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RECEPTIVENESS OF THE CONSTITUTIONAL COURT OF COLOMBIA TO UNFAVOURABLE INTERNATIONAL JUDICIAL DECISIONS

Abstract

While Colombia's political authorities considered the unfavourable maritime delimitation decision by the International Court of Justice in the *Territorial and Maritime Dispute* case to be unconstitutional, the Constitutional Court of Colombia declined to declare it contrary to the Constitution. The reasoning appears to be indirectly based on the distinction between obligations of result and obligations of means, it also highlights the absurdity of the traditional dichotomy between monism and dualism. Contrary to similar proceedings in Italy, Russia, and Poland, the Constitutional Court demonstrated its receptiveness to international law.

KEYWORDS

Constitutional Court of Colombia, International Court of Justice, obligations of result, obligations of means, monism, dualism

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Trybunał Konstytucyjny Kolumbii, Międzynarodowy Trybunał Sprawiedliwości, zobowiązania rezultatu, zobowiązania środków, monizm, dualizm

I. INTRODUCTORY REMARKS

International judicial decisions are often subject to proceedings before national courts of the decision-debtor. (Un)famous are cases in which the highest national courts (either directly or indirectly) rejected their enforceability.[1] As Judge Iwasawa points out, that scenario undermines the prestige of international courts and places a State in a difficult position regarding the implementation of an international decision.[2]

A specific sub-category involves cases that are initiated before the highest national courts solely to undermine an international decision. These are politically misperceived as providing a sufficient basis for State organs to disregard international decisions they consider unfavourable.

A similar attempt occurred in Colombia following the disadvantageous maritime delimitation by the International Court of Justice (ICJ) in the *Territorial and Maritime Dispute* case.[3] The Constitutional Court, contrary to the expectations of local politicians, declined to undermine the judgment of the ICJ.[4] Although this already makes the decision significant, it did not attract international attention.[5] It was neither reported in the *International Law Reports* nor in the *International Legal Materials*. The aim of this short study is to address this lamentable gap.

II. *TERRITORIAL AND MARITIME DISPUTE* CASE AND ITS POLITICAL AFTERMATH

Nicaragua initiated proceedings against Colombia concerning sovereignty over the San Andrés Archipelago and the maritime boundary in the Caribbean

[1] The most widely known example is probably the judgment of the Supreme Court of the United States in *Medellín v Texas* 552 US 491 (2008). It was the follow-up to *Avena and Other Mexican Nationals (Mexico v United States of America)* [2004] ICJ Rep 12. As regards the Court of Justice of the European Union, one might point to, for example, Case Pl ÚS 5/12 31 January 2012 Constitutional Court of the Czech Republic (Ústavní soud České republiky); and Joined Cases 2 BvR 859/15, 2 BvR 1651/15, 2 BvR 2006/15, 2 BvR 980/16 5 May 2020 Second Senate of the Federal Constitutional Court (Bundesverfassungsgericht) ECLI:DE:BVerfG:2020:rs202005052bvr085915.

[2] Yūji Iwasawa, *Domestic Application of International Law: Focusing on Direct Applicability* (Brill Nijhoff 2022) 255.

[3] *Territorial and Maritime Dispute (Nicaragua v Colombia)* (Merits) [2012] ICJ Rep 624.

[4] Case C-269/14 12 May 2014 Constitutional Court of Colombia (Corte Constitucional de Colombia).

[5] It was only discussed in a single article, and rather critically, due to the arguments used by the Constitutional Court. See Andrés Sarmiento Lamus, 'Impacto e implementación en Colombia de la decisión de fondo de la Corte Internacional de Justicia en el *diferendo territorial y marítimo (Nicaragua c. Colombia)*' (2016) XVI Anuario Mexicano de Derecho Internacional 401.

Sea. The central issue in the dispute was the interpretation of the 1928 Esguerra-Bárcenas Treaty and its 1930 Protocol.[6] The Treaty recognised Colombia's sovereignty over certain islands in the Archipelago, that is, San Andrés, Providencia, and Santa Catalina. Under the 1930 Protocol, the western boundary of the Archipelago was not to extend beyond the 82nd meridian. For Colombia, this marked the proper maritime border with Nicaragua, whereas for Nicaragua, it was merely a demarcation of the Archipelago's territorial limits.

Nicaragua sought to found the jurisdiction of the ICJ on the basis of Article XXXI of the Pact of Bogotá.[7] At the preliminary objection stage, the ICJ ruled that the issue of sovereignty over San Andrés, Providencia, and Santa Catalina fell outside its jurisdiction.[8] This was because of Article VI of the Pact of Bogotá, which excludes from judicial settlement disputes that have already been settled by the parties.[9]

In the Judgment on the merits, the ICJ found that Colombia had sovereignty over all other islands of the Archipelago.[10] It also rejected Nicaragua's request to delimit its continental shelf beyond 200 nautical miles.[11] With regard to the maritime delimitation, although the boundary was found to largely follow the 82nd meridian along the Archipelago, the majority of it was determined to be perpendicular to the limits of Nicaragua's continental shelf.[12] As a result, Colombia 'lost' the portion of the Caribbean Sea it had claimed as its own, and the Archipelago was thus 'surrounded' by Nicaragua's exclusive economic zone.

While celebrating sovereignty over the Archipelago, the President of Colombia believed that the maritime delimitation restricted Colombia's navigational rights and violated the Constitution.[13] He pledged to protect the State's interests, the first step of which was Colombia's withdrawal from the Pact of Bogotá.[14] The Colom-

[6] For excerpts from these texts, see *Territorial and Maritime Dispute (Nicaragua v Colombia)* (Preliminary Objections) [2007] ICJ Rep 832.

[7] American Treaty on Pacific Settlement (signed 30 April 1948, entered into force 6 May 1949) 30 UNTS 84.

[8] *Territorial and Maritime Dispute* (Preliminary Objections) (n 6) 860–1 paras 85–90.

[9] 'The aforesaid procedures, furthermore, may not be applied to matters already settled by arrangement between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty'. For more information on the jurisdiction of the ICJ based on the Pact of Bogotá, see María Teresa Infante Caffi, 'The Pact of Bogota: Cases and Practice' (2017) 10 Anuario Colombiano de Derecho Internacional 85.

[10] *Territorial and Maritime Dispute* (Merits) (n 3) 641–62 paras 25–103.

[11] (n 3) 668–70 paras 125–131.

[12] (n 3) 673–717 paras 137–247.

[13] 'Alocución del Presidente Juan Manuel Santos sobre el fallo de la Corte Internacional de Justicia' (*Cancillería de Colombia*, 19 November 2012).

[14] 'Declaración de la Canciller Holguín frente al fallo proferido por la Corte Internacional de Justicia' (*Cancillería de Colombia*, 28 November 2012).

bian Minister of Foreign Affairs was summoned by parliamentary committees to explain the litigation strategy before the ICJ.[15] In one of the interviews, she stated that Colombia did not accept the Judgment and intended to analyse it in depth.[16] Two former Colombian ministers also raised concerns about a potential conflict of interest involving Judge Xue, of Chinese nationality, due to the Chinese-led construction of an interoceanic canal in Nicaragua.[17] However, they did not substantiate their allegations in any way,[18] and fortunately, the Colombian government distanced itself from them.[19] Finally, the President of Colombia announced the official response strategy to the Judgment, which included challenging it before the Constitutional Court.[20]

In the meantime, Nicaragua initiated two new proceedings against Colombia before the ICJ. In the first case, it accused Colombia of failing to comply with the Judgment in the *Territorial and Maritime Dispute* case. In this regard, the ICJ ruled that there were breaches by both Colombia and Nicaragua.[21] In the second case, Nicaragua sought the delimitation of its continental shelf extending beyond 200 nautical miles, an issue which had not been settled in the first proceedings. All of Nicaragua's claims in these proceedings were, however, dismissed.[22]

III. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT OF COLOMBIA

The Constitutional Court was seized by the President of Colombia and, independently, by several citizens. As Colombia is a dualist State, the purpose of the

[15] 'La Canciller Holguín explicó las acciones de Colombia frente al fallo de la CIJ en la Comisión Segunda de la Cámara y plenarias del Senado y la Cámara de Representantes' (*Cancillería de Colombia*, 22 November 2012).

[16] '"Nosotros no hemos acatado el fallo. Lo que hemos dicho es que queremos estudiar el fallo a profundidad", dijo Canciller Holguín en diálogo con CNN' (*Cancillería de Colombia*, 23 November 2012).

[17] Noemí Sanín Posada and Miguel Ceballos Arévalo, 'El fallo de La Haya: ¿Triunfo de Nicaragua o cuento chino?' (*Semana*, 27 March 2013).

[18] Sarmiento Lamus (n 5) 409.

[19] For some aftermath, see 'Noemí Sanín renunció a la Comisión de Relaciones Exteriores de Colombia' (*El País*, 29 July 2013).

[20] 'Alocución del Presidente de la República, Juan Manuel Santos, sobre la Estrategia Integral de Colombia frente al Fallo de la Corte Internacional de Justicia de La Haya' (*Cancillería de Colombia*, 9 September 2013). For some commentary, see Sarmiento Lamus (n 5) 409–12.

[21] See *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v Colombia)* (Merits) [2022] ICJ Rep 266.

[22] See *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v Colombia)* (Judgment) [2023] ICJ Rep 413.

proceedings was to challenge the national law expressing consent to be bound by the Pact of Bogotá. It was argued that the Judgment in the *Territorial and Maritime Dispute* case should be unenforceable in Colombia because the ICJ did not have jurisdiction over the matter. Furthermore, it was alleged that the contested decision unconstitutionally altered the borders, which are fixed by Article 101 of the Constitution:

> The borders of Colombia are those established in international treaties approved by Congress and duly ratified by the President of the Republic, and those defined by arbitration awards in which Colombia takes part.
>
> The borders identified in the form provided for by this Constitution may be modified only by treaties approved by Congress and duly ratified by the President of the Republic.
>
> Besides the continental territory, the archipelago of San Andrés, Providencia, and Santa Catalina, and the island of Malpelo are part of Colombia in addition to the islands, islets, keys, headlands, and sandbanks that belong to it.
>
> Also, part of Colombia is the subsoil, territorial sea, contiguous zone, continental shelf, exclusive economic zone, airspace, segment of geostationary orbit, and electromagnetic spectrum and the space where it operates, in accordance with international law, or with the laws of Colombia in the absence of international regulations.[23]

The Constitutional Court observed that the Constitution was based on two seemingly contradictory principles.[24] While Article 4 provides for the supremacy of the Constitution,[25] Colombia respects international law and is a party to the Vienna Convention on the Law of Treaties, which includes the principle *pacta sunt servanda*.[26] Combining these two principles, the Court held that '[i]t is the responsibility of the authorised interpreter of the Constitution to ensure its harmonisation'.[27]

On the other hand, in the Constitutional Court's view, 'It is the fundamental aim [of Colombia] to maintain territorial integrity… as well as the duty of its

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[23] Constitución Política de la República de Colombia de 1991 promulgada en la Gaceta Constitucional n.° 114 del domingo 7 de julio de 1991. The English text of the Constitution is from the website of the Constitutional Court of Colombia.

[24] See further C-269/14 (n 4) pt III para 6.

[25] 'The Constitution provides the norm of regulations. In all cases of incompatibility between the Constitution and the statute or other legal regulations, the constitutional provisions shall apply. It is the duty of citizens and of aliens in Colombia to obey the Constitution and the laws, and to respect and obey the authorities'.

[26] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 art 26.

[27] 'Corresponde el intérprete autorizado de la Constitución, componen su armonización'. C-269/14 (n 4) pt III para 6.5.

authorities to ensure the inviolability of the territory, extended, in accordance with the applicable rules, to each of its components'.[28]

Under Colombian law, border treaties are ranked higher in the hierarchy of legal sources than the Constitution itself. However, the Pact of Bogotá does not have this status.[29] As a result, the Constitutional Court found that an international judgment issued on the basis of the Pact of Bogotá, which concerns a change to Colombia's borders, would be contrary to Article 101 of the Constitution.[30]

However, that was not the end of the decision in question. Because Colombia was defined as a State complying with international law, the Constitutional Court sought an interpretation of the Constitution that would be consistent with international obligations. It was stated that Article 101 of the Constitution only governs the procedure for altering the boundaries, whereas the Judgment in the *Territorial and Maritime Dispute* case imposed an obligation on Colombia to effect such a change. By separating these two effects, the Court concluded that Judgment of the ICJ in question was not contrary to the Constitution of Colombia.[31]

It is worth noting that even after this ruling, further attempts were made to undermine judicially the Judgment of the ICJ,[32] the decision of the Constitutional Court,[33] and even the 1928 Esguerra-Bárcenas Treaty.[34] None of these were successful.

IV. DIFFERENCES BETWEEN THE CONSTITUTIONAL COURT OF COLOMBIA AND OTHER HIGHEST NATIONAL COURTS

The starting point for any analysis of a domestic judgment on an international decision must be the observation that if a statute of an international court provides for the binding nature of its decision, it is a settled issue. With regard to judgments of the ICJ, it is regulated by Article 59 of the Statute. It states that '[t]he decision

[28] 'Es fin esencial [de Colombia], mantener la integridad territorial … así como la obligación de sus autoridades asegurar la inviolabilidad del territorio, extendido, de conformidad con las reglas aplicables, a cada uno de sus components'. (n 4) pt III para 8.3.

[29] (n 4) pt III paras 9.1–9.5.

[30] (n 4) pt III para 9.3.

[31] (n 4) pt III paras 9.6–9.15.

[32] See Case Auto 053/13 13 March 2013 Constitutional Court of Colombia (Corte Constitucional de Colombia).

[33] See Case Auto 057/14 11 March 2014 Constitutional Court of Colombia (Corte Constitucional de Colombia).

[34] See Case Auto 331/15 5 June 2015 Constitutional Court of Colombia (Corte Constitucional de Colombia); Case Auto 723/17 13 December 2017 Constitutional Court of Colombia (Corte Constitucional de Colombia).

of the Court has no binding force except between the parties and in respect of that particular case'.[35] As was held in the *Factory at Chorzów* case, 'attributing to a judgment of a municipal court power indirectly to invalidate a judgment of an international court … is impossible'.[36] It is worth adding, following Judge Iwasawa, that international decisions in national courts are neither 'self-executory' nor 'self-executing', nor are they of 'direct applicability'. They can be only 'enforced', with 'their effects [being] accepted and recognised'.[37]

1. OBLIGATIONS OF RESULTS V OBLIGATIONS OF MEANS

States are free to choose the method of enforcement of an international judicial decision,[38] depending on the circumstances of the case and the wording contained in the decision itself.[39] The condition is that it must take place within a reasonable time.[40] Accordingly, enforcement constitutes an obligation of result.

The distinction between obligations of result and obligations of means is often unclear.[41] For example, the ICJ in the *Gabčíkovo-Nagymaros* case referred to 'obligations of conduct, obligations of performance, and obligations of result'.[42] In contrast, in the *Bosnian Genocide* case, only the dichotomous division was

[35] Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 33 UNTS 993. See also Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS 16 art 94(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'.

[36] *Factory at Chorzów (Indemnities) (Germany v Poland)* (Merits) (1928) PCIJ Ser A No 17, 33; Malcolm N Shaw, *Rosenne's Law and Practice of the International Court 1920-2015* (5th edn, Brill Nijhoff 2016) 219.

[37] Iwasawa (n 2) 260–1. See also Fulvio Maria Palombino, 'Les arrêts de la Cour internationale de Justice devant le juge interne' (2005) 51 Annuaire français de droit international 121, 122.

[38] See eg *Haya de la Torre (Colombia v Peru)* [1951] ICJ Rep 71, 79.

[39] See eg *Polish Postal Service in Danzig* (Advisory Opinion) (1925) PCIJ Ser B No 11, 29–30; Karin Oellers-Frahm, 'Article 94' in Bruno Simma and others (eds), *The Charter of the United Nations: a commentary* (3rd edn, Oxford University Press 2012) paras 6–7; Christian J Tams, 'Article 94 UN Charter' in Andreas Zimmermann and others (eds), *The Statute of the International Court of Justice: A Commentary* (3rd edn, Oxford University Press 2019) paras 11–12.

[40] *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico v United States of America) *(Mexico v United States of America)* [2009] ICJ Rep 3, 17 para 44; Robert Kolb, *La Cour internationale de Justice* (Pedone 2013) 862–3.

[41] Hugh Thirlway, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence* (Oxford University Press 2013) 599.

[42] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* [1997] ICJ Rep 7, 76–7 para 135.

presented (obligations of result and obligations of conduct).[43] One cannot but agree with the Thirlway's conclusion on this matter that the phrase 'obligations of means' fits better within the second category, as it includes both conduct and performance.[44]

From the perspective of national law, compliance with an international decision may require the adoption of national legislation.[45] International law does not interfere with the legislative process itself. It is, however, clear that no provision of national law, even of a constitutional nature, can justify non-compliance with a judgment.[46]

Nor is the lack of influence of executive power on the judiciary a prerequisite for exoneration.[47] As is well known from the *Certain German Interests* case, national judicial decisions are treated only as 'facts'.[48] As such, they can be assessed by international courts in terms of their compliance with international law.[49] Although scholars are divided as to the soundness of such a radical approach to national judgments,[50] the ICJ still tends to regard itself as a superior court to national courts and issues 'directives' on how the latter should act in certain situations.[51]

Sarmiento Lamus criticises the Constitutional Court for making the implementation of the *Territorial and Maritime Dispute* case conditional on compliance with the Constitution of Colombia.[52] However, it is precisely the correct

[43] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43, 221 para 430.

[44] Thirlway (n 41) 1518–9.

[45] *Exchange of Greek and Turkish Populations* (Advisory Opinion) (1925) PCIJ Ser B No 10, 20; Krzysztof Skubiszewski, 'Wzajemny stosunek i związki pomiędzy prawem międzynarodowym i prawem krajowym' (1986) 48(1) Ruch Prawniczy, Ekonomiczny i Socjologiczny 1, 7.

[46] See eg *Alabama Arbitration (United States of America v United Kingdom)* (1872) XXIX RIAA 125, 125; *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory* (Advisory Opinion) (1932) PCIJ Ser AB No 44, 24; VCLT art 26.

[47] Oellers-Frahm (n 39) paras 12–14; Shaw (n 36) 215; Tams (n 39) paras 19–23. See also ILC, 'Report of the International Law Commission on the work of its fifty-third session' (23 April–1 June and 2 July–10 August 2001) UN Doc A/56/10 art 4.

[48] *Certain German Interests in Polish Upper Silesia (Germany v Poland)* (Merits) (1926) PCIJ Ser A No 7, 19.

[49] See eg *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights* (Advisory Opinion) [1999] ICJ Rep 62, 88 para 63.

[50] *Pro* Pierre d'Argent, 'Remarques sur le conflit entre normes de droit interne et de droit international' (2012) 45 Revue Belge de Droit International 355, 356. *Contra* Skubiszewski (n 45) 7; James Crawford, *Brownlie's Principles of Public International Law* (9th ed, Oxford University Press 2019) 49.

[51] Oktawian Kuc, *The International Court of Justice and Municipal Courts: An Inter-Judicial Dialogue* (Routledge 2022) 64–70.

[52] Sarmiento Lamus (n 5) 415–6.

distinction between the obligations of result and the obligations of means, and the proper inclusion of the obligation to comply with the Judgment of the ICJ under the former, leaving the method to the imperative norm of Article 101 of the Constitution, which serves as a model example of resolving an apparent conflict.

A similar solution could have been adopted by the Constitutional Court of Italy in the 238/2014 case. It is recalled that the Tribunal in Florence[53] challenged the judgment of the ICJ in the *Jurisdictional Immunities* case, in which Italian proceedings, which denied Germany's jurisdictional immunity for the crimes of the Third Reich, were found to be in breach of international law.[54] The Constitutional Court declared the obligation for Italy to comply with that decision to be unconstitutional.[55] The reasoning behind that decision suggests that without violating jurisdictional immunity, Italy would not have been able to obtain due reparations from Germany.[56] The Constitutional Court apparently misunderstood the *Jurisdictional Immunities* case. The ICJ only ruled that the denial of jurisdictional immunity is contrary to international law but did not prohibit the pursuit of due reparations by Germany altogether. Italy was also declared free to choose the manner in which to guarantee Germany's jurisdictional immunity.[57] In any event, the aftermath of the 238/2014 case prompted Germany to initiate new proceedings against Italy before the ICJ.[58]

2. MONISM V DUALISM

Proceedings before the highest national courts, aimed at challenging an international judicial decision, are usually justified as attempts to 'protect' the national

[53] Joined Cases 84, 85 and 113/2014 21 January 2014 Tribunal of Florence (Tribunale di Firenze) (2013) 23 Italian Yearbook of International Law 436.

[54] *Jurisdictional Immunities of the State (Germany v Italy: Greece intervening)* (Merits) [2012] ICJ Rep 99, 154 para 138.

[55] Case 238/2014 22 October 2014 Constitutional Court of the Italian Republic (Corte costituzionale della Repubblica Italiana) ECLI:IT:COST:2014:238.

[56] Paolo Palchetti, 'Judgment 238/2014 of the Italian Constitutional Court: In search of a way out' (2014) 2 Questions of International Law, Zoom-out 43; Fulvio Maria Palombino, 'Compliance with International Judgments: Between Supremacy of International Law and National Fundamental Principles' (2015) 75 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 503, 512: The Constitutional Court of Italy ruled that way 'due to the lack of a judicial alternative remedy available to the victims of Nazi crimes'.

[57] *Jurisdictional Immunities of the State* (n 54) 155 para 139(4).

[58] *Questions of Jurisdictional Immunities of the State and Measures of Constraint against State-Owned Property (Germany v Italy)* (Pending) < https://www.icj-cij.org/case/183>. See further Karin Oellers-Frahm, 'Questions Relating to the Request for the Indication of Provisional Measures in the Case Germany v Italy' (2022) 94 Questions of International Law, Zoom-in 5.

legal systems. This is an indirect reference to the distinction between a monistic and a dualistic approach to international law.[59] It is recalled that, while dualism assumes that national law and international law are two separate legal systems, monism assumes their unity.[60]

Both Greenwood and Crawford have, however, argued that this division is irrelevant in practice.[61] No two national legal systems are identical, which is why there is no uniform pattern of monism or dualism.[62] Furthermore, the key is not the theoretical approach, but 'the general culture within a given national legal system and its receptiveness to the use of rules of international law'.[63] This is best demonstrated in the case of the 'conflict' between national and international law, which, according to d'Argent, occurs only in borderline situations where a national norm cannot be interpreted in a way that is consistent with an international norm.[64]

For example, although England is a dualist State in terms of treaties, these must be transposed by an Act of Parliament, the courts of England feel obliged to interpret statutes in a manner that is consistent with international obligations.[65] Another example could be found in some subsystems of international law, such as European Union law, where there is even an explicit obligation to interpret national law in accordance with international obligations.[66]

International law does not regulate its place within the legal systems of individual States.[67] Each State determines how its legal system relates to international law,[68] as this is purely a matter of constitutional choice.[69] From the perspective

[59] For some summary, see Crawford (n 50) 45–7.

[60] See also Giorgio Gaja, 'Dualism – a Review' in Janne E Nijman and André Nollkaemper (eds), *New Perspectives on the Divide Between National and International Law* (Oxford University Press 2007) 52.

[61] Christopher Greenwood, 'The Development of International Law by National Courts' in Tiyanjana Maluwa, Max Du Plessis and Dire Tladi (eds), *The Pursuit of a Brave New World in International Law* (Brill 2017) 194–5; Crawford (n 50) 47.

[62] Crawford (n 50) 47.

[63] Greenwood (n 66) 195. It was previously proposed by Skubiszewski (n 45) 9. It goes without saying that the receptiveness of national courts to international decisions is a complex and wide-ranging issue. See eg Oktawian Kuc, 'Reception of ICJ Jurisprudence by Domestic Courts in the Field of International Law of the Sea' in Tomasz Kamiński and Karol Karski (eds), *40 Years of the United Nations Convention on the Law of the Sea* (Routledge 2024).

[64] d'Argent (n 50) 360–1.

[65] However, this has its limits; if the statute is clear and unambiguous, the English court must apply it, even if it contradicts international law. *Salomon v Commissioners of Customs and Excise* (1967) 2 QB 116, 143. Greenwood (n 66) 195.

[66] See Case 14/83 *Von Colson and Kamann v Land Nordrhein-Westfalen* ECLI:EU:C:1984:153.

[67] See eg d'Argent (n 50) 357.

[68] Crawford (n 50) 102.

[69] Greenwood (n 66) 195.

of international law, any 'conflict' between a national norm and an international norm exists solely within national law.[70] The coexistence of a given norm in both national and international legal systems is also irrelevant.[71]

In Colombia's decision in question, the Constitutional Court clearly emphasised its duty to seek an interpretation of the Constitution that would be consistent with Colombia's international obligations. One may have objections to the argument that Colombia adheres to international law because it is required by the Constitution, rather than because it is a direct obligation under international law,[72] but it is difficult to expect a different stance from a constitutional court. Moreover, it is worth noting that the Constitutional Court is aware that its decision, whatever it may be, does not per se exempt Colombia from complying with its international obligations.[73] The dualist nature of Colombia was, therefore, not used for confrontational purposes.

A completely different position has been adopted in Russia. Following an unfavourable ruling by the European Court of Human Rights (ECtHR), a case was referred to the Russian Constitutional Court, which ruled that it should have the right to declare the unenforceability of any decision of the ECtHR deemed 'contrary' to the Russian Constitution.[74] As a result, the Act on the Constitutional Court was amended accordingly. Exercising the powers granted to it, the Court did not hesitate to 'pragmatically' declare the unenforceability of the judgment, which required Russia to pay substantial compensation to individual applicants.[75]

Similarly, in Poland, at the request of the politicians of the then parliamentary majority and the President, the Constitutional Tribunal examined the constitutionality of several international judicial decisions, even though this competence did not directly arise from the Constitution.[76] In all cases, the unconstitutionality of the provisions of international treaties, as interpreted by international courts, was declared. This applied, *inter alia*, to the assessment of the reform of the judiciary system, the National Council of the Judiciary, and interim measures in this

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[70] d'Argent (n 50) 356.

[71] *Avena* (n 1) 65 para 139; Thirlway (n 41) 1160–2.

[72] See C-269/14 (n 4) pt III para 9.6.

[73] (n 4) pt III para 9.5.

[74] Case 21-П/2015 14 July 2015 Constitutional Court of the Russian Federation (Конституционный Суд Российской Федерации). For more general information see Lauri Mälksoo, 'Russia's Constitutional Court Defies the European Court of Human Rights: Constitutional Court of the Russian Federation Judgment of 14 July 2015, No 21-П/2015' (2016) 12 European Constitutional Law Review 377.

[75] See eg Case 12-П/2016 19 April 2016 Constitutional Court of the Russian Federation (Конституционный Суд Российской Федерации).

[76] For more general information see Anna Wyrozumska, 'Conflict between the Polish Constitutional Tribunal and the CJEU with Regard to the Reforms of the Judiciary' (2022) 60 Archiv des Völkerrechts 379.

regard by the CJEU,[77] as well as to the finding by the ECtHR of irregularities in the composition of the Constitutional Tribunal itself.[78]

The content of the decisions of the Constitutional Court of Russia, the Constitutional Tribunal of Poland, and the Constitutional Court of Italy indicates that their substance does not stem from a dispute between monistic and dualistic approaches. In all cases, the courts recognised their obligation to 'protect' the national legal system and demonstrated a marked unresponsiveness to international law. This stands in stark contrast to the approach of the Constitutional Court of Colombia.

V. CONCLUDING REMARKS

Based on the analysis conducted, the following conclusions can be drawn:

The proceedings before the Constitutional Court of Colombia were a classic example of a politically motivated process aimed at securing a ruling from the highest national court, declaring the unfavourable international decision unenforceable within the State, and thus claiming that the State was freed from its obligation to comply with that international decision.

Despite political expectations, the Constitutional Court of Colombia did not challenge the Judgment of the ICJ in the *Territorial and Maritime Dispute* case. While affirming the supremacy of the Constitution, it recognised the constitutional duty for Colombia to comply with international law. The Court felt obliged to find an interpretation of the Constitution that would be consistent with international obligations.[79]

From the perspective of international law, Colombia's decision in question was indirectly based on the distinction between obligations of result and obligations of means. It also serves as proof of the inadequacy of the traditional division into monism and dualism (Colombia is a dualist State). What is important, instead, is the receptiveness of the national court to international law.

Constitutional courts in other States, such as Italy, Russia, and Poland, have proven to be completely unresponsive to obligations regarding the enforcement of

[77] See eg Case Kpt 1/20 21 April 2020 Constitutional Tribunal (Trybunał Konstytucyjny) OTK ZU A/2020 item 60; Case P 7/20 14 July 2021 Constitutional Tribunal (Trybunał Konstytucyjny) OTK ZU A/2021 item 49; Case K 3/21 7 October 2021 Constitutional Tribunal (Trybunał Konstytucyjny) OTK ZU A/2022 item 65.

[78] Case K 6/21 24 November 2021 Constitutional Tribunal (Trybunał Konstytucyjny) OTK ZU A/2022 item 9.

[79] It should be noted that the decisions of the ICJ in two other proceedings involving Nicaragua and Colombia were not challenged before the Constitutional Court of Colombia.

international judicial decisions. These highest national courts have wrongly acted as though their decisions could unilaterally exempt the States from international obligations.

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REFERENCES

‘Alocución del Presidente de la República, Juan Manuel Santos, sobre la Estrategia Integral de Colombia frente al Fallo de la Corte Internacional de Justicia de La Haya’ (*Cancillería de Colombia*, 9 September 2013)

‘Alocución del Presidente Juan Manuel Santos sobre el fallo de la Corte Internacional de Justicia’ (*Cancillería de Colombia*, 19 November 2012)

Crawford J, *Brownlie’s Principles of Public International Law* (9th ed, Oxford University Press 2019)

d’Argent P, ‘Remarques sur le conflit entre normes de droit interne et de droit international’ (2012) 45 Revue Belge de Droit International 355

‘Declaración de la Canciller Holguín frente al fallo proferido por la Corte Internacional de Justicia’ (*Cancillería de Colombia*, 28 November 2012)

Gaja G, ‘Dualism – a Review’ in Janne E Nijman and André Nollkaemper (eds), *New Perspectives on the Divide Between National and International Law* (Oxford University Press 2007)Greenwood C, ‘The Development of International Law by National Courts’ in Tiyanjana Maluwa, Max Du Plessis and Dire Tladi (eds), *The Pursuit of a Brave New World in International Law* (Brill 2017)

Infante Caffi MT, ‘The Pact of Bogota: Cases and Practice’ (2017) 10 Anuario Colombiano de Derecho Internacional 85

Iwasawa Y, *Domestic Application of International Law: Focusing on Direct Applicability* (Brill Nijhoff 2022)

Kolb R, *La Cour internationale de Justice* (Pedone 2013)

Kuc O, *The International Court of Justice and Municipal Courts: An Inter-Judicial Dialogue* (Routledge 2022)

— —, ‘Reception of ICJ Jurisprudence by Domestic Courts in the Field of International Law of the Sea’ in Tomasz Kamiński and Karol Karski (eds), *40 Years of the United Nations Convention on the Law of the Sea* (Routledge 2024)

‘La Canciller Holguín explicó las acciones de Colombia frente al fallo de la CIJ en la Comisión Segunda de la Cámara y plenarias del Senado y la Cámara de Representantes’ (*Cancillería de Colombia*, 22 November 2012)

Mälksoo L, 'Russia's Constitutional Court Defies the European Court of Human Rights: Constitutional Court of the Russian Federation Judgment of 14 July 2015, No 21-П/2015' (2016) 12 European Constitutional Law Review 377

'Noemí Sanín renunció a la Comisión de Relaciones Exteriores de Colombia' (*El País*, 29 July 2013)

'Nosotros no hemos acatado el fallo. Lo que hemos dicho es que queremos estudiar el fallo a profundidad', dijo Canciller Holguín en diálogo con CNN' (*Cancillería de Colombia*, 23 November 2012)

Oellers-Frahm K, 'Article 94' in Bruno Simma and others (eds), *The Charter of the United Nations: a commentary* (3rd edn, Oxford University Press 2012)

— —, 'Questions Relating to the Request for the Indication of Provisional Measures in the Case Germany v Italy' (2022) 94 Questions of International Law, Zoom-in 5

Palchetti P, 'Judgment 238/2014 of the Italian Constitutional Court: In search of a way out' (2014) 2 Questions of International Law, Zoom-out 43

Palombino FM, 'Les arrêts de la Cour internationale de Justice devant le juge interne' (2005) 51 Annuaire français de droit international 121

— —, 'Compliance with International Judgments: Between Supremacy of International Law and National Fundamental Principles' (2015) 75 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 503

Sanín Posada N and Ceballos Arévalo M, 'El fallo de La Haya: ¿Triunfo de Nicaragua o cuento chino?' (*Semana*, 27 March 2013)

Sarmiento Lamus A, 'Impacto e implementación en Colombia de la decisión de fondo de la Corte Internacional de Justicia en el diferendo territorial y marítimo *(Nicaragua c. Colombia)*' (2016) XVI Anuario Mexicano de Derecho Internacional 401

Shaw MN, *Rosenne's Law and Practice of the International Court 1920-2015* (5th edn, Brill Nijhoff 2016)

Skubiszewski K, 'Wzajemny stosunek i związki pomiędzy prawem międzynarodowym i prawem krajowym' (1986) 48(1) Ruch Prawniczy, Ekonomiczny i Socjologiczny 1

Tams CJ, 'Article 94 UN Charter' in Andreas Zimmermann and others (eds), *The Statute of the International Court of Justice: A Commentary* (3rd edn, Oxford University Press 2019)

Thirlway H, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence* (Oxford University Press 2013)

Wyrozumska A, 'Conflict between the Polish Constitutional Tribunal and the CJEU with Regard to the Reforms of the Judiciary' (2022) 60 Archiv des Völkerrechts 379

CASES

Alabama Arbitration (United States of America v United Kingdom) (1872) XXIX RIAA 125

Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v Colombia) (Merits) [2022] ICJ Rep 266

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment) [2007] ICJ Rep 43

Avena and Other Mexican Nationals (Mexico v United States of America) [2004] ICJ Rep 12

Case 12-П/2016 19 April 2016 Constitutional Court of the Russian Federation (Конституционный Суд Российской Федерации)

Case 21-П/2015 14 July 2015 Constitutional Court of the Russian Federation (Конституционный Суд Российской Федерации)

Case 238/2014 22 October 2014 Constitutional Court of the Italian Republic (Corte costituzionale della Repubblica Italiana) ECLI:IT:COST:2014:238

Case Auto 053/13 13 March 2013 Constitutional Court of Colombia (Corte Constitucional de Colombia)

Case Auto 057/14 11 March 2014 Constitutional Court of Colombia (Corte Constitucional de Colombia)

Case Auto 331/15 5 June 2015 Constitutional Court of Colombia (Corte Constitucional de Colombia)

Case Auto 723/17 13 December 2017 Constitutional Court of Colombia (Corte Constitucional de Colombia)

Case C-269/14 12 May 2014 Constitutional Court of Colombia (Corte Constitucional de Colombia)

Case K 6/21 24 November 2021 Constitutional Tribunal (Trybunał Konstytucyjny) OTK ZU A/2022 item 9

Case Pl ÚS 5/12 31 January 2012 Constitutional Court of the Czech Republic (Ústavní soud České republiky)

Certain German Interests in Polish Upper Silesia (Germany v Poland) (Merits) (1926) PCIJ Ser A No 7

Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Advisory Opinion) [1999] ICJ Rep 62

Exchange of Greek and Turkish Populations (Advisory Opinion) (1925) PCIJ Ser B No 10

Factory at Chorzów (Indemnities) (Germany v Poland) (Merits) (1928) PCIJ Ser A No 17

Gabčíkovo-Nagymaros Project (Hungary/Slovakia) [1997] ICJ Rep 7

Haya de la Torre (Colombia v Peru) [1951] ICJ Rep 71

Joined Cases 2 BvR 859/15, 2 BvR 1651/15, 2 BvR 2006/15, 2 BvR 980/16 5 May 2020 Second Senate of the Federal Constitutional Court (Bundesverfassungsgericht) ECLI:DE:BVerfG:2020:rs202005052bvr085915

Joined Cases 84, 85 and 113/2014 21 January 2014 Tribunal of Florence (Tribunale di Firenze) (2013) 23 Italian Yearbook of International Law 436

Jurisdictional Immunities of the State (Germany v Italy: Greece intervening) (Merits) [2012] ICJ Rep 99

Medellín v Texas 552 US 491 (2008)

Polish Postal Service in Danzig (Advisory Opinion) (1925) PCIJ Ser B No 11

Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v Colombia) (Judgment) [2023] ICJ Rep 413

Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v United States of America) *(Mexico v United States of America)* [2009] ICJ Rep 3

Salomon v Commissioners of Customs and Excise (1967) 2 QB 116

Territorial and Maritime Dispute (Nicaragua v Colombia) (Merits) [2012] ICJ Rep 624

Territorial and Maritime Dispute (Nicaragua v Colombia) (Preliminary Objections) [2007] ICJ Rep 832

Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory (Advisory Opinion) (1932) PCIJ Ser AB No 44

Von Colson and Kamann v Land Nordrhein-Westfalen (Case 14/83) ECLI:EU:C:1984:153

ILC, 'Report of the International Law Commission on the work of its fifty-third session' (23 April – 1 June and 2 July – 10 August 2001) UN Doc A/56/10

American Treaty on Pacific Settlement (signed 30 April 1948, entered into force 6 May 1949) 30 UNTS 84

Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS 16

Constitución Política de la República de Colombia de 1991 promulgada en la Gaceta Constitucional n.° 114 del domingo 7 de julio de 1991

Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 33 UNTS 993

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331