### Contents

Table of Cases

Abbreviations

Introduction

XX1 XX1X

6

6

7

8

8

13

14

18

#### **Chapter 1: Methodology**

- A. Perspective of This Study
- B. The Relevant Decisions
  - I. Final judgments
  - II. Interim measures of protection
  - III. Interlocutory decisions other than provisional measures: no object of this study
  - IV. Advisory opinions: no object of this study

#### **Chapter 2: The Legal Framework**

#### A. Introduction

- B. History of the Provisions on Compliance and Enforcement
  - I. The predecessor of Article 94 of the Charter: Article 13(4) of the League of Nations Covenant
  - II. The way from Article 13(4) League of Nations Covenant to Article 94 of the UN Charter
- C. The Addressees of the Obligation of Compliance and of Potential **Enforcement** Action
  - I. "The parties:" states in their entirety 24
  - II. A special case: parties to ICJ proceedings that are non-members to the United Nations

19

19

21

24

III. Intervening states	27
D. The Obligation of Compliance	29
I. Compliance with final judgments	29
II. Compliance with provisional measures	32
1. Provisional measures as "decision" under Article 94(1)	32
2. Scope of the obligation	33

# xii Contents III. Non-compliance and possible defenses E. Enforcement of ICJ Decisions I. Preliminary remarks

- II. Enforcement of ICJ decisions under the United Nations Charter
  - 1. Enforcement of ICJ decisions through the Security Council
    - a. Nature of the Council's jurisdiction under Article 94(2)
    - b. Range of measures
    - c. The Security Council and the Court decision
    - d. The procedure before the Security Council
    - e. Desirability of an automatic procedure?
    - f. Enforcement of provisional measures
  - 2. Enforcement by other UN organs
    - a. The General Assembly
    - b. ECOSOC

68

69

71

71

72

74

75

77

81

81

81

82

87

63

34

36

36

38

39

39

44

48

52

58

60

62

c. The Secretary-General

III. Unilateral enforcement and assistance by other actors

- 1. Availability of regular unilateral enforcement measures
- 2. The concrete measures available
- 3. Assistance by third states
- 4. Enforcement action by specialized agencies and regional organizations

5. Enforcement through proceedings before domestic courts

**Chapter 3: The ICJ Practice Analyzed** 

-

A. Analysis of the Practice: Which Practice and How?

I. Form of the presentation

II. Selection of decisions for the analysis

III. Compliance with judgments

Contents	Xiii
IV. Compliance with provisional measures	89
B. Compliance with Judgments	91
I. The Corfu Channel case	91
1. Background and proceedings before the Court	91
2. The judgments of 1949	94
3. Albania's response: non-compliance	95
4. The settlement	97
5. Conclusion	98
II. Asylum/Haya de la Torre	99
1. Background of the proceedings	100
2. The judgments of 20 and 27 November 1950	102
3. The judgment of 13 June 1951	103
4. The post-adjudicative phase: a difficult implementation	107
5. Reasons for the difficulties in the implementation	109
III. Rights of nationals of the United States of America in Morocco	110
IV. Ambatielos	113
V. Minquiers and Ecrehos	114
VI. Right of passage over Indian territory	117
1. The institution of the proceedings	117
2. The judgments of 1957 and 1960	118
3. Scope of the Court's findings	119
4. Portugal's complaint of non-compliance	121
VII. Sovereignty over certain frontier land	122

VIII. Arbitral award made by the King of Spain on 23 December 1906	126
IX. Temple of Preah Vihear	132
X. North Sea continental shelf	137
XI. Appeal relating to the jurisdiction of the ICAO Council	140

xiv	Contents	
	II. Fisheries Jurisdiction	144
	1. Background of the dispute	144
	2. The proceedings before the Court	146
	3. The judgments on the merits	148
	4. The scope of the obligations arising from the judgment	150
	5. Follow-up to the judgment	151

6. Conclusion

#### XIII. Continental shelf (Tunisia/Libya)

- 1. The special agreement and the proceedings before the Court
- 2. The judgment on the merits of 1982
- 3. Tunisia's request for revision, correction, and interpretation and the judgment of 1985
- 4. The final settlement

XIV. United States diplomatic and consular staff in Tehran

155

158

158 159

160

162

163

1. Background: the events of 1979	163
2. The reaction by the international community	164
3. The proceedings before the Court	166
4. The judgment of 24 May 1980	167
5. The follow-up to the judgment	169
6. Conclusion: the Court's role in the Tehran Hostages dispute	171
XV. Delimitation of the maritime boundary in the Gulf of	
Maine area	173
1. The efforts to submit the dispute to an ICJ chamber	173

2. The judgment of the Chamber

177

178

181

XVI. Continental shelf (Libyan Arab Jamahiriya / Malta)

XVII. Frontier dispute (Burkina Faso/Mali)

XVIII. Military and paramilitary activities in and against Nicaragua

#### Contents xv

1. Background of the case 184

- 2. The parties' submissions and the judgment on jurisdiction 186
- 3. The US reaction to the judgment on jurisdiction 190
- 4. The proceedings on the merits 192
- 5. The parties' reactions 197
- 6. Action undertaken to bring about US compliance

	a. An initiative of interested private persons: domestic litigation in the US	198
	b. Initiatives by Nicaragua	199
	7. The proceedings on compensation before the ICJ and the final settlement	205
	8. Conclusion	207
	9. Evaluation	209
IXX.	Land, Island and Maritime Frontier Dispute	211
	1. Background of the case	211
	2. The proceedings before a Chamber of the Court	212
	3. The judgment of 11 September 1992	214
	4. The aftermath of the decision	215
XX.	Maritime delimitation in the area between Greenland and Jan Mayen	220
XXI.	Arbitral award of 31 July 1989	224
	1. The arbitral award of 31 July 1989	225
	2. The proceedings before the ICJ	226
	3. The judgment of 12 November 1991 and its aftermath	227
XXII.	Territorial dispute	229

## XXIII. Maritime delimitation and territorial questions between Qatar and Bahrain

- 1. Areas at dispute between Qatar and Bahrain and settlement attempts
- 2. The proceedings before the ICJ

236

234

234

Xvi	Contents	
	3. The judgment on the merits	238
X	XIV. Gabčíkovo-Nagymaros	240
	1. Background of the case	240
	2. The proceedings before the ICJ	241
	3. The judgment of 25 September 1997	243
	4. The follow-up to the judgment	245

	r. In ion op to the Judgment	475
	5. Evaluation	248
XXV.	Kasikili/Sedudu	249
XXVI.	LaGrand	253
	1. The facts and the institution of proceedings before the Court	254
	2. The parties' submissions	255
	3. The judgment of 27 June 2001	258
	4. Action required by the United States in order to comply with the judgment	259

277

280

281

285

.

- E -

XXVII. Arrest warrant of 11 April 2000	264
1. Background of the case	264
2. The judgment of 14 February 2002	266
3. The implications of the judgment	268
4. The follow-up to the judgment	269
XXVIII. Conclusion: An overall positive record of compliance with judgments	271
C. Compliance with Provisional measures	275
I. Anglo-Iranian Oil Company case	275
1. Background of the case	275

- 2. The interim measures taken by the Court
- 3. Iran's rejection of the provisional measures
- 4. The proceedings in the UN Security Council
- 5. Conclusion

Contents	xvii
II. Fisheries Jurisdiction	286
1. The proceedings on interim measures	286
2. The parties' reactions	289
3. Conclusion	293
III. Nuclear tests	296
1. Background: France's nuclear weapons program	296

	2.	Australia's and New Zealand's applications and requests for the indication of provisional measures	298
	3.	The orders of 22 July 1973	300
	4.	The situation after the orders	302
	5.	The judgments of 20 December 1974	306
	6.	A sequel in court: the proceedings in 1995	307
	7.	Non-compliance with the order: relevant factors	308
IV.	Uı	nited States diplomatic and consular staff in Tehran	310
	1.	The proceedings on interim protection and the Court's order	310

2. Iran's reaction	313
3. The US reaction: non-compliance?	316
4. Conclusion	320
V. Frontier dispute (Burkina Faso v. Mali)	321
VI. Military and paramilitary activities in and against Nicaragua (Nicaragua case)	324
1. Content of the measures	325
2. Reasoning of the order	327
3. The follow-up to the order	330

334

335

338

.

4. Conclusion

1

- VII. Application of the Convention on the Prevention and Punishment of the Crime of Genocide
  - 1. Bosnia's application and the first proceedings on interim protection
  - 2. The order of 8 April 1993

#### xviii Contents 3. Events subsequent to the order 340 4. The second proceedings on interim protection 342 5. The order of 13 September 1993 345 348 6. Assessment VIII. Land and maritime boundary between Cameroon 351 and Nigeria

	1. Background of the proceedings	351
	2. The incidents of February 1996 and the proceedings on interim protection	352
	3. The order of 15 March 1996	355
	4. The follow-up to the order	359
	5. Conclusion	363
IX	. Vienna Convention on Consular Relations (Breard case)	364
	1. Background	365
	2. The order of 9 April 1998	366
	3. The US reaction	368

4. The further proceedings	372
5. Conclusion	373
X. LaGrand	375
1. The order of 3 March 1999	375
2. The follow-up to the order	377
3. The further proceedings: the judgment as a vehicle for sanctioning the breach of an ICJ order	379
4. Conclusion	382
XI. Armed activities on the territory of the Congo	

383

383

384

- (DRC v. Uganda)
- 1. Background of the case
- 2. Security Council Resolution 1304 and Congo's request for provisional measures
- 3. The relation between the request and the resolution

#### Contents xix

- 4. The Court and the Security Council resolution: 390
- 5. The order of 1 July 2000 391
- 6. The follow-up to the interim measures 395
- 7. Conclusion 398
- XII. Conclusion: A mixed record for provisional measures
- Chapter 4: Lessons to be Learned from the Practice403A. General Observations403I. Compliance and usefulness403II. Defiance and non-appearance before the Court:<br/>The Nicaragua judgment as a turning point403III. Delays and difficulties in implementation: Problems to<br/>some degree inevitable404IV. Source of jurisdiction: Relation of non-compliance and<br/>cases of compulsory jurisdiction405
  - 1. The alleged smoothness of proceedings based

on specific consent 406 2. The experience in cases of compulsory jurisdiction 410 V. Non-compliance and highly political situations 413 VI. Subject-matter of the proceedings 413 VII. Factors with a doubtful or non-measurable impact on 414 compliance 1. Relations between the parties and form 414 of government 2. UN membership 415

3. Voting patterns and dissenting votes

415

416

417

418

- -
- 4. Decisions of a Chamber vis-à-vis decisions of the full Court
- VIII. The role of the UN main organs
- B. The Weaker Record for Provisional Measures: Explanations and Possible Remedies

#### Contents

- I. Circumstances under which the orders were issued/nature of the cases
  - 1. Form of introduction of proceedings

.

- 2. Attitude of parties towards the proceedings
- 3. Political leverage

XX

4. Preponderance of ulterior motives of the applicant of 421 provisional measures

420

421

422

422

424

424

425

- 421 5. Low expectation of meaningful Security Council involvement
- II. Inherent problems of interim protection before the Court
  - 1. No final determination of the Court's jurisdiction
  - 2. Practical problems: Time pressure and lack of knowledge and expertise
  - 3. Brevity of the reasoning
  - 4. Impression of bias/balancing of interests
  - 426 5. Uncertainty about the recovery of potential losses and injuries
  - 6. Degree of precision of the measures indicated

#### III. Uncertainty about the binding force

- IV. Decisions by the Court for improved compliance with provisional measures: Complementary measures, further orders and sanctioning mechanisms in the judgment
  - 1. Complementary measures and further orders to bring about compliance
  - 2. Sanctioning non-compliance in the judgment on the merits
    - a. Jurisdiction for non-compliance claims
    - b. Admissibility of non-compliance
    - c. The relation between non-compliance claims and the main claim

428

430

430

430

432

432

434

434

436

438

427

d. Withholding of relief

Concluding Remarks

Zusammenfassung (German Summary)

Bibliography Index

