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Thank you.





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# AFTER THE JUDGMENT

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## **I. Introduction**

- **Record of Compliance with International Judicial Decisions**
- **Factors Related to Non-Compliance of International Judicial Decisions**

## **II. Steps After the Judgment**

- **Determining Relevant Domestic Measures**
- **Negotiating with the Other Party**
- **Monitoring the Other Party's Compliance**

## **III. Obligation of Compliance and Enforcement Mechanisms of International Judicial Decisions**

- **ICJ Judgments**
- **ITLOS Judgments**
- **Arbitral Awards**



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# I. INTRODUCTION



- ❑ **General Satisfactory Level of Compliance with International Judgments**
  - Reciprocity
  - Stability of bilateral relations with neighboring States
  - Reputational considerations
  - Increased institutionalization through regional and international organizations (integration)
  - Development of precedent by international courts and tribunals (predictability)
  
- ❑ **Factors Related to Non-Compliance and Challenging Implementation**
  - Differentiation between difficulties of implementation vs. deliberate non-compliance (defiance)
  - Connection between Grounds for Jurisdiction/scope of Parties' consent of the case and compliance with the Judgment
  - Technical challenges and pitfalls



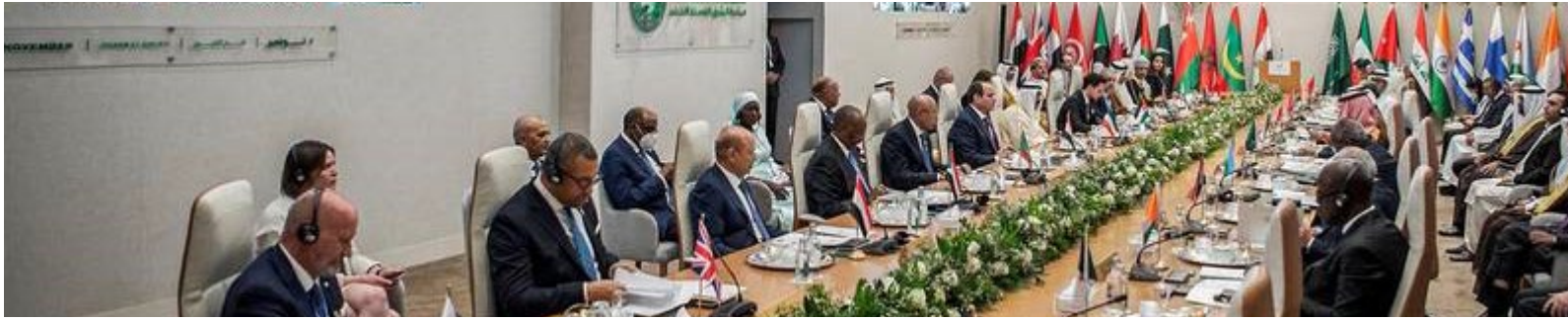


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## II. STEPS AFTER THE JUDGMENT

## 1. *Ensuring Compliance at the Domestic Level*

- Identification of specific actions required by the judgment (Form of reparation granted by the Court/Tribunal)
- Public declarations related to the judgment (media, diplomatic exchanges)
- Identification by municipal law of the precise domestic means and mechanisms to bring about compliance with the judgment by each of the Parties
- For judgments which establish a maritime boundary: forms of “demarcation of the Ocean”
  - ✓ Maritime borders are not physically marked. Buoys and markers are sometimes used (however they are costly and impossible to mark the entire border)
  - ✓ Use of nautical charts, GPS



## 2. Negotiating with the Other Party / Joint Request for Assistance

- Form and effect of judgments/awards depend on scope of Parties' consent:
  - Parties can limit their request to the court to deciding “what principles and rules of international law are applicable to delimitation” (ex. *North Sea Continental Shelf case*)
  - Parties can limit their request to decide on “*principles and rules of international law applicable*” as well as “*practical guidance about how such principles should be applied*” (*Tunisia/Libya; Libya/Malta cases*)



## 3. Monitoring Other Party's Compliance:

- ❑ Presumption that States comply with international judgments and awards in good faith
- ❑ Difficulty of proving another State's explicit "defiance" or rejection of the judgment or award unless publicly expressed
  - Few cases of unilateral rejection of a judgment as opposed to denunciation of the instrument of jurisdiction in which the Court based its ruling (ex. Colombia after the 2012 Nicaragua/Colombia Judgment)
  - Challenges to an international judgment tend to be grounded in legal arguments and give rise to requests for annulment (ex. Guinea-Bissau/Senegal award) or revision of the case (ex. Tunisia's request to "correct an error in the judgment" of Tunisia/Libya judgment)
  - Challenges to an international judgment may be temporary, as the obligation to comply with it remains and changes of Administration can alter the State's position (ex. US on the Nicaragua v. USA case)
- ❑ Possibility to invoke the international responsibility of the non-complying Party to create political leverage (exs. Cameroon against Nigeria and Bosnia and Herzegovina against Yugoslavia)



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### **III. Obligation of Compliance and Enforcement Mechanisms of International Judicial Decisions**

# Obligation of Compliance / Enforcement Mechanisms (ICJ decisions)



## Article 59 ICJ Statute

- “The decision of the Court has no binding force except **between the parties and in respect of that particular case.**”

## Article 60 ICJ Statute

- “**The judgment is final and without appeal.** In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party”.

## Chapter XIV — The International Court of Justice

### Article 94 of the UN Charter:



- “1. Each **Member of the United Nations** undertakes to comply with the **decision** of the **International Court of Justice** in any case to which it is a **party**.
- 2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, **the other party** may have **recourse to the Security Council**, which may, if it deems necessary, make **recommendations** or decide upon **measures** to be taken to give effect to the judgment.”

## ■ Article 94 UN Charter

- Covers ICJ “decisions” only (*quid* provisional measures orders)
- Right to recourse to the Security Council only initiated by one of the Parties to the case (no automatic enforcement agency)
- UNSC can adopt recommendations and binding decisions (discretion)
- Special cases: non-compliance by a Party to a case that is a non-UN member State
  - ICJ is open to States that are not UN members (article 35(2) ICJ Statute)
  - Deposit of declaration before the Registrar indicating the State party to the proceedings undertakes to “comply in good faith with the decision or decisions of the Court” and to “accept all the obligations of a Member of the United Nations under Article 94 of the Charter.”



# Obligation of Compliance and Enforcement Mechanisms (ITLOS Judgments)

## Article 296 - UNCLOS

### *Finality and binding force of decisions*

- “1. **Any decision** rendered by a court or tribunal having jurisdiction under this section shall be final and **shall be complied with by all the parties to the dispute.**
- 2. Any such decision shall have no binding force except between the parties and in respect of that particular dispute.”

## UNCLOS Annex VI, Article 33 ITLOS Statute

### *Finality and binding force of decisions*

- “1. The decision of the Tribunal is final and **shall be complied with by all the parties to the dispute.**
- 2. The decision shall have no **binding force** except **between the parties in respect of that particular dispute.**
- 3. In the event of dispute as to the meaning or scope of the decision, the Tribunal shall construe it upon the request of any party.”



# Obligation of Compliance and Enforcement Mechanisms (ITLOS Judgments)

## Article 11, Annex VII UNCLOS

### *Finality of award*

- “The award shall be final and without appeal, unless the parties to the dispute have agreed in advance to an appellate procedure. It **shall be complied with by the parties to the dispute.**”

## Article 12, Annex VII UNCLOS

### *Interpretation or implementation of award*

- “1. Any controversy which may arise between the parties to the dispute as regards the interpretation **or manner of implementation** of the award may be **submitted by either party for decision to the arbitral tribunal which made the award.** For this purpose, any vacancy in the tribunal shall be filled in the manner provided for in the original appointments of the members of the tribunal.
- 2. Any such controversy may be submitted to another court or tribunal under article 287 by agreement of all the parties to the dispute.”



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# *INTERPRETATION AND REVISION*

- Possibility to submit a request for interpretation of the judgment to clarify its meaning or scope (Article 60 ICJ Statute)
  - The request shall cover the *dispositif* as well as the essential elements of the *ratio decidendi* that explain and justify the *dispositif*
  - Can be filed by any of the Parties to the case
  - No need to invoke new jurisdictional grounds
  - Does not suspend the obligation of the parties to comply with the judgment and shall not delay compliance with the judgment
  - Shall not seek to resolve issues that fall outside of the scope of the judgement
  
- Possibility of submitting requests for interpretation of arbitral awards more limited (either before the Tribunal or a new one)

- ❑ Possibility to submit a request for revision of the judgment to clarify its meaning or scope (Article 61(1) ICJ Statute)
  - Discovery of new decisive fact
  - Late discovery not due to the negligence of the Parties
  - Filed within six months since the discovery of the new fact
  - Never filed after 10 years since the judgment was delivered
  - No need to invoke new jurisdictional grounds
  - All attempts have been rejected in admissibility phase because the facts were not new or were not decisive
  
- ❑ Possibility of submitting requests for interpretation of arbitral awards depends on the *compromis* and is more limited (either before the Tribunal or a new one)

**Merci beaucoup pour votre attention !**

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