) Request for the indication of provisional measures 2008, Judgement 28 May 2009

The Court recalls that, on 19 February 2009, the Kingdom of Belgium (hereinafter “Belgium”) filed an Application instituting proceedings against the Republic of Senegal (hereinafter “Senegal”) in respect of a dispute concerning “Senegal’s compliance with its obligation to prosecute Mr. Hissène Habré, former President of the Republic of Chad, or to extradite him to Belgium for the purposes of criminal proceedings”. Belgium bases its claims on the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (hereinafter “the Convention against Torture”), as well as on customary international law. Taking note of the assurances given by Senegal, the Court finds that the risk of irreparable prejudice to the rights claimed by Belgium is not apparent on the date of this Order and concludes from the foregoing that there does not exist, in the circumstances of the present case, any urgency to justify the indication of provisional measures by the Court.

Having rejected Belgium’s Request for the indication of provisional measures, the Court makes clear that the decision given in the present proceedings in no way prejudgets the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves, and that it leaves unaffected the right of the Governments of Belgium and Senegal to submit arguments in respect of those questions. It adds that the present decision also leaves unaffected Belgium’s right to submit in future a fresh request for the indication of provisional measures, under Article 75, paragraph 3, of the Rules of Court, based on new facts.

The International Court of Justice has fixed the briefing schedule for Belgium’s case against Switzerland in the case known as Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters.

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Belgium must file its memorial by August 23, 2010. The Swiss Confederation must reply by April 25, 2011. Each party has eight months, which may surprise blog readers as being a shorter period than usually allowed. A press release from the court states that the Agents for each nation agreed to a shorter time to have the case dealt with as soon as possible.

2.2 Some Significant Advisory Cases

(i) Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)\textsuperscript{23}

Prior to this case, from the creation of the United Nations some 12 States had unsuccessfully applied for admission. Their applications were rejected by the Security Council in consequence of a veto imposed by one or other of the States which are permanent members of the Council. A proposal was then made for the admission of all the candidates at the same time. The General Assembly referred the question to the Court. In the interpretation it gave of Article 4 of the Charter of the United Nations, in its Advisory Opinion of 28 May 1948, the Court declared that the conditions laid down for the admission of States were exhaustive and that if these conditions were fulfilled by a State which was a candidate, the Security Council ought to make the recommendation which would enable the General Assembly to decide upon the admission.

(ii) Competence for the General Assembly for the Admission of a State to the United Nations\textsuperscript{24}

The preceding Advisory Opinion (No. 2.1 above) given by the Court did not lead to a settlement of the problem in the Security Council. A Member of the United Nations then proposed that the word 'recommendation' in Article 4 of the Charter should be construed as not necessarily signifying a favourable recommendation. In other words, a State might be admitted by the General Assembly even in the absence of a recommendation—this being interpreted as an unfavourable recommendation—thus making it possible, it was suggested, to escape...

\textsuperscript{23} I.C.J. Reports 1947-1948, p. 57.
\textsuperscript{24} I.C.J. Reports 1950, p. 4.
the effects of the veto. In the Advisory Opinion which it delivered on 3 March
1950, the Court pointed out that the Charter laid down two conditions for the
admission of new Members: a recommendation by the Security Council and a
decision by the General Assembly. If the latter body had power to decide without
a recommendation by the Council, the Council would be deprived of an important
function assigned to it by the Charter. The absence of a recommendation by the
Council as the result of a veto, could not be interpreted as an unfavourable
recommendation, since the Council itself had interpreted its own decision as
meaning that no recommendation had been made.

(iii) Reparation or Injuries Suffered in the Service of the United Nations

As a consequence of the assassination in September 1948 in Jerusalem of
Count Folke Bernadotte, the United Nations Mediator in Palestine, and other
members of the United Nations Mission to Palestine, the General Assembly asked
the Court whether the United Nations had the capacity to bring an international
claim against the State responsible with a view to obtaining reparation for damage
caued to the Organization and to the victim. If this question were answered in the
affirmative, it was further asked in what manner the action taken by the United
Nations could be reconciled with such rights as might be possessed by the State of
which the victim was a national. In its Advisory Opinion of 11 April 1949, the
Court held that the Organization was intended to exercise functions and rights
which could only be explained on the basis of the possession of a large measure of
international personality and the capacity to operate upon the international plane.
It followed that the Organization had the capacity to bring a claim and to give it
the character of an international action for reparation for the damage that had been
caued to it. The Court further declared that the Organization can claim reparation
not only in respect of damage caused to itself, but also in respect of damage
suffered by the victim or persons entitled through him. Although, according to the
traditional rule, diplomatic protection had to be exercised by the national State, the
Organization should be regarded in international law as possessing the powers
which, even if they are not expressly stated in the Charter, are conferred upon the

Organization as being essential to the discharge of its functions. The Organization may require to entrust its agents with important missions in disturbed parts of the world. In such cases, it is necessary that the agents should receive suitable support and protection. The Court therefore found that the Organization has the capacity to claim appropriate reparation, including also reparation for damage suffered by the victim or by persons entitled through him. The risk of possible competition between the Organization and the victim's national State could be eliminated either by means of a general convention or by a particular agreement in any individual case.

(iv) **Interpretation of Peace Treaties with Bulgaria, Hungary and Romania**

This case concerned the procedure to be adopted in regard to the settlement of disputes between the States signatories of the peace Treaties of 1947 (Bulgaria, Hungary, Romania, on the one hand, and the Allied States, on the other). *In the first Advisory Opinion* (30 March 1950), the Court stated that the countries, which I had signed a Treaty providing an arbitral procedure for the settlement of disputes relating to the interpretation or application of the Treaty, were under an obligation to appoint their representatives to the arbitration commissions prescribed by the Treaty. Notwithstanding this Advisory Opinion, the three States, which had declined to appoint their representatives on the arbitration commissions, failed to modify their attitude. A time-limit was given to them within which to comply with the obligation laid down in the Treaties as they had been interpreted by the Court. After the expiry of the time-limit, the Court was requested to say whether the Secretary-General, who, by the terms of the Treaties, was authorized to appoint the third member of the arbitration commission in the absence of agreement between the parties in respect of this appointment, could proceed to make this appointment, even if one of the parties had failed to appoint its representative. In a further Advisory Opinion of 18 July 1950, the Court replied that this method could not be adopted since it would result in creating a commission of two members.

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whereas the Treaty provided for a commission of three members reaching its decision by a majority.

(v) **International Status of South West Africa**

This Advisory Opinion, given on 11 July 1950, at the request of the General Assembly, was concerned with the determination of the legal status of the Territory, the administration of which had been placed by the League of Nations after the First World War under the mandate of the Union of South Africa. The League had disappeared, and with it the machinery for the supervision of the mandates. Moreover, the Charter of the United Nations did not provide that the former mandated Territories should automatically come under trusteeship. The Court held that the dissolution of the League of Nations and its supervisory machinery had not entailed the lapse of the mandate, and that the mandatory Power was still under an obligation to give an account of its administration to the United Nations, which was legally qualified to discharge the supervisory functions formerly exercised by the League of Nations. The degree of supervision to be exercised by the General Assembly should not, however, exceed that which applied under the mandates system and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations. On the other hand, the mandatory Power was not under an obligation to place the Territory under trusteeship, although it might have certain political and moral duties in this connection. Finally, it had no competence to modify the international status of South West Africa unilaterally.

(vi) **Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa**

Following the preceding Advisory Opinion (No. 2.5 above) the General Assembly on 11 October 1954, adopted a special Rule F on voting procedure to be followed by the Assembly in taking decisions on questions relating to reports and

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petitions concerning the Territory of South West Africa. According to this Rule, such decisions were to be regarded as important questions within the meaning of Article 18, paragraph 2, of the United Nations Charter and would therefore require a two-thirds majority of Members of the United Nations present and voting. In its Advisory Opinion of 7 June 1955, the Court considered that Rule F was a correct application of its earlier Advisory Opinion. It related only to procedure, and procedural matters were not material to the degree of supervision exercised by the General Assembly. Moreover, the Assembly was entitled to apply its own voting procedure and Rule F was in accord with the requirement that the supervision exercised by the Assembly should conform as far as possible to the procedure followed by the Council of the League of Nations.

(vii) Admissibility of Hearings of Petitioners by the Committee on South West Africa

In this Advisory Opinion, of 1 June 1956, the Court considered that it would be in accordance with its Advisory Opinion of 1950 on the international status of South West Africa (see No. 2.5 above) for the Committee on South West Africa, established by the General Assembly, to grant oral hearings to petitioners on matters relating to the Territory of South West Africa if such a course was necessary for the maintenance of effective international supervision of the mandated Territory. The General Assembly was legally qualified to carry out an effective and adequate supervision of the administration of the mandated Territory. Under the League of Nations, the Council would have been competent to authorize such hearings. Although the degree of supervision to be exercised by the Assembly should not exceed that which applied under the mandates system, the grant of hearings would not involve such an excess in the degree of supervision. Under the circumstances then existing, the hearing of petitioners by the Committee on South West Africa might be in the interest of the proper working of the mandates system.

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29 I.C.J. Reports 1956, p. 23.
(viii) Legal Consequences for States of the Continued Presence of South
Africa in Namibia (South West Africa) notwithstanding Security
Council Resolution 276, 1970

On 27 October 1966, the General Assembly decided that the mandate for
South West Africa (see Advisory Cases, Nos. 2.5-7 above and Contentious Cases,
Nos. 1.35-36) was terminated and that South Africa had no other right to
administer the Territory. In 1969 the Security Council called upon South Africa to
withdraw its administration from the Territory, and on 30 January 1970 it declared
that the continued presence there of the South African authorities was illegal and
that all acts taken by the South African Government on behalf of or concerning
Namibia after the termination of the mandate were illegal and invalid; it further
called upon all States to refrain from any dealings with the South African
Government that were incompatible with that declaration. On 29 July 1970, the
Security Council decided to request of the Court an advisory opinion on the legal
consequences for States of the continued presence of South Africa in Namibia. In
its Advisory Opinion of 21 June 1971, the Court found that the continued presence
of South Africa in Namibia was illegal and that South Africa was under an
obligation to withdraw its administration immediately. The Court was further of
the opinion that States Members of the United Nations were under an obligation to
recognize the illegality of South Africa's presence in Namibia and the invalidity of
its acts on behalf of or concerning Namibia, and to refrain from any acts implying
recognition of the legality of, or lending support or assistance to, such presence
and administration. Finally, it was of the opinion that it was incumbent upon
States which were not Members of the United Nations to give assistance in the
action which had been taken by the United Nations with regard to Namibia.

30 I.C.J. Reports 1971, p. 16.
(ix) Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide

In November 1950, the General Assembly asked the Court a series of questions as to the position of a State which attached reservations to its signature of the multilateral Convention on genocide if other States, signatories of the same convention, objected to these reservations. The Court considered, in its Advisory Opinion of 28 May 1951, that, even if a convention contained no article on the subject of reservations, it did not follow that they were prohibited. The character of the convention, its purposes and its provisions must be taken into account. It was the compatibility of the reservation with the purpose of the convention which must furnish the criterion of the attitude of the State making the reservation, and of the State which objected thereto. The Court did not consider that it was possible to give an absolute answer to the abstract question put to it. As regards the effects of the reservation in relations between States, the Court considered that a State could not be bound by a reservation to which it had not consented. Every State was therefore free to decide for itself whether the State which formulated the reservation was or was not a party to the convention. The situation presented real disadvantages, but they could only be remedied by the insertion in the convention of an article on the use of reservations. A third question referred to the effects of an objection by a State which was not yet a party to the convention, either because it had not signed it or because it had signed but not ratified it. The Court was of the opinion that, as regards the first case, it would be inconceivable that a State which had not signed the convention should be able to exclude another State from it. In the second case, the situation was different: the objection was valid, but it would not produce an immediate legal effect, it would merely express and proclaim the attitude which a signatory State would assume when it had become a party to the convention. In all the foregoing, the Court adjudicated only on the specific case referred to it, namely, the genocide Convention.

31 I.C.J. Reports 1951, p. 15.
The United Nations Administrative Tribunal was established by the General Assembly to hear applications alleging non-observance of contracts of employment of staff members of the United Nations Secretariat or of the terms of appointment of such staff members. In its Advisory Opinion of 13 July 1954, the Court considered that the Assembly was not entitled on any grounds to refuse to give effect to an award of compensation made by the Administrative Tribunal in favour of a staff member of the United Nations whose contract of service had been terminated without his assent. The Tribunal was an independent and truly judicial body pronouncing final judgments without appeal within the limited field of its functions and not merely an advisory or subordinate organ. Its judgments were therefore binding on the United Nations Organization and thus also on the General Assembly.

The Statute of the Administrative Tribunal of the International Labour Organization (ILO) (the jurisdiction of which had been accepted by the United Nations Educational, Scientific and Cultural Organization (Unesco) for the purpose of settling certain disputes which might arise between the organization and its staff members) provides that the Tribunal's judgments shall be final and without appeal, subject to the right of the organization to challenge them. It further provides that in the event of such a challenge, the question of the validity of the decision shall be referred to the Court for an advisory opinion, which will be binding. When four Unesco staff members holding fixed-term appointments complained of the Director-General's refusal to renew their contracts on expiry, the Tribunal gave judgment in their favour. Unesco challenged these judgments, contending that the staff members concerned had no legal right to such renewal and that the Tribunal was competent only to hear complaints alleging non-

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32 I.C.J. Reports 1954, p. 47.
33 I.C.J. Reports 1956, p. 150.
observance of terms of appointment or staff regulations. Consequently, Unesco maintained, the Tribunal lacked the requisite jurisdiction. In its Advisory Opinion of 23 October 1956, the Court said that an administrative memorandum which had announced that all holders of fixed-term contracts would, subject to certain conditions, be offered renewals might reasonably be regarded as binding on the organization and that it was sufficient to establish the jurisdiction of the Tribunal, that the complaints should appear to have a substantial and not merely artificial connection with the terms and provisions invoked. It was therefore the Court's opinion that the Administrative Tribunal had been competent to hear the complaints in question.

(xii) Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization

The Inter-Governmental Maritime Consultative Organization (IMCO) (now the International Maritime Organization) comprises, among other organs, an Assembly and a Maritime Safety Committee. Under the terms of Article 28 (a) of the Convention for the establishment of the organization, this Committee consists of 14 members elected by the Assembly from the members of the organization having an important interest in maritime safety, 'of which not less than eight shall be the largest ship-owning nations'. When, on 15 January 1959, the IMCO Assembly, for the first time, proceeded to elect the members of the Committee, it elected neither Liberia nor Panama, although those two States were among the eight members of the organization which possessed the largest registered tonnage. Subsequently, the Assembly decided to ask the Court whether the Maritime Safety Committee was constituted in accordance with the Convention for the Establishment of the organization. In its Advisory Opinion of 8 June 1960, the Court replied to this question in the negative.

(xiii) Certain Expenses of the United Nations

Article 17, paragraph 2, of the Charter of the United Nations provides that the expenses of the Organization shall be borne by the Members as apportioned by

34 I.C.J. Reports 1960, p. 150.
the General Assembly. On 20 December 1961, the General Assembly adopted a resolution requesting an advisory opinion on whether the expenditures authorized by it relating to United Nations operations in the Congo and to the operations of the United Nations Emergency Force in the Middle East constituted 'expenses of the Organization' within the meaning of this Article and paragraph of the charter. The Court, in its Advisory Opinion of 20 July 1962, replied in the affirmative that these expenditures were expenses of the United Nations. The Court pointed out that under Article 17, paragraph 2, of the Charter, the expenses of the Organization' are the amounts paid out to defray the costs of carrying out the purposes of the Organization. After examining the resolutions authorizing the expenditures in question, the Court concluded that they were so incurred. The Court also analyzed the principal arguments which had been advanced against the conclusion that these expenditures should be considered as 'expenses of the Organization' and found these arguments to be unfounded.

(xiv) Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal.36

On 28 April 1972, the United Nations Administrative Tribunal gave, in Judgment No. 158, its ruling on a complaint by a former United Nations staff member concerning the non-renewal of his fixed-term contract. The staff member resorted to the machinery set up by the General Assembly in 1955, and applied for the review of this ruling to the Committee on Applications for Review of Administrative Tribunal Judgments, which decided that there was a substantial basis for the application and requested the Court to give an advisory opinion on two questions arising from the applicant's contentions. In its Advisory Opinion of 12 July 1973, the Court decided to comply with the Committee's request considering that the review procedure was not incompatible with the general principles of litigation. It expressed the opinion that, contrary to those contentions, the Tribunal had not failed to exercise the jurisdiction vested in it and had not committed a fundamental error in procedure having occasioned a failure of justice.

On 13 December 1974, the General Assembly requested an advisory opinion on the following questions: I Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (terra nullius) If the answer to the first question is in the negative. 'II. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?' In its Advisory Opinion, delivered on 16 October 1975, the Court replied to Question I in the negative. In reply to Question II, it expressed the opinion that the materials and information presented to it showed the existence, at the time of Spanish colonization, of legal ties of allegiance between the sultan of Morocco and some of the tribes living in the territory of Western Sahara. They equally showed the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara. On the other hand, the Court's conclusion was that the materials and information presented to it did not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court did not find any legal ties of such a nature as might affect the application of the General Assembly's 1960 resolution 1514 (XV) - containing the Declaration on the Granting of Independence to Colonial Countries and Peoples-in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the territory.

Having regard to a possible transfer from Alexandria of the World Health Organization's Regional Office for the Eastern Mediterranean Region, the World Health Assembly in May 1980 submitted a request to the Court for an advisory opinion on the following questions:

1. Are the negotiation and notice provisions of Section 37 of the Agreement of 25 March 1951 between the World Health Organization and Egypt applicable in the event that either party to the Agreement wishes to have the Regional Office transferred from the territory of Egypt?

2. If so, what would be the legal responsibilities of both the World Health Organization and Egypt, with regard to the Regional Office in Alexandria, during the two-year period between notice and termination of the Agreement?

The Court expressed the opinion that in the event of a transfer of the seat of the Regional Office to another country, the WHO and Egypt were under mutual obligations to consult together in good faith as to the conditions and modalities of the transfer, and to negotiate the various arrangements needed to effect the transfer with a minimum of prejudice to the work of the organization and to the interests of Egypt. The party wishing to effect the transfer had a duty, despite the specific period of notice indicated in the 1951 Agreement, to give a reasonable period of notice to the other party, and during this period the legal responsibilities of the WHO and of Egypt would be to fulfil in good faith their mutual obligations as set out above.

(xvii) Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal

A former staff member of the United Nations Secretariat had challenged the Secretary-General's refusal to pay him a repatriation grant unless he produced evidence of having relocated upon retirement. By a Judgment of 15 May 1981, the United Nations Administrative Tribunal had found that the staff member was entitled to receive the grant and, therefore, to compensation for the injury sustained through its non-payment. The injury had been assessed at the amount of the repatriation grant of which payment was refused. The United States Government addressed an application for review of this Judgment to the Committee on Applications for Review of Administrative Tribunal Judgments, and the Committee decided to request an Advisory Opinion of the Court on the

39 I.C.J. Reports 1930, pp. 67, 73.
correctness of the decision in question. In its Advisory Opinion of 20 July 1982, the Court, after pointing out that a number of procedural and substantive irregularities had been committed, decided nevertheless to comply with the Committee's request, whose wording it interpreted as really seeking a determination as to whether.

**(xviii) Legality of the use by a state of Nuclear Weapons in Armed conflict.**

**Decision dated 8th July, 1996. Request for Advisory Opinion by WHO**

By a letter dated 27th August, 1993, filed in the Registry of the International Court of Justice on 3 September 1993, the World Health Organization requested the World Court to give an advisory opinion on the following question:

"In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under International law including the WHO's Constitution?"

Certain nuclear powers, especially United States and U. K. contended that the above question is essentially political and is also beyond the scope of the WHO's proper activities, the World Court should, therefore, decline to give an advisory opinion. The International Court of Justice accepted this argument partly and held that the request by the WHO does not relate to a question which arises 'within the scope of activities' of that organization in accordance with Article 96, paragraph 2 of the U.N. Charter and thus an essential condition of founding the Court's jurisdiction in the present case is absent and that it cannot, accordingly, give the opinion requested. Thus the International Court of Justice declined to give the advisory opinion which was requested of it by the World Health Organization.

The World Court's reason for declining to give its advisory opinion does not seem to be convincing and sound. The effect of use of nuclear Weapons falls on environment and effect on environment falls on health. Radio-activity emanating from use of nuclear weapons affects environment and jeopardises health of people. WHO is directly concerned with these. It is true that disarmament is a topic with which the General Assembly and the Security-Council
are more concerned but WHO is also concerned with the effects of the use of nuclear weapon. It is, therefore, not just and proper to say that the question referred by WHO is not within the scope of proper activities of WHO.

(xix) Differences relating to immunity from legal process of a special rapporteur of the commission of human rights. Advisory opinion on 29 April 1999

In this case the court handed down its advisory opinion the request of the Economic And Social Council (ECOSOC), one of the six principal organs of the United Nations, in the case concerning the Difference relating to immunity from Legal process of a special rapporteur of the commission of human rights. The Court was the opinion, by fourteen votes to one, that Article VI, Section 22, of the convention of the Privileges and immunities of the UN was applicable in case of Dato’ Param Cumaraswamy.

After declaring Advisory Opinion Court points out that the Question of immunity from legal process is distinct from the issue of compensation for any damage incurred as a result of acts performed by the UN or by its agents acting on their official capacity. The United Nations may be required to bear responsibility from the damage arising from such acts. The Court furthermore considers that it need hardly be said that all agents of the UN, in whatever official capacity they act, must take care not to exceed the scope of their functions, and should so comport themselves as to avoid claims against the United Nations.

(xx) Advisory opinion on Legality of the Threat or use of Nuclear Weapons (Request for advisory opinion by the General Assembly of the U.N)

The General Assembly vide Resolution 49/75 dated 15th December, 1994 requested the International Court of Justice to give its advisory opinion on the following question:

"Is the threat or use of nuclear weapons in any circumstance permitted under International law?" The General Assembly made this request pursuant to Article .96, paragraph 1 of the Charter of the United Nations.

The International Court of Justice unanimously held that there is no specific authorization for the threat or use of nuclear weapons under customary or
conventional law. Secondly, a threat or use of force by means of nuclear weapons is unlawful as it is contrary to Art. 2(4) of the U.N. Charter and not vindicated by the requirement of Article 51 of the U.N. Charter. Thirdly, a threat or use of nuclear weapons ought to be compatible with the requirement of the International law applicable in armed conflict, especially international humanitarian law including specific obligations under treaties expressly dealing with nuclear weapons. Lastly, there is an obligation of the members of the United Nations to pursue in good faith and conclude negotiations leading to nuclear disarmament under effective International Control.

However, as regards the specific question, "Is the threat or use of nuclear weapons in any circumstance permitted under International law?" the World Court observed:

"Nevertheless, the Court considers that it does not have sufficient elements to enable it to conclude with certainty that the use of nuclear weapons would necessarily be at variance with the principles and rules of law applicable in armed conflict in any circumstance.

Furthermore, the Court cannot lose sight of the fundamental right of every state to survival, and thus its right to resort to self defence, in accordance with Article 51 of the charter, when its survival is at stake."

After holding that in view of the unique characteristics of nuclear weapons the use of such weapons in fact seems scarcely reconcilable with the rules of law applicable in armed conflict, the above observation does not seem to be just and proper. As pointed out by Judge Shahabuddeen in his separate opinion: If international law has nothing to say on the subject of the use of nuclear weapons this necessarily means that international law does not include a rule authorizing such use. Due to absence of such authorization, states do not have a right to use nuclear weapons. As regards right of every state to use nuclear weapons under Article 51 of the Charter, when its survival is at stake, it has to be noted that imperative needs of survival of a state cannot prevail over even more imperative needs of survival and preservation of the entire human race.
(xxi) Legal Consequences of the Construction of a wall in Palestinian Territory (Request for advisory opinion) 9 July 2004

The Court’s view that the United Nations and especially The General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the Wall and the associated regime, taking due account of the present advisory opinion.

The Court considers that its conclusion that the construction of the wall by Israel in Occupied Palestinian territory is contrary to international Law must be placed in a more general context. Since, 1947, the year when General Assembly resolution 181(11) was adopted and the Mandate for Palestine was terminated, there has been a succession of armed conflicts, acts of indiscriminate violence and repressive measures on the former mandated territory. The Court would emphasized that both Israel and Palestine are under an obligation scrupulously to observe the rules of international Humanitarian Law, One of the paramount purposes of which is to protect civilian life. Illegal actions and unilateral decisions have been taken on all sides, whereas in the Court’s view, the tragic situation can be bought to an end only through implementation in good faith of all relevant Security Council resolutions. In particular resolutions 242(1967) and 338(1973). The “ROADMAP” approved by Security Council resolution 1515(2003) represents the most recent of efforts to initiate negotiation to this end. The Court considers that it has a duty to draw the attention of the General Assembly, to which the present Opinion is addressed, to the need for these efforts to be encouraged with a view to achieving as soon as possible, on the basis of International Law, a negotiated solution to the outstanding problems and the establishment of a Palestinian State, existing side by side with Israel and its other neighbours, with peace and security for all in the region.
Accordance with International Law of the Unilateral Declaration of Independence by the Provisional institutions of Self Government of Kosovo (Request of Advisory Opinion) 8th October 2008

Regarding this Advisory Opinion, Hague, the city of Holland, On 8th October 2008, The General Assembly of United Nations adopted resolution A/RES/63/3 in which referring to Article 65 of the Statute of the Court, it requested to ICJ to render an advisory opinion on the following Question: Is the Unilateral declaration of Independence by the Provisional Institutions of Self-Government of Kosovo in accordance with International Law?

The request for advisory opinion was transmitted to the court by the Secretary General of United Nations in a letter dated 9 October 2008, which was filed with the registry on the 10th October 2008. The case is under process and the Advisory Opinion is yet to come.

The above list is simply illustrative. So far the Court has delivered more than 26 advisory opinions.

So far Court has rendered a lot of advisory opinions. If an over all scrutiny of the advisory opinions to the end of avoiding conflicts between States, rendered by the Court is made it would enable the derivation that the problems on which the Court gave the advice have been either resolved or mitigated to a considerable extent. Thus, efforts towards peaceful settlement have been strengthened. The interpretation of law made by the Court while rendering advisory opinion has been of an authoritative nature and there is hardly any doubt that has been expressed about it. The United Nations General Assembly and other international organs on whose requests advisory opinions have been given; have always been satisfied with them so much so that the effects have tended to give shape to the future actions of the respective bodies.

Certain opinions of the Court, in spite of the appreciation thereof have remained either ineffective or ignored. Certain examples are the cases of Admission of a State to Membership in the United Nations, The Interpretation of

Peace Treaties (first phase)\textsuperscript{41} and International Status of South West Africa.\textsuperscript{42} In these cases the Statues actions might have been such as not clashing with the Court’s opinions yet what results did not conform exactly to the authoritative spirit of the Court’s verdicts.

The opinion in the case of Certain Expenses of the United Nations\textsuperscript{43} almost resulted in a situation critical to the existence of the United Nations.

However, the advisory opinion given by the Court in 1971 to the Security Council relating to the Presence of South Africa in Namibia\textsuperscript{44} helped to smother the feelings of the States concerned. The ultimate culmination of the effect of the opinion has taken place in the final movement of South Africa from Namibian territory. Again in the Western Sahara Advisory Opinion Case\textsuperscript{45} Mauritania, Spain, Morocco and Algeria were brought to appear before the Court and the reference to the Court provided a period of subsiding and keeping the dispute under a certain control and the withdrawal by Mauritania, one of the disputing parties, of its claims to the territory. The Court has contributed to the peaceful settlement of disputes in cases where its decision has effected directly or contributed to the settlement of the dispute. Also included are cases in which the Court’s intervention has led indirectly to the resolution of the conflict.

(xxiii) New Request for Advisory Opinion from the ICJ – Judgment No.2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development latest developments of this case on 17 May 2010

The International Fund for Agricultural Development (IFAD – a specialized agency of the UN) has on 26 April 2010 requested for an advisory

\begin{itemize}
\item \textsuperscript{41} I.C.J. Reports 1950, p.65.
\item \textsuperscript{42} I.C.J. Reports 1950, p. 128.
\item \textsuperscript{43} I.C.J. Reports 1962, p.151.
\item \textsuperscript{44} I.C.J. Reports 1971, p.16.
\item \textsuperscript{45} I.C.J. Reports 1975, p.12.
\end{itemize}

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opinion from the ICJ, concerning the Administrative Tribunal of the International Labour Organization’s judgment.

The ICJ’s unofficial Press Release classifies the request as falling „within the framework of a rarely used procedure, that of the review of judgments of administrative tribunals, which has given rise to the delivery of only four advisory opinions since 1946“.

The request for this advisory opinion received in the Registry on 26 April 2010 falls within the framework of a rarely used procedure, that of the review of judgments of administrative tribunals, which has given rise to the delivery of only four advisory opinions since 1946. In 1955, the Executive Board of UNESCO, acting within the framework of Article XII of the Statute of the Administrative Tribunal of the ILO, decided to challenge two decisions rendered by the Tribunal and to refer the question of their validity to the Court for an advisory opinion. In 1972, 1981 and 1984, the Committee on Applications for Review of United Nations Administrative Tribunal Judgements, acting within the framework of Article 11 of the Statute of that Tribunal, decided that there was a substantial basis within the meaning of that Article for the applications for review of Judgements Nos. 158, 273 and 333. It therefore requested the Court to give an advisory opinion on the matter in respect of each of those applications.

3. THE PROBLEM OF IMPLEMENTATION

The experience of international adjudication after the World War Second and since 1945 has been that in several cases the decisions of the ICJ have been disregarded if not openly defied. Even a small dispute, if not carefully handled may result into nuclear warfare and therefore, it is not wise for a state to use force against another to compel it, to go according to a judgment. In earlier times this might have been alright but the altered developments in the thought and practice of the international society does not permit such an action now. The judgment of
the Court in the Corfu Channel Case could be disregarded by Albania, Haya de La Torre could be detained in the Colombian Embassy for nearly three years even after the Court’s final decision and Thailand could make a declaration that it could not abide by an adverse decision. Although, none of these cases involved the vital interests of the concerned nations but they beyond doubt demonstrate that an adverse decision is not always acceptable to the Countries of such disregard of the Court’s decision is the case of Military and Paramilitary Activities in and Against Nicaragua. In which for the end of the dispute credit goes to other factors than the decisions given by the Court.

There remains no doubt, about the consideration that some effective machinery of execution is essential if the ICJ is to serve its real purpose in the settlement of international conflicts. It may be helpful to examine the means which are available to the successful party under the present system of international law for the execution of the Judgments.

The problem of execution of judicial awards is essentially a political one. The Washington Committee of Jurists in 1945 declared that it is not a functions of an International Court to see that the parties comply with its decision. After a court has rendered its judgment, it becomes functus officio. It is precisely for this reason that the provisions relating to execution of judgment or awards find place in the charter of the United Nations and not in the Statute of the ICJ. Being affected by their limitations the international courts have hesitated in dealing with questions of execution or enforcement. Just as in the Mavrommati Jerusalem Concessions Case the PCIJ found it unnecessary to deal with the question whether in certain cases, it might have jurisdiction to decide disputes concerning non-compliance with one of its decisions. Similarly, in the Haya de La Torrie Case the ICJ refused to answer a question contained in the submission of both

the parties, concerning the manner in which its former judgment in the *Asylum Case*\(^{51}\) should be executed.

4. **ENFORCEMENT OF VERDICTS**

The Court does not have power to enforce its own judgments. In fact, it is not the business of the Court to see that the parties comply with its decisions. The Covenant of the League of Nations treated the execution of judgments as a political problem and entrusted the task of enforcement to the Council of the League of Nations. Article 13(4) of the Covenant of the League of Nations attached great importance to the judgment given by the Permanent Court of International Justice and made it binding on members to comply with the judgment in good faith and not to resort to war against a member which complied with it. Under the terms of the provisions of that Article failure to comply with the judgment was violation of the Covenant of the League of Nations. It further provided that in the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto.

Fortunately, no case of non-compliance arose during the regime of the Permanent Court of International Justice. This emboldened the founding members of the United Nations to follow the League precedent in the matter. They nourished the hope that member-States would comply with the decisions of the Court as a matter of course, even if such decisions are adverse to their interest. It was further believed that enforcement machinery similar to that provided under Article 13(4) of the Covenant would serve the purpose of execution of judgments. Article 94(1) of the U.N. Charter provides: Each member of the United Nations undertakes to comply with the decision of the International Court of Justice.

Obviously, the failure or refusal to comply with the judgment of the Court is a violation of Charter obligations. It is the consent of the parties to a dispute which forms the basis of international adjudication argues Nantwi. According to

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51. I.C.J. Reports 1950, p.266.
him, it is this element “which gives rise to certain obligations of a legal character and refusal to comply with the judgments of international tribunal is ipso facto a breach of an international obligation”.  

Compliance with the decisions of international tribunals by the States concerned in the past has been so much impressive that many authorities thought that the problem of the execution of international judicial awards is a problem of the ‘extremely unimportant nature’. Jussup wrote in 1947:

Although there has been no international marshal to enforce the decisions of international courts, but their decisions have been respected so close, an approach to universality that it is proper to assert that enforcement of judgments of international courts has never been an international problem.

Subsequently, Prof. Anand has rightly pointed out that ‘execution of international judicial awards is not an altogether negligible problem’. Besides the Nicaragua case referred to earlier, there have been several cases in which the States concerned refused to accept the judgments.

5. ENFORCEMENT PROCEDURE UNDER ARTICLE 94(2)

Article 94(2) of the Charter provides for enforcement of judgments by the U.N. Security Council. It reads: All members, in order to ensure to all of them the right and benefits resulting from membership shall fulfill in good faith the obligations assumed by them in accordance with the present Charter. The reason behind entrusting the task of enforcement of judgment to the Security Council is obvious. The Council is not only the executive organ of the United Nations but

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52. E.K. Nantwi, "The Enforcement of International Judicial Decisions and Arbitral Awards in Public International Law" (1967) 188.
also has its own techniques of enforcement in circumstances where the dispute or situation degenerates into an actual ‘threat to the peace’, ‘breach of the peace’ or an act of aggression within the meaning of chapter VII of the Charter.

Article 94(2) gives rise to a host of legal issues on which the travaure preparatoires of the Charter are inconclusive and views of scholars are contradictory to one another. In the first place it is not clear whether the Council has discretion to act or not under the said provision. The expression ‘if it deems necessary’ gives the impression that it may even decline to take action under Article 94(2). No less a person than Oppenheim, however, observes that the Council is obliged to act and its discretions are only in respect of the nature of actions to be taken to give effect to the judgment. In other words, it may make either a recommendation or a decision.56

Certainly every act of noncompliance may not constitute an imminent threat to peace. Therefore, the acceptance of this view would mean that the Council is devoid of power to act in such cases. There is nothing in the wordings of Article 94(2) and there seems to be no reasons to believe that there is restriction on the authority of the Council to act in relation to all judgments of the Court under this provision.57 Furthermore, as Golunsky of the U.S.S.R. pointed out, this Article “made a considerable change in the functions of the Security Council. Formerly, Security Council had jurisdiction only in matters concerning maintenance of peace and security. This Article would give the Council authority to deal with matters which might have nothing to do with security”.58 Most writers share the view that the enforcement powers given to the Security Council is in addition to its powers to enforce compliance with judgments of the I.C.J. under Article 94 of the Charter. As Article 94(2) does not spell out the measures that may be recommended or decided upon by the Council to give effect to the judgment of the Court, the question does arise as to whether or not they are limited to those

57. Schachter, no. 11, at 22.
contemplated of the Charter. Schachter argues that measures to be adopted under Article 94 are not necessarily limited to actions provided for in Article 41 or Article 42. The Council may suggest other measures 'to secure compliance with a decision. For example, in order to give effect to judgments it may suggest that assets of the recalcitrant state in the territories of the member states of the United Nations be attached. It has also been suggested by a few writers that the Council 'may take action similar to that provided for in Article 41 or Article 42, without involving those articles, under broad powers conferred upon it by Article 94(2)

Another related question is whether the party puts the Court under the mercy of the Security Council by bringing a complaint of noncompliance before the latter. It has been argued that enforcement action of the Council under Article 94(2) does so. As a representative of the United States Department at the Hearings on the Charter before the Senate Foreign Relations Committee 1945 said:

If the matter is referred to the Council, the Council is not limited in its method of enforcement or adjustment to anything that happened in the Court, but it would have the same power, within the scope of its authority, that it would have had if the case had originally been brought before the Council.

Kelsen argues that 'the obligation imposed upon the Members by Article 92, paragraph 1, and by the Statute of the Court, to comply with the decisions of the Court, may be restricted by application of Article 94, paragraph 2'. The acceptance of this view, however, would appear inconsistent with Article 59 of the Statute and Article 94(1) of the Charter. Further, as Rosenne has pointed out, "this would contradict and make non-sense of Article 60 of the Statute whereby the judgment is final and without appeal". The Security Council, it has been rightly observed, is neither 'an appellate tribunal' nor a 'body having the power of

59. Schachter, no.11, at 22.
61. Rosenne, The International Court of Justice (1957), 105.
judicial review". Therefore, it cannot go into allegations of legal infirmities in the decision. However, since the Council is a political body where debate is free, 'pleas based upon legal considerations, or an unsatisfactory condition of the law, cannot be prevented.

Whatever action the Council takes under Article 94(2), it can act only by a majority of nine members including the votes of all the permanent members. In other words, an action under this provision is possible only when there is unanimity among permanent members of the Council. If past experience is any guide, such unanimity is rare if not impossible. As matter stands now, any permanent member can prevent the Council from taking action against itself or its ally by exercising the Veto power. Thus, The provisions regarding 'execution of judgments under Article 94(2) cannot be applied in negligible number of cases, usually for politically unimportant ones".

It is clear from the foregoing that if the recalcitrant state were obliged to abstain from voting on an action by the Security Council proposed under Article 94 and the permanent members are denied Veto right in respect of any action under this provision, much of the present difficulties regarding execution of judgments will be eliminated. Moreover, the Statute of the Court may be amended to provide that the States submitting their disputes to the Court shall give an undertaking of compliance with the judgment rendered by the Court. As Kunz pertinently remarked,

"a more advanced international law must be based on the full recognition by States of the primacy of international law and an enforceable sanction both for the maintenance of peace and security and for the enforcement of international law in general by organs of international community".

63. R.P. Anand, n.12 at 283, Schachter, no.11, at 23; Rosenne, n.21 at 107, Jenks, The Prospects of International Adjudication (1964), 693; Kelson, no. 20 at 541.
In addition to the Security Council, a complaint of noncompliance can be made to the General Assembly by the aggrieved state under Articles 10 and 14 of the United Nations Charter. Under these provisions the Assembly can make recommendations to both the recalcitrant party and to other member states concerning measures to be taken to secure compliance with the judgment. Although such recommendations are not binding, “the pressure of a strong, well informed and organized public opinion”. Rosenne says, “may be not less efficacious than the possibility of use of force in assuming the execution of judgments”.

The specialized agencies also can play a useful role in securing compliance with international decisions. In addition, the regional arrangements may as well be helpful in this regard.

While self-help through use of force to secure compliance with decisions of international Court might have been justified under the traditional international law, today its legality is doubtful in view of the outlawary of the unilateral use of force under the United Nations Charter. Schachter has accordingly remarked

In this context, at least, the Charter gives priority to ‘peace’ over ‘justice’ and to permit a breach of international peace to compel execution of a judicial award (or to vindicate any specific legal right) would do violence both to the text and the dominant intentions of the draftsmen and signers. It is, moreover, far from evident that the administration of international justice would be served by permitting armed force to be used to compel execution.

In the present juncture any comprehensive solution to the problem of implementation of the judicial verdicts does not exist. Any idea suggesting the establishment of an International police force for the implementation of International judicial verdict is particularly impossible. Besides, use of force even

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65. Rosenne, n.21 at 115; Jenks, no.26 at 694-5; Schachter n.11 at 24.
to bring home peace in the present age is fraught with inherent dangers. Therefore, reliance on strong and organized world opinion and other method, always short of war is the only advisable course. Concerted efforts through various specialized agencies of the United Nations and the regional Organizations may serve the purpose considerably and be effective in most of the cases. Just as the Jurisdiction of the court has to depend on the willingness of the state parties so has the implementation of verdicts rendered. On both the fronts the court has no risk of injured prestige. Its aim is prevention of peace through settlement of international conflicts.

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