Effects of *pacta sunt servanda* and its exceptions in international adjudication and judgements enforcements

A. Amuda-Kannike[1], E. E. Jumbo[2], G. Oladapo[3], L.U. Iluno[4], G.C. Aaron[5]

Introduction

Pacta sunt servanda as a principle of international and domestic law, implies a condition of strict observance of the terms of a contract. However, certain exceptions make makes the principle ineffective in certain agreeable circumstances.

These exceptions notwithstanding and in order to make sure that there exists the performance of internationally binding legal obligations, the principle of *pacta sunt servanda* was created and it means that every treaty in existence are to be binding on all the parties to the treaty or treaties and such must be carried out in good faith [1] without necessarily being prompted to do so [2]. In view of the foregoing, and according to the operational definition of enforcement by Cheryl E. Wasserman, Acting Director, Office of Enforcement Policy, Office of Enforcement, U.S. Environmental Protection Agency:

1. **A. Amuda-Kannike, SAN**, **Ph.D, Professor** and Dean, Faculty of Law, POMA International Business University, Dubai, UAE. He is also a Senior Advocate of Nigeria (SAN) and the Managing Counsel of Amuda-Kannike (SAN) & Co, No 8, Mbonu Streetm D-Line, Port Harcourt, Rivers State, Nigeria.
2. **E. E. Jumbo, Ph.D, JD**, **BL, Professor** and Senior Research Fellow, Centre for International Law Studies, Southgate Institute of Technology, Uyo, Akwa Ibom State, Nigeria. Dr. Jumbo is also of the Engineering Law Unit, Faculty of Engineering, Niger Delta University, Wilberforce Island, Bayelsa State, Nigeria
3. **G. Oladapo**,**LLM,** Faculty of Law, Rivers State University of Science and Technology, Port Harcourt, Rivers State, Nigeria.
4. **L. U. Iluno, LLM,** Faculty of Law, Imo State University, Owerri, Imo State, Nigeria
5. **G. C. Aaron, LLM**: School of Law, Pacific Western University, Denver, Colorado, USA

> "Enforcement is defined as the application of a set of legal tools, both informal and formal, designed to impose legal sanction (e.g.

> penalty) to ensure a defined set of requirements is complied with".

Based on this definition Wasserman observed that;

> "….an issue that is continually debated is whether compliance can be achieved without enforcement".

The answer, based on the U.S. experience and theory, is that enforcement is a necessary, but not sufficient means of achieving compliance. Although enforcement may not be needed to achieve compliance in individual cases, in most situations some level of enforcement is thought to be needed to create and maintain a complying majority. In 1941, Chester Bowles, of the Wartime Office of Price Administration suggested the view that there will always be 5% of individuals who will violate the law, no matter what, 20% who will comply no matter what, and 75% who will comply only if the violators are punished and/or the requirements are perceived as non-arbitrary.

Thus, in concept, is the philosophical underpinning of the U.S. enforcement program". A position paper cited from Cheryl E. Wasserman: "An Overview of Compliance and Enforcement in the United States: Philosophy, Strategies, and Management Tools".

This principle can be found in Article 26 of the Vienna Convention on the Law of Treaties dated 6th May, 1969 which states thus:

> "Every Treaty in force is binding upon the parties to it and must be performed by them in good faith"

The whole essence of this principle is that once you have promised to be bound by whatever agreement you have signed or agreed upon, it is

natural that you must carry out your obligation or obligations under the agreement which is the Treaty. It should be understood that in order to give effect to the principle, it was made a part of the United Nations Charter as could be found in Article 9(2) of the United Nations Charter which states thus:

> "All members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present charter"

Since the principle made mention of duties and obligations , one of such duties and obligations can be seen in the area of making sure that the judgments of the International Court of Justice is carried out especially as it is stipulated under Article 94(1) of the United Nations Charter that;

> "each member of the United Nations undertakes to comply with the decisions of the International Court of Justice in any case to which it is a party".

The issue of compliance with the doctrine of p*acta sunt servanda* and good faith has been adequately canvassed in some cases decided by the I.C.J.[3] Thus, the position canvassed above requires that once the process of agreement have been contextualized, the parties by ratified convention are obligated to give effect to the terms of their agreements in the form of compliance without recourse to any secondary measure of enforcement.

This position is further strengthened when viewed from the assertions of the "obligatory theory", opined by the, Proceedings of American Society of International Law, under the paper, "The International Court of Justice and Development of Useful' Rules of Interpretation' in the Process of Treaty Interpretation, 1965.

In the *Continental Shelf case between Tunisia/Libya*[4] three questions were put to both parties during oral proceedings on binding force of the judgment to be given by the court which are:

> (1) the principles and rules of International Law which might be indicated by the Court;
> (2) circumstances which characterized the area regarded by the Court as important,
> (3) any equitable principles the Court might take into account.

In the light of the foregoing, Tunisia agreed that parties are bound in accordance with Article 94(1) of the Charter. But upon Libya's disagreement; the Court asserted the relationship and co-existence of Article 94 of the Charter and Articles 59 and 60 of the Statute of the Court and Article 94(2) of the Rules of the Court of 1978 and concluded that there must be compliance with the judgment of the Court under Article 94 of the Charter.

Also in the *Frontier Dispute of Burkina Faso/Mali,*[5] the Court decided that since the parties have concluded a Special Agreement to settle their dispute by a Chamber of the Court, this is an indication to comply with Article 94, paragraph 1 of the United Nations Charter especially as the special agreement expressly states that the parties accept the judgment of the Court given pursuant to the agreement as final and binding.

In the case of *Gabcikovo Nagymaros Project (Hungary/Slovakia)*[6] the parties with respect to this case agreed by virtue of Article 5 of the 1993 Special Agreement which stipulates that if they are unable to reach agreement within the period of six months, any of the parties to the agreement can on its own make a request to the Court for the purpose of rendering an additional judgment which said judgment would then define the ways and manner the judgment will be executed. The Court stated that it will not determine what should be the outcome of the negotiations between the parties but that the parties on their own should do that on the basis of good faith and *pacta sunt servanda* vis-à-vis International Law principles.

The Court plainly stated that the parties are estopped from taking steps not to comply with the judgement of the Court, especially where the judgement is based on the consent of the parties who are deemed to have taken every circumstance into consideration before giving their consent.

Thus, the parties in this case agreed that on the event that any of the parties fails to perform an obligation under the agreement, the other party can approach the Court

for *directional judgment* with respect to the extent execution (enforcement). This position is reproduced as follows: Fundamental change of circumstances

> "In the Court's view, the prevalent political conditions were not so closely linked to the object and purpose of the Treaty that they constituted an essential basis of the consent of the parties and, in changing, radically altered the extent of the obligations still to be performed. The same holds good for the economic system in force at the time of the conclusion of the 1977 Treaty.
>
> Nor does the Court consider that new developments in the state of environmental knowledge and of environmental law can be said to have been completely unforeseen. What is more, the formulation of Articles 15, 19 and 20 is designed to accommodate change. The changed circumstances advanced by Hungary are thus, in the Court's view, not of such a nature, either individually or collectively, that their effect would radically transform the extent of the obligations still to be performed in order to accomplish the Project".

Further, of importance is also the *Land and Maritime Boundary (Cameroon vs Nigeria)*[7] (preliminary objections) case, where the Court stated that it is a cardinal principle of International Law to observe good faith and this principle is set out in Article 2, paragraph 2 of the United Nations Charter vis-à-vis Article 26 of the Vienna Convention on the Law of Treaties of May 23rd, 1969.

The facts of the case shows that in March 1994, Cameroon filed a case before the International Court of Justice (ICJ) concerning a dispute relating 'essentially to the question of sovereignty over the Bakassi Peninsula'. In June 1994, Cameroon extended the subject of the dispute to include the question of sovereignty over Cameroonian territory in the area of Lake Chad and the frontier between Cameroon and Nigeria from Lake Chad to the sea.

However, in 1999, the Court authorized an intervention by Guinea, which sought to protect its legal rights in the light of pending maritime boundary claims between Cameroon and Nigeria. The ICJ delivered its judgment in the case on 10 October 2002. The Court decided that sovereignty over the Bakassi Peninsula lies with

Cameroon and that the boundary is delimited by the Anglo-German agreement of 11 March 1913. The Court noted that the land boundary dispute 'falls within an historical framework' including partition by European powers in the 19th and early 20th centuries, League of Nations mandates, UN Trusteeships and the independence of the two states.

The Court also ruled on the 1690 km border between Lake Chad and the sea, the maritime boundary, and issues of state responsibility. The Court requested that both Nigeria and Cameroon withdraw their administration and their military and police forces from certain areas according to the judgment. However, in an official statement issued on October 23, 2002, Nigeria refused to comply with the Court's judgment in order to maintain the *status quo* in Bakassi Peninsula where inhabitants are predominately Nigerians, but which was decided by the Court to fallunder the sovereignty of Cameroon.

This paper observed that, the statement as reported by, *Reuters/Washington Post,* on Thursday, October 24, 2002; at p. A30; maintained that, "being a nation ruled by law we are bound to continue to exercise jurisdiction over these areas in accordance with the constitution and on no account will Nigeria abandon her people and their interests". In this regard, this statement makes a proposition that seeks to invoke the *state of necessity* to refuse compliance with the Court's judgment. Although Nigeria eventually complied with the judgment of the ICJ under a deal brokered by the United Nations, it should be noted that it was not by means of enforcement as there was no recorded incidence of state action by Cameroon nor any other intervening state to achieve compliance.

It should be understood that there are however exceptions to the Rule of *Pacta Sunt Servanda* and the exceptions are as follows:
(i) State of Necessity (ii) Force Majeure (iii) Rebus Sic Stantibus (iv) Res-Judicata

State of Necessity as a Valid Exception to the Principle

This is a situation which shows that unless a state goes contrary to the doctrine of *pacta punt servanda*, there is the probability of the imminent collapse of that state. Therefore, our observation is that it has always been difficult for a state to invoke the doctrine of necessity after consenting to the jurisdiction of the Court and after undertaking to comply with its decision under Article 94 of the United Nations Charter as the issue indicate that there is no way out of the problem in order for the immediate survival of such a state, then a breach of the agreement under the principle arises as an exception or imminent peril cannot be used as a basis to state that the treaty obligations referred to in Article 94 of the Charter and Articles 59 and 60 of the statute have been terminated. Therefore, it can be seen that this exception is recognized by virtue of Article 25(1)(a) of the International Law Commission's Articles on the Responsibility of State for Internationally Wrongful Acts(2001)[8].

No wonder, Nigeria tried for some time to use this exception not to comply with the judgment of the International Court of Justice in the Land and Maritime Boundary, *(Cameroon vs Nigeria: Equatorial Guinea Intervening)*[9]. In utilizing this tool, Nigeria officially issued out a statement about 13 days after the judgment stating that she will not comply with the judgment because, the Bakassi Peninsula was majorly occupied by Nigerians, although the judgment of the Court gave the Peninsula to Cameroon. Nigeria contended that the Country is governed by a Constitution and that the welfare and interest of the Nigerians that are resident in the Peninsula is paramount to the Country and not whether there is oil and other natural resources on the Peninsula [10]. Thus, Nigeria made effort to rely on this exception in order not to comply with the judgement of the ICJ.

The fact that this contention was to be realized later as untenable became apparent, because Nigeria later on complied with the said judgment. It is therefore our candid

opinion in this regard that the only time an exception can be created under this ground of "State of Necessity" is for the parties on their own, especially with the concession of the winning party to agree (because of clearly seen necessity) to either waive the issue of compliance with the judgment or to ask for partial compliance under Article 23 of the International Law Commission, or Article 61 of the Vienna Convention.

Force Majeure as a Valid Exception to the Principle

The doctrine of *Force Majeure* means the occurrence of an irresistible force or of an act of an unforeseen event beyond the control of the state which automatically makes it impossible in that circumstance to perform the obligations which the defaulting state has agreed to perform[11]. Under the Convention on the Law of Treaties, *Force Majeure* could be used as a ground of exception to compliance with the Court's judgment.

In other words, if the Court delivers judgment which ordered a state to put back sand stones, model, ancient pottery, monuments, sculptures and assuming that these items listed are already destroyed as a result of *Force Majeure* or act beyond the control of the defaulting state, that means there is no way the judgment of the Court can be executed as there is nothing to execute upon. This was part of the situation which occurred in *Temple of Preah Vihear case* [12].

The facts of this case and the lessons therefrom is as follows: on the 11th day of November 2013 the International Court of Justice (ICJ) ruled that Cambodia has sovereignty over the whole territory of the *Preah Vihear Temple*, and that Thailand is obligated to withdraw its military personnel from the area. It could be recalled that following Cambodia's independence, Thailand occupied the 900-year-old Hindu temple in 1954.

The temple and its vicinity have been in long contention between the neighbors and have resulted deadly clashes between them. In a June 1962 judgment, the ICJ found

that the temple is situated in territory under the sovereignty of Cambodia, and that Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed at the Temple or in its vicinity on Cambodian territory.

However, in April 2011, Cambodia requested the ICJ to interpret the 1962 Judgment, arguing that while Thailand recognizes Cambodia's sovereignty over the temple itself, it does not appear to recognize the sovereignty of Cambodia over the vicinity of the temple. In its decision, the Court declared unanimously that the 1962 Judgement decided that Cambodia had sovereignty over the whole territory of the promontory of *Preah Vihear*, and that Thailand is obligated to withdraw its forces from that territory.

Thus, since there was nothing to execute upon, the judgement of November 2013, was meant to bring to the awareness of Thailand their responsibility under the previous judgement to recognize the sovereignty of Cambodia over the disputed location. The Court also pronounced that the temple, which was admitted in 2008 on the World Heritage List drawn up by the UN Educational, Scientific and Cultural Organization (UNESCO), is a site of religious and cultural significance for the peoples of the region.

There could also arise a situation dealing with monetary claims or compensations against a defaulting state and the defaulting state now contending that because of its financial position, it will not be able to comply with the judgment of the Court [13].

In view of the foregoing, it is difficult to agree that *Force Majeure* or impossibility of performance would allow the defaulting state to go free from the obligation or responsibility arising from a valid judgement of Court to which a party willingly submitted to its jurisdiction. This was not allowed to be in favour of Greece which was a defaulting party in the *Societe Commerciale de Belgique Case*[14] where the case was decided in favour of Belgium.

The foregoing case holds an important lesson for this study, in the sense that in 1925, the *Société Commerciale de Belgique* entered into an agreement with the Greek Government for the construction and supply of certain railway equipment, payment by the Greek Government should be in the form of Government bonds issued to the Company. However, in 1932, the Greek Government defaulted on the bonds. The Company resorted to arbitration under the contract and the arbitration awards, in 1936, provided for the cancellation of the contract and the payment by the Greek Government to the Company of a certain sum with interest.

The Greek Government did not pay the sum awarded, maintaining that the debt was part of Greek's public debt, subject to the same methods of payment as the Greek public external debts. Belgium unilaterally instituted proceedings before the P.C.I.J. against Greece, which did not object but argued on the merits. Incidentally, on the 15th June 1939, the Court, in finding that the arbitral awards were definitive and obligatory, *held* that, (1) although in principle the nature of a dispute brought before the Court could not be transformed by amendments in the submissions into a dispute of another character, in the special circumstances of this case the proceedings should not be regarded as irregular; (2) the actions of Belgium and Greece showed that they agreed to the Court having jurisdiction; and (3) they also agreed that the arbitral awards had the force of *res judicata*, from which it followed that Greece must execute them as they stood and could not claim to subordinate payments under the award to conditions not contained in the award, relating to settlement of the Greek public external debt.

This means that fundamental change of circumstances could be the basis of the contention of a defaulting state that is not willing to comply with the judgement; and because of its unwillingness, it creates an exception to the principle of *pacta sunt servanda* and good faith. All that the defaulting state would say is that because of

fundamental change of circumstances, it would not be able to comply with the judgment of the Court.

Rebus Sic Stantibus as a Valid Exception to the Principle

The concept of *rebus sic stantibus* (Latin: "things standing thus") stipulates that, where there has been a fundamental change of circumstances, a party may withdraw from the performance of obligations under a treaty pending the removal of the impediment; or terminate the treaty in question. An example would be one in which a relevant island has become submerged.

The principle of *rebus sic stantibus* was canvassed in the case of *Fisheries Jurisdiction*[15] where Iceland was sued by the United Kingdom with respect to Iceland extending its fishery jurisdiction from 12 to 50 miles within its shores. It was on record that on the basis of Article 36(1) of the Statute and the Exchange of Notes dated 11/3/61, where the United Kingdom and Iceland agreed that Iceland can claim 12 miles of fisheries length and any dispute as to the extension beyond the limit mentioned shall be referred to the International Court of Justice upon the request made by any of the parties. Thus, Iceland being a party to the agreement made a request to the Court that it would not be able to comply with the agreement nor confer the Court with jurisdiction to handle the case just because of the fundamental change of circumstances making the *Notes* about the fishery limits not capable of being applicable. However, after Iceland had given information to the Court in order to create an exception of *rebus sic stantibus*, it refused to appear in Court to the advantage of the United Kingdom.

The Court agreed that there is the recognition that in an appropriate circumstance, the principle of *rebus sic stantibus* can be utilized to create an exception to the principle of p*acta sunt servanda* and good faith, but that with regard to the Iceland case, no exception is created and that the non-compliance is a breach of the principle of *pacta sunt servanda*. In this case, the exception, did not avail nor discharge Iceland from its obligations under the agreement.

Applicability of Res-Judicata and Exceptions Thereto

The concept of *res-judicata* means that there is a judgment of the Court on any particular course of action and issue, between the same parties. Thus, under Article 38(1)(c) of the Statute of ICJ, *res-judicata* is provided for as a principle of International Law and a fundamental legal principle. The requirement of *res-judicata* also provided for in Article 59 of the ICJ Statute which states that the decision of the Court has no binding force except between the parties and in respect of that particular case. In other words, Article 60 of the ICJ Statute states that the judgment of the Court is final and without an appeal.

Furthermore, it is stated in Article 94 of the Rules of the Court, 1978 that the judgment of the Court shall be binding on the parties on the day of the reading of the judgment. That makes the judgment to be binding on the basis of *res-judicata* [16].

There should be an end to litigation and no party to a judgment ought to be allowed to re-open his case all over again or allowed to re-litigate all over again on the same course of action or issue and between the same parties with respect to the decision of the court. Therefore, it should be understood that there exist three requirements for the existence of *res-judicata* as stated in the dissenting opinion of Judge Anzilotte which is traceable to the *Chorzow Factory Case Interpretation of 1927* [17] where he stated as follows;

> The first object of Article 60 being to ensure, by excluding every ordinary means of appeal against, that the Court's judgment shall possess the formal value of res-judicata, it is evident that Article 60 which is closely connected with Article 59 which determines the material limits of res-judicata when stating that the decision of the Court has no binding force except between the parties and in respect of that particular case. We have here the three traditional elements of identification, petition, *causa petendi*, for it is clear that, that particular case (*les cas qui et al decide*) covers both the object and the ground of the claim.

From the quotation, it is clear that the elements involved in *res-judicata* are;

(i) parties must be the same (ii) Object must be the same (iii) Cause is the same
(ii) it is the cardinal and general principle of International Law that the right question or fact distinctly put and which has already been determined by a Court of competent jurisdiction cannot form the subject matter of any further dispute [18].

The question then is, how can the Court come to the awareness that the case falls within the principle of *res-judicata*? The simple answer to this, is that, it is difficult to recognize the precise subject matter as well as cause of action that are covered in the case before the Court, especially as to whether it has been dealt with earlier by the Court or whether it is "in respect of that particular case".

In order to solve this problem, Article 38(2) of the Rules the Court, 1978 requires that the party presenting its case before the Court should specify the precise nature of the claim, together with a succinct statement of the facts and grounds upon which the claim is based. Notwithstanding how the case is presented, the Court would still scrutinize the case in order to determine whether *res-judicata* is applicable. Therefore, it can be seen that the application of *res-judicata* to a case as to determine if it is actionable or not, is not easy because application of res-judicata in domestic proceedings hardly separate jurisdiction and merits while international dispute separates jurisdiction and merits [19].

The case of *United Kingdom vs. Albanian* popularly called *Corfu Channel Case* [20] is important for our discussion. In this case, two British destroyers struck mines in Albanian waters, where they suffered severe damages and losses which included loss of life. The United Kingdom sued Albania while Albania raised objection to the jurisdiction of the Court. The Court did not agree with the Albanian objection and the case was adjourned for hearing of the case on the merits.

The parties notified the Court of a compromise which extent is as to whether Albania was under any duty to pay compensation to the United Kingdom. Albania still asserted in its final submission that the Court had no jurisdiction to assess the

amount of compensation to be paid to the United Kingdom, which was making such claim before the Court. The Court judgment was delivered on 9/4/1949 and apart from the fact that the Court agreed that it had jurisdiction to handle the case, it equally stated that Albania caused the damages upon which the United Kingdom went to Court and another proceedings was used to decide the question of pecuniary compensation [21].

Also, as a result of the afore-mentioned fact, it was the direction of the Court that the parties should assess the amount of compensation. As if the issue of raising objection is not enough, Albania again raised the issue that the Court does not have jurisdiction. The United Kingdom on its part relied on Articles 36(6) and 60 of the Statute of the Court stating that Albania had earlier raised the issue of jurisdiction and have been overruled and as such the issue of jurisdiction as raised by Albania is *res-judicata*. Instead of Albania to come forward with respect to whether the issue of *res-judicata* can succeed or not, Albania refused to participate in the case any further.

The Court further decided the case on compensation without the participation of Albania, and the United Kingdom's argument was upheld by the Court on 15th day of December 1949; wherein the Court held that on the basis of Article 60 of the statute of the Court, the Albanian Government is bound by the judgment of the Court which is final and without an appeal and therefore the matter is *res-judicata* [22].

However, in the *Asylum Case* [23] there was however a new twist as the Court refused to apply the principle of *res-judicata* in this case which involved a Peruvian refugee called Haya de la Torre; who was being sought for by the Peruvian Government but sought refuge in the Columbian Embassy in Lima, Peru. The case went to Court and two abstract questions dealing with diplomatic asylum and interpretation of some provisions of the Havana Convention on Asylum of 1928 was dealt with.

The Court in deciding the case answered the questions put forward to it; but the Court stated that the issue of whether or not the refugee should be handed over to the Peruvian Government was not part of the request submitted to the Court but instead of the Court stopping at that point, the Court still went on the voyage of its own, by deciding what was not put before it. It is to be noted that the same Court in its judgment when it did not try this point, still found that the granting of diplomatic asylum in favour of Haya de la Torre by the Columbian Government was contrary to the Havana Convention, which the two countries were signatories to [24].

Further, the Columbian Government having full knowledge of the gap that has been created in the judgment sought for interpretation of the said judgment under Article 60 of the Statute and part of the questions put before the Court has to do with the qualification made by the Columbian Ambassador and equally as to whether the refugee should be surrendered to Peru. The Court decided that in its first judgment the two questions were not decided and therefore, there existed no gap in the judgment to be filled by virtue of Article 60 of the Statute. Before the Court would decide these questions formally, the two parties must file another case before the Court [25].

The Columbian Government in 1950 decided to institute a new case before the Court which gave birth to the famous Asylum case popularly called *Haya de la Torre Case*. The purpose upon which the Columbian government filed the case was the prayer before the Court as to whether on the basis of the Havana Convention, Columbia is to release the refugee to the Peruvian Government and also whether it can terminate the asylum being enjoyed by Haya de la Torre. It is on record that Cuba one of the signatories to the Havana Convention, decided to intervene in the case, but Peru objected to the application for intervention. The Court ruled that the application for intervention was well made as the intervention was based on new

facts involving new aspects of the convention which cannot be defeated on the basis of *res- judicata* as those new facts were not decided by the earlier judgment of the Court.

The Court equally stated that the question of the surrender of the refugee to Peru and termination of the asylum are not affected by *res-judicata* because it was not decided in the earlier judgment. It should be noted that practically, once there is a judgment on a particular issue which affects the main case or the basis of the case in dispute, the principle of *res-judicata* is likely to have set in.

Therefore, it has been said that the best option is for litigant states to avoid causing obscurity and damages to their cases by indicating adequately what their claims are, as was decided in the *Fisheries Case (United Kingdom vs. Norway)* [26]. In its Judgment the Court found that neither the method employed for the delimitation by the Decree, nor the lines themselves fixed by the said Decree, are contrary to international law; the first finding is adopted by ten votes to two, and the second by eight votes to four. This judgement thus support the views that claims against damages should not be shrouded in obscurity.

Conclusion

The study has viewed the cardinal principle of *pacta sunt servanda* and its direct effects on treaties and other instruments that defines rights and obligations of parties. A central theme in this study is the fact that once agreements have been reached, parties are estopped from any conducts that may tend to violates the rights and obligations of the parties. To support this argument and principle of international law, decided cases of the ICJ were resorted to. The Court in coming to its conclusion, utilized the Rules of Court, the ICJ Statute, parties' agreements or treaties and other international legal instruments.

Thus, the resulting findings were in agreement with the position of the paper that although, treaties must be complied with; there are certain exceptional circumstances where it becomes impracticable to compel the defaulting state to comply with the tenets of the treaties. These exceptions thus acts as defenses as was discussed in the *Cameroon vs. Nigeria case* where the exception of State of Necessity could not avail Nigeria. A second situation where one of these known exceptions did not avail a state party is in the *Fisheries Jurisdiction case* were Iceland approached the Court under the defense of *rebus sic stantibus* and the court held that, that defense cannot be used to vitiate Iceland's liability to the claims of the United Kingdom.

Recommendations

1. Parties to an agreement are supposed to know that, enforcement is a necessity, but not sufficient means of achieving compliance when there are exceptions to the *pacta sunt servanda* rule.
2. The study observed that in most situations some level of enforcement is required to create and maintain a complying majority of persons under the jurisdiction of the ICJ. This imply the compliance is necessary for development of confidence in future transactions.
3. Every Treaty in force is binding upon the parties to it and must be performed by them in good faith as prescribed by the instruments of their covenants.
4. The study observed that prevalent political conditions should not be the basis in defeating the objects and purposes of a treaty or an agreement, even though they constituted essential conditions of the consent of the parties. This view should apply to both national and regional economic systems in force at the time of the conclusion of a Treaty.
5. That the doctrine of "State of Necessity" is only applicable upon the agreement of the winning party after due considerations that the acclaimed

issues of necessity are as presented by the judgement debtor. This enables the creditor to either waive full compliance or negotiate to a partial compliance under Article 23 of the International Law Commission, or Article 61 of the Vienna Convention. In view of this finding states relying on state of necessity should do so under clear cut observable conditions of impossibility. This is the only acceptable condition for this exception to apply.

6. Since Articles 60 and 59 determines the material limits of *res-judicata* in requiring that its application is only possible when the parties to the action and the subject matter are the same, parties hoping to raise this exception must do so within the allowable time as not to waste the resources of the states and the Court. The reason being that decisions from such proceedings are not binding on the parties and are also of no use to the international adjudicatory processes and procedures are largely rely on stare decisis and case antecedents.
7. Parties are to bear in mind that irrespective of how the case is presented, the Court can *so muto* scrutinize the case in order to determine whether *res-judicata* is applicable. It should be noted that most domestic jurisdictions do not apply this scrutiny and as such largely rely on the defendants to do so. But under international adjudication, cases are proceeded with on the basis of their merits and the jurisdiction of the Court.

References and Notes

[1] Good faith in this circumstance thus requires utmost willingness to perform required obligations without compulsion. In this regard, enforcement is applied to achieve compliance and both are distinct only to the extent that enforcement is a means to compliance when the willingness to comply is lacking.
(Source: http://www.inece.org/1stvol1/wasserman.htm. visited 18th Nov, 2016).

[2] Suganami, H. "Why Ought Treaties to be Kept?" 33 (B.W.A) (1979) p 243-256 at p. 243

[3] A position of the Harvard Research in International Law (Chailley, P: "Harvard Research in International Law, Law of Treaties, 29 A.J.I.L. Supp. 653at 937 (1935), Art. 19.), which was

adopted by The American Law Institute, Restatement of the Law (Second), and The Foreign Relations Law of the United States (1965) at 449, Art. 146, states that:

> "The primary object of interpretation is to ascertain the meaning intended by the parties for the terms in which the agreement is expressed, having regard to the context in which they occur and the circumstances under which the agreement was made. This meaning is determined in the light of all relevant factors."

Full details are available at: (Source:http://digitalcommons.law.yale. edu/cgi/viewcontent.cgi?article=3595&context=fss_papers.Visited on the 5th Nov. 2016.

[4] *ICJ Judgment of 10 December 1985- Application for Revision and Interpretation of the Judgment of 24th February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Source: http://www.icj-cij.org/docket/index. php? sum =368& code= tltl&p1=3&p2=3&case=71&k=05&p3=5 Visited on the 6th Nov, 2016*

[5] Summary of The Judgment of 22nd December 1986 in the *Case Concerning The Frontier Dispute (Burkina Faso/Republic of Mali)* wherein the Court concluded as follows, as per para 178 of the judgement:

XIII. *Binding force of the Judgment*

"The Chamber also notes that the Parties, already bound by Article 94, paragraph 1, of the Charter of the United Nations, expressly declared in Article IV, paragraph 1, of the Special Agreement that they "accept the Judgment of the Chamber . . . as final and binding upon them". The Chamber is happy to record the attachment of both Parties to the international judicial process and to the peaceful settlement of disputes. (Source: http://www.icj-cij.org/docket/index.php?sum=359&p 1=3 & p2=3&case=69&p3=5. Visited on the 18th April, 2014.

[6] Summary of the Judgment of 25th September 1997**:** *Gabcikovo Nagymaros Project (Hungary / Slovakia)*-ICJ Rep. (1997) para 2.

For further information on this proceeding, see (http:// www.icjcij.org/docket/index.php?sum=483&code=hs&p1=3&p2=3&case=+92&k= 8d& p3=5visited on the 4th Nov. 2016.

[7] ICJ Rep. (1998) para 38

[8] Article 25 (1) (a) in Crawford, J., *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries,* (Cambridge University Press, 2002), p. 178.

[9] ICJ Rep. (2002), para 325

[10] Reuters/ Washington Post, Thursday, October 24, 2002 at A 20.

[11] It should be noted that according to paragraph (3) of the International Law Commission's commentary to *Article 58* (Supervening impossibility of performance),of the Law of Treaties it was identified that such cases might be regarded simply as cases in which *force majeure* could be pleaded as a defense exonerating a party from liability for non-performance of the treaty; but not to incur responsibility for an act or its omission was to have the right of performance or non-performance of an act. If in the case of *force majeure* a State did not incur any responsibility that was because, so long as *force majeure* lasted, the treaty must be considered suspended. Source: http://legal.un.org/diplomaticconferences/lawoftr eaties-1969/docs/english/1stsess/a_conf_39_c1_sr62.pdf. Visited on the 25th Oct, 2016.

[12] ICJ Rep (1962) pg 6

http://www.un.org/apps/news/story.asp?NewsID=46461&Cr=court+of+justice & Cr1=#.U1wnjKLnSSo
In this respect, the Court recalled that Cambodia and Thailand – which are both parties to the World Heritage Convention – must cooperate in the protection of the site as a world heritage. In addition, each State is under an obligation not to "take any deliberate measures which might damage directly or indirectly" such heritage.

[13] Crawford, J., *The International Law Commission's Article on State Responsibility: Introduction, Text and Commentary (*Cambridge University Press, 2002) p. 183, para 15

[14] *Belgium v. Greece (1939) P.C.I.J.,Ser. A/B, No.78*. Source: http://www. answers. com/ topic/societe-commerciale-de-belgique#ixzz31d BA 58Ra. Visited on the 13th Oct. 2016.

[15] ICJ Report (1973) 3: As reported in the referenced judgement, the international law elements of the case are the Laws of the Sea, the theory that ***silence leads to consent***, and *sub specie legis ferendae*. The rule of law that was used in this case was the general rule under the United Nations Conference on the Law of the Sea. This conference set out to establish rules and regulations for the sea. Although there was no written rule for fishery jurisdiction, silent consent was given to the 12 mile regulation thus making it a law. Although the ICJ knew that there would be discussions with respect to the extension of this area, it could not anticipate such a change (*sub specie legis ferendae*) and needed to wait until it was written down. Source: www.icj-cij.org/docket/index.php? sum= *302&p1=3&p2. Visited on the 14thOct, 2016*.

[16] UNTS (1949) p. 34: The provisions Article 94 of the Rules states as follows:
Article 94:

1. When the Court has completed its deliberations and adopted its judgment, the parties shall be notified of the date on which it will be read.
2. The judgment shall be read at a public sitting of the Court and shall become binding on the parties on the day of the reading.

Full details of the Rules of Court, 1978, could be sourced from: http://www.icj-cij.org/documents/index.php? p1=4&p2=3&. Visited 14th Oct, 2016.

[17] (1927) P.C.I.J Ser A. No. 13 p. 23.
Full details of the judgment could be obtained from: http://www.icj-cij.org/pcij/serie_A/A_13/43_ Interpretation _des _ Arrets_ No_7_et_8_Usine_de_Chorzow_Arret.pdf. Visited 14th Oct, 2016

[18] See Ralston, J. "Report of French-Venezuelan Mixed Claim Commission of 1902 Washington", 1906 p. 355 and most especially, the position of the Nigerian Supreme Court in the case *of Ntuks & 9 Ors vs. Nigerian Ports Authority, (2007),* where, His Lordship, Ogbuagu, J.S.C. observed that:

> *"If the res thing actually and directly in dispute has been already adjudicated, of course by a competent court, it cannot be litigated upon…….The rule of res judicata, is derived from the maxim of nemo debet bis vexari pro eadem causa (No one should be twice troubled for the same cause). Of course, it is the causa that matters and therefore, a plaintiff cannot, be formulating a fresh action/claim, re-litigate the same cause."*

Full judgement could be sourced from: http://www.nigeria-law.org/S.O.Ntuks & 9 Ors vs. Nigerian Ports Authority. 18th Oct, 2016

[19] Scobbie, I. *"Res Judicata Precedent and the International Court: a Preliminary Sketch" 20 AYBI* (1999) pp. 299-317 at p. 307

[20] ICJ Rep. (1948) p. 15

[21] Two judges ad hoc were chosen by Albania in the Corfu Channel Case, [1949] I.C.J. Rep. 4: they are M. Doxner who sat on the bench when the preliminary objection was heard, and M. Ecer of Czechoslovakia, who sat when the case was heard on the merits.
However, Judges Krylov and M. Ecer disagreed with the operative clause and the reasons for the Judgment. They both rejected the procedure for the pecuniary compensation that was awarded.

[22] ICJ Rep (1949) 244 p.248, records of proceedings and full judgement for this case could be found in:www.worldcourts.com/icj/eng/decisions/1949.12.15_ corfu.htm. Visited on 17th Oct, 2016

[23] As could be seen in the judgement of the Court in that case, the irregularity of the asylum and the obligation to terminate it must be regarded as *res judicata,* but the ICJ did not view it in that light. See ICJ Rep. (1950) p.280

[24] The parties were indeed signatories to the Convention on Asylum in 1928. However, after the judgement on the Victor Rad Haya de la Torre case, the Columbian Government not wanting to comply with the judgment decided to avoid its implementation by way of seeking for interpretation under Article 60 of the Statute and of Article 79, paragraph 2, of the Rules of Court. But the Court in its judgement observed that: 'In reality, the object of the questions submitted by the Colombian Government is to obtain, by the indirect means of interpretation, a decision on questions which the Court was not called upon by the Parties to answer'….. 'It is evident that this condition does not exist in the present case. Not only has the existence of a dispute between the Parties not been brought to the attention of the Court, but the very date of the Colombian Government's request for interpretation shows that such a dispute could not possibly have arisen in any way whatever'. Source: http://www.worldcourts.com/icj/eng/ decisions /1950 .11.27_request_for_ interpretation.htm. Visited 25th Oct. 2016

[25] The Court found that: 'the requirements of Article 60 of the Statute and of Article 79, paragraph 2, of the Rules of Court, have not been satisfied. [p 404]. For these reasons, The Court, by twelve votes to one, Declares the request for interpretation of the Judgment of November 20th, 1950, presented on the same day by the Government of the Republic of Colombia, to be inadmissible', implying that if a dispute exists, the aggrieved party could proceed to the Court on such new claims and not on a previously determined case, which is res judicata. Source: http://www.worldcourts.com/icj/eng/ decisions/1950.11.27_ request_ for_ interpretation.htm. Visited 25th Oct. 2016

[26] The Fisheries Case was brought before the Court by the United Kingdom of Great Britain and Northern Ireland against Norway. It should be noted that by a Decree of July 12th. 1935, the Norwegian Government had, in the northern part of the country (north of the Arctic Circle) delimited the zone in which the fisheries were reserved to its own nationals. The United Kingdom asked the Court to state whether this delimitation was or was not contrary to international law.