

VANDA LAMM*

Declarations Accepting the Compulsory Jurisdiction of the International Court of Justice

Abstract. The article offers an overview on the forms and contents of the declarations accepting the compulsory jurisdiction of the ICJ made under Article 36. para. 2. of the Statute. The author examines first the provisions of the Statutes of the two world courts, than the forms of declarations and the practice of the two International Courts on the validity and the entry into force of the declarations accepting the compulsory jurisdiction.

Since the states are free to choose what form they please one can find a great variety of the forms and wording of the declarations. According to the Statute the only formality required is that a declaration should be deposited to the UN Secretary General and the intention of the state clearly results from a declaration. The ICJ dealt in several cases with the problem of the entry into force of the declarations and according to the well-established practice of the Court the date of the entry into force of these instruments corresponds to their deposit to the Secretary General.

Keywords: International Court of Justice, Optional Clause, compulsory jurisdiction, declarations under Art. 36. para 2. of the Statute

1. Rules of the two Statutes

The jurisdiction of the International Court of Justice (ICJ) as the principal judicial forum of the United Nations may be accepted by states by, *inter alia*, making unilateral declarations of acceptance under the optional clause as embodied in Art. 36, para. 2, of the Statute.¹ The Statutes of the ICJ and its predecessor, the Permanent Court of International Justice (PCIJ), contain very

* The author is Associate Member of the Institut de Droit international; Professor and Director of the Institute for Legal Studies of the Hungarian Academy of Sciences, H-1014 Budapest, Országház u. 30.

E-mail: lamm@jog.mta.hu

¹ The way in which states manifest their consent to the jurisdiction of the Court is defined in Art. 36 of the Statutes. Three possibilities are envisaged here: 1. the parties in a special agreement bilaterally agree to submit an already existing dispute to the court; 2. the parties in dispute concerning treaties or conventions in force conferred jurisdiction to the Court (compromissory clauses); 3. unilateral declarations made under the optional clause.

few provisions concerning the making of such declarations and the texts thereof.

Art. 36 of the Statute of the Permanent Court of International Justice is confined to stating that “The member states of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or of ratifying the Protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory, *ipso facto* and without separate agreement, the jurisdiction of the Court as being compulsory in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning...”

Under Art. 36, para. 2, of the Statute of the ICJ, “The States parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court...”

The cited articles of the two Statutes seem rather similar at first sight, suggesting that the provisions set forth in the Statute of the former Court were practically reproduced in this respect during the negotiations on the establishment of the new Court at the San Francisco Conference after World War Two.² The San Francisco Conference effected in fact two changes in regard to optional clause declarations.

On the proposal of the Conference’s Committee IV/1, it added a new paragraph to Art. 36. (para. 4.) providing that “Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court”. Accordingly, the optional clause declarations, which are usually signed on behalf of the state by the foreign minister or the representative to the United Nations, are to be forwarded to the United Nations’ Secretary-General, who must transmit them to the member states of the Organization and to the parties to the Statute of the Court, and publish them in the United Nations’ Treaty Series, and transmit them to the Registrar of the Court for publication in the Court’s Yearbooks.

The other change was that while, at the time of PCIJ, a state had the possibility of accepting the Court’s compulsory jurisdiction only in respect of one or more categories of disputes under subparas. a) to d), however, under the new Statute a state should accept the compulsory jurisdiction of the Court in

² On the elaboration of the Statute see, Russel, R. M.—Muther, J. E.: *A History of the United Nations Charter*. Washington, D. C. 1958, 864–896.

respect of all the four specified categories of disputes enumerated in a)–d) subparas. of para. 2. Art. 36.³

There is, however, an essential difference, apart from the paragraph inserted by the San Francisco Conference, between the aforementioned provisions of the Statutes of the two International Courts concerning declarations made under the optional clause. In effect, under the Statute of the PCIJ, declarations accepting the Court's compulsory jurisdiction could only be made by states, which had at least signed the Statute, meaning that a state could make a declaration of acceptance even before the Statute had entered into force in respect of that state. By contrast, the Statute of the ICJ refers to states that are parties to the present Statute, which allows the compulsory jurisdiction of the new Court to be accepted only by states that are already parties to the Statute, namely they have signed and ratified the Charter of the United Nations, of which the Statute forms an integral part, or by states that are not members of the world organisation but have acceded to it, as Switzerland and Liechtenstein, for example, became parties to the Statute as non-members of the United Nations,⁴

³ According to the Statute of the PCIJ, the Members of the League of Nations and the States mentioned in the Annex to the Covenant states recognize the compulsory jurisdiction of the Court “in all or any of the classes of legal disputes concerning: a) the interpretation of a treaty; b) any question of international law; c) the existence of any fact which, if established, would constitute a breach of an international obligation; d) the nature of or extent of the reparation to be made for the breach of an international obligation.” The Statute of the ICJ speaks of the acceptance of “the jurisdiction of the Court in all legal disputes concerning:...”.

At the time of the PCIJ, Iran was the only state that made a declaration under the optional clause recognizing the Court's compulsory jurisdiction with respect to one of the categories of disputes.

The relevant part of the 1930 declaration reads as follow:

“The Imperial Government of Persia recognizes as compulsory *ipso facto* and without special agreement in relation to any other State accepting the same obligation, that is to say, on condition of reciprocity, the jurisdiction of the Permanent Court of International Justice, in accordance with Article 36, paragraph 2, of the Statute of the Court, in any disputes arising after the ratification of the present declaration *with regard to situations or facts relating directly or indirectly to the application of treaties or conventions* (my italics—V. L.) accepted by Persia and subsequently to the ratification of this declaration, with the exception of :...”.

⁴ For the resolution on Switzerland, see: *ICJ Yearbook*, 1946–1947, 105–106. For the resolution on Liechtenstein, see: *ICJ Yearbook*, 1949–1950, 32–33. Also, see: *ICJ Yearbook*, 1953–1954, 36–37.

and concurrently with the acceptance of the Statute they made optional clause declarations.⁵

During the consideration of different cases, both the PCIJ and the ICJ were seized by the problem of whether, pursuant to the cited provisions of the Statute, certain states were at all in a position to make declarations under the optional clause.

At the time of the PCIJ, it was in the Gerliczy case that the question arose of whether a declaration of acceptance by a state which was not included among those mentioned in the Annex to the Covenant of the League of Nations or which was not a member of the League of Nations could be deemed to be valid. In the dispute submitted by Liechtenstein against Hungary in 1939, on the basis of the declarations of acceptance by the two states, the Hungarian Government announced its intention to file a preliminary objection, for Liechtenstein was not among the states listed in the Annex to the Covenant, nor a member of the League of Nations and made optional clause declaration on the basis of the Council's decision of May 17, 1922.⁶ However, the decision expressed that, in the absence of special agreement, such a declaration could not be invoked against a member state of the League of Nations which, mentioned in the Annex of the Covenant, had signed or would sign the 'optional clause'. The Gerliczy case remained pending because of the war, so no answer was given to the question relating to Liechtenstein's declaration of acceptance.

More than half a century later, the International Court of Justice was faced with a problem, somewhat similar to that of the Gerliczy case, with regard to Yugoslavia in the context of whether it was possible for a declaration of acceptance to have been made by a state on whose membership in the United Nations was uncertain. The opinion of the international community was rather divided, to say the least.⁷

⁵ The declarations by Switzerland and Liechtenstein were dated July 6, 1948, and March 10, 1950, respectively. Both instruments contained, among other things, the statement that the declaration was effective from the day on which the particular state became a party to the Statute.

⁶ The decision was adopted pursuant to a request addressed by the Court to the Council and was concerned with, *inter alia*, the conditions under which the states listed in the Annex to the Covenant and states not members of the League of Nations were entitled to resort to the Court. On this point, see: Hudson, M. O.: *The Permanent Court of International Justice. 1920–1942*. Arno Press, New York, 1972, 386–387.

⁷ The membership of the Federal Republic of Yugoslavia (FRY) in the United Nations was uncertain from April 27, 1992, i.e., from the date of its establishment. The problem of Yugoslavia's membership in the United Nations was on the agenda of General Assembly from 1992. Long debates and a quasi political compromise led to the adoption of General Assembly resolution 47/1, which stated that the General Assembly "1. Considers that the

During the days of the Milosevic regime, the Belgrade Government made a declaration under the optional clause on April 25, 1999, and a few days later, on April 29, 1999, during the NATO air strikes, it addressed an application to the Court against 10 NATO member states by invoking violations of the prohibition of the use of force and of the Genocide Convention (Cases concerning Legality of Use of Force).⁸

During the consideration of the Yugoslavian request for the ordering of provisional measures, certain responding states, such as Belgium, argued that the FRY was not a successor state to the Socialist Federal Republic of Yugoslavia, nor a party to the Statute and not therefore in a position to make a declaration under the optional clause.

For its part, the Court gave no answer to this question and in connection with declarations of acceptance, it found it sufficient to point out that, in view of the reservation *ratione temporis* (concerning future disputes) included in the Yugoslav declaration, it was without jurisdiction even *prima facie*, for, given this limitation, the Court had jurisdiction only in disputes relating to situations and facts subsequent to the signature of the declaration, whereas the dispute between the parties arose before April 25, 1999, for the air strikes by NATO states had begun on March 24, 1999.⁹

So, while, in the phase of the proceedings concerning provisional measures, the Court endeavoured to sidestep the issues relating to Yugoslavia's member-

Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations and therefore, decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it should not participate in the work of the General assembly." Thereafter, the FRY took part in the activities of only some UN organs. After the downfall of Milosevic and company, FRY's submission to membership was admitted on November 1, 2000.

The dispute about the FRY's membership in the UN was ended by the Court's Judgement of February 3, 2003, after the Court had spelled out, in connection with the Yugoslavian request for a revision of the judgement of July 11, 1996, in the dispute between Bosnia and Herzegovina and the FRY regarding the case on the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, that between 1992 and 2000 the status of the FRY was *sui generis* in respect of the UN and the ICJ (para. 71 of the judgement) as the FRY took part in the work of certain UN organs but did not in that of others.

⁸ In the case, with six out of the 10 NATO member states—Belgium, Canada, the Netherlands, Portugal, Spain and the United Kingdom—the FRY also invoked, *inter alia*, Art. 36, para. 2, of the Court's Statute, notably the optional clause, as the basis for the Court's jurisdiction.

⁹ Case concerning Legality of Use of Force (Yugoslavia v. Belgium) request for the Indication of Provisional Measures. Order of June 2, 1999, 134–135.

ship in the United Nations as well as the possibility of Yugoslavia having made a declaration under the optional clause at all, several members of the Court were quite insistent on pursuing this issue further. Judge Kooijmans wrote this: „How can the Court say that there is no need to consider the validity of Yugoslavia’s declaration whereas at the same time it concludes that this declaration, taken together with that of the Respondent, cannot constitute a basis of jurisdiction?” According to the Dutch judge, this reasoning implies the presumption that the Yugoslavian declaration is valid, at least in the present phase of the proceedings.¹⁰ Rosalyn Higgins, the British member of the Court, showed some understanding of the Court’s failure to have thoroughly examined the rather complicated question of Yugoslavia’s status, since the Court constantly has to make extremely speedy decisions on provisional measures.¹¹ On the other hand, Judge Oda, one of the Court’s most experienced members, was clearly of the position that the FRY was not a member of the United Nations and hence had no right to institute proceedings before the Court.¹² Oda maintains that even if the FRY is supposed to be a party to the Statute, with its declaration of acceptance registered as required by law, it in no way acted in good faith as it made its declaration of acceptance under the optional clause a few days before the filing of the application.¹³ In other words, Judge Oda, in dealing with the Yugoslavian declaration accepting the optional clause, also raised the question that had been the subject of debate even in the Right of Passage case during the 1950s, namely that of whether a state was entitled to submit an application to the Court a few days after it had made a declaration of acceptance.

These cases and particularly those concerning Legality of the Use of Force go to suggest that the Court is loath to examine whether a given state was or was not entitled to make a declaration of acceptance. Such attitude reflects the Court’s view that the declaring state assumes, of its own will, certain extra obligations regarding the Court’s jurisdiction and that the Court should take such obligations into account. We may add that the Court must do so all the more as the international community took cognizance of those obligations at the time they were assumed.

¹⁰ *Ibid.*, 117.

¹¹ *Ibid.*, 167.

¹² *Ibid.*, 145–146.

¹³ *Ibid.*, 148.

2. Contents of declarations and relevance of the principle of will

The idea that it would be advisable to elaborate a model document concerning declarations of acceptance had emerged as early as the negotiations for the establishment of the PCIJ. Although the so-called Third Committee did not suggest a model, the elaboration of such a document, a draft of the “optional clause”, or declarations was also attached to the Draft Protocol of Signature of the Statute when it was submitted to the Council of the League of Nations on December 14, 1920. In Hudson’s opinion, that draft seems to have been approved by the Council and, as a separate protocol, it was opened for signature on December 17, 1920.¹⁴ Called “optional clause”, this additional protocol was not a separate document but a subsidiary one intended to serve as a model for declaration to be made under Art. 36, para. 2, of the Statute.¹⁵ At any rate, Hudson emphasises that the said document was only a suggested version for the first part of the text of declarations and that states were free to disregard it in making their declarations.¹⁶

Thus, in spite of the existence of a certain kind of model document, the states accepting the compulsory jurisdiction of the PCIJ paid little attention to it and developed diverse contents and forms of declarations of submission in the years following the establishment of the Court.

The declarations of acceptance by some states practically reproduced Art. 36, para. 2, of the Statute, stating that the declaring state “recognize as compulsory *ipso facto* and without special agreement, on condition of reciprocity” the jurisdiction of the Court. While others departed from it, with completely different wordings inserted in their declarations. Another group of states declared in a single sentence, quite short and to the point, that they accepted the jurisdiction of the Court. During the interwar period, some states accepting the Court’s compulsory jurisdiction incorporated their declarations of acceptance in the instruments of ratification of the Statute of the PCIJ, while others submitted their optional clause declarations to the Secretary-General of the League of Nations in the form of a letter. Considering that, as noted previously, the Statute contained no provision for making declarations under Art. 36, para. 2., any form of optional clause declaration became accepted. This was recognized by the International Court of Justice in the Nicaraguan case through its statement that: “The Statute of the Permanent Court did not lay down any set form or procedure

¹⁴ Hudson: *The Permanent Court ... op. cit.*, 127.

¹⁵ *Ibid.*, 451.

¹⁶ *Ibid.*, 452.

to be followed for the making of such declarations, and in practice a number of different methods were used by States.”¹⁷

The formal questions concerning declarations of acceptance were touched upon by the International Court in several cases. In its very first judgement, in the Corfu Channel case in the preliminary objections, the Court held that “...neither the Statute nor the Rules require that this consent should be expressed in any particular form.”¹⁸ The same was spelled out in the Temple of Preah Vihear case, in which the Court sought to answer the question whether Thailand’s letter of May 20, 1950, addressed to the United Nations Secretary-General in accordance with Art. 36, para. 2, of the Statute, was to be regarded, in substance and form, as recognizing compulsory jurisdiction pursuant to Art. 36, para. 2, of the present-day Court’s Statute.¹⁹ The Court stated: “The precise form and language in which they do this (the declaration—V. L.) is left to them, and there is no suggestion that any particular form is required, or that any declarations not in such form will be invalid. No doubt custom and tradition have brought it about that a certain pattern of terminology is normally, as a matter of fact and convenience, employed by countries accepting the compulsory jurisdiction of the Court; but there is nothing mandatory about the employment of this language. Nor is there any obligation, notwithstanding paragraphs 2 and 3 of Article 36, to mention such matters as periods of duration, conditions or reservations, and there are acceptances which have in one or more, or even in all, of these respects maintained silence.”²⁰

With regard to the contents of the optional clause declarations, the Court stressed that “... the sole relevant question is whether the language employed in any given declaration does reveal a clear intention, in the terms of paragraph 2 of Article 36 of the Statute, to ‘recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same

¹⁷ Case concerning Military and Paramilitary Activities in and against Nicaragua. *ICJ Report*, 1984, 404.

¹⁸ The Corfu Channel, *ICJ Recueil*, 1948, 27.

¹⁹ In its declaration of September 30, 1929, Thailand originally accepted the compulsory jurisdiction of the PCIJ for a period of 10 years, and in 1940 and 1950 it renewed its declaration with other declarations, containing the previous conditions and reservations, for additional periods of 10 years. In its first preliminary objection in the Preah Vihear case, Thailand advanced the argument, along with others, that in 1950 there was a mistaken view of the status of her earlier declaration of 1940 as it had renewed its declaration of acceptance in respect of a court that no longer existed.

²⁰ Case concerning the Temple of Preah Vihear. Preliminary Objections. *ICJ Reports*, 1961, 32.

obligation, the jurisdiction of the Court in all legal disputes' concerning the categories of questions enumerated in that paragraph".²¹

As can be seen, the Court attached no importance to formal questions of making declarations and deemed the intentions of the parties to be the determining incident. Relying on private-law examples, it pointed out that international law "... places the principal emphasis on the intentions of the parties, the law prescribes no particular form, parties are free to choose what form they please provided their intention clearly results from it."²² All this was summed up by Sir Percy Spender in these terms: "No requirement of form are called for paragraph (2) of Article 36. If consent to recognize this Court's jurisdiction in terms of that paragraph is clearly manifested, it matters not in what form the declaration containing that consent is cast."²³

3. The problem of collective declarations accepting the compulsory jurisdiction

For nearly seven decades since the establishment of the PCIJ, states had made individual declarations of acceptance, and it was not until the end of the 1980s that, in the Case concerning Border and Transborder Armed Actions, the possibility arose of recognizing the Court's compulsory jurisdiction by collective declarations.²⁴

In that dispute between Nicaragua and Honduras, the applicant state, Nicaragua, founded the Court's jurisdiction on Article XXXI of the American Treaty on Pacific Settlement,²⁵ officially known, as the Pact of Bogotá, signed

²¹ *Ibid.*, 32.

²² *Ibid.*, 31.

²³ See Sir Percy Spender's individual opinion in the case concerning the Temple of Preah Vihear. ICJ Reports, 1961, 40.

²⁴ On this point see Buffet-Tchalakoff, M. E.: La compétence de la Cour Internationale de Justice dans l'affaire des „Actions frontalières et transfrontalières" (Nicaragua-Honduras), *Revue Générale de Droit International*, Tome 93, 1989, No. 3, 623–653.

²⁵ Art. XXXI of the Bogota Pact reads as follows: „In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arose among them concerning.

The interpretation of a treaty;

Any question of international law;

on April 30, 1948, and on the declarations accepting the jurisdiction of the Court by the two states.²⁶ These two instruments serving as the basis for the Court's jurisdiction—and the possibility of making collective declarations of acceptance that actually arose in connection with them—highlight the specific feature that Art. XXXI of the Pact of Bogotá is virtually identical, almost word for word, with Art. 36, para. 2, of the Statute.

Before the Court, Art. XXXI of the Pact of Bogotá on judicial settlement of disputes was linked by Honduras with declarations of acceptance under Art. 36, para. 2, of the Statute. According to Honduras, Art. XXXI, which, as mentioned above, is almost literally identical to Art. 36, para. 2, of the Statute, “contains a jurisdiction which can be more precisely defined by means of a unilateral declaration”, notably in unilateral declarations, under Art. 36, para. 2, of the Statute, by each party to the Pact.²⁷ Starting with this, Honduras was of the position that any declaration made under Art. 36, para. 2, of the Statute and the reservations attached thereto applied to Art. XXXI of the Pact of Bogotá as well.²⁸ In connection with all this, Honduras interpreted Art. XXXI of the Pact in two ways with respect to the present case. First, it argued that, under this Article, the Court had jurisdiction only if a declaration of acceptance was also made under the optional clause, but later it claimed that such a unilateral declaration was not necessary but only possible and that Art. XXXI of the Pact of Bogotá

The existence of any fact which, if established, would constitute a breach of an international obligation;

The nature or extent of the reparation to be made for the breach of an international obligation.”

²⁶ The Honduran declaration of acceptance of compulsory jurisdiction was dated February 2, 1948, and was renewed several times, first on May 24, 1954, for a period of six years and on February 20, 1960, for an indefinite period. It was modified by a declaration on May 22, 1986, inserting a paragraph under which the present declaration and the reservations contained therein may at any time be supplemented, modified or withdrawn by giving notice to the Secretary-General of the United Nations. The Nicaraguan declaration of acceptance was made on September 24, 1929, and its legal effect was, according to Nicaragua transmitted to the ICJ by Art. 36, para. 5, of the Statute. This declaration of acceptance by Nicaragua was the same as that which was at issue in the legal dispute between Nicaragua and the United States of America.

²⁷ Case concerning Border and Transborder Armed Actions, *ICJ Pleadings*, 1988, Vol. I, 65.

²⁸ *Ibid.*, 74. Honduras relied on this for objecting to the Court's jurisdiction on the ground that, owing to the reservations attached to the 1986 declaration, the Court's jurisdiction did not extend to the present case on the basis either of the optional clause or of Art. XXXI of the Pact of Bogotá.

Pact was valid irrespective of any declaration relating thereto.²⁹ Then again, it claimed that Art. XXXI was to be seen as recognition of the Court's compulsory jurisdiction under the optional clause understood as implied in the Pact of Bogotá.³⁰ In other words, according to Honduras, Art. XXXI of the Pact of Bogotá was nothing more than a collective declaration of acceptance.

The Court's opinion on these argumentation was the following: "The first interpretation advanced by Honduras—that Article XXXI must be supplemented by a declaration—is incompatible with the actual terms of the Article. In that text, the parties "declare that they recognize" the Court's jurisdiction "as compulsory *ipso facto*" in the cases enumerated. Article XXXI does not subject that recognition to the making of a new declaration to be deposited with the United Nations Secretary-General in accordance with Article 36, paragraphs 2 and 4, of the Statute. It is drafted in the present indicative sense, and thus of itself constitutes acceptance of the Court's jurisdiction."³¹ With regards to the second interpretation, the Court noted that the parties had come forward with two possible interpretations on the relationship between Art. XXXI of the Pact of Bogotá and the Statute: on the one hand, they conceived the said Article as a treaty provision conferring jurisdiction upon the Court under Art. 36, para. 1, of the Statute and, on the other, they deemed it to be a collective declaration of acceptance of compulsory jurisdiction under Art. 36, para. 2, of the Statute and incorporated in the Pact of Bogotá.³²

Without going too deeply into the case concerning Border and Transborder Armed Actions, we should note that the quotation from the Court's judgement indicates that the International Court did not entirely preclude the *acceptance of its compulsory jurisdiction by a collective declaration of acceptance* but,

²⁹ Case concerning Border and Transborder Armed Actions, *ICJ Reports*, 1988, 83.

³⁰ Case concerning Border and Transborder Armed Actions, *ICJ Pleadings*, 1988, Vol. I, 75.

³¹ Case concerning Border and Transborder Armed Actions, *ICJ Reports*, 1988, 84.

³² Honduras advanced the latter interpretation in the Case concerning Border and Transborder Armed Actions. In 1984, in its legal dispute with the United States concerning Military and Paramilitary Actions against Nicaragua, Nicaragua claimed that Art. XXXI should be regarded as a declaration made under Art. 36, para. 2, of the Statute, that is to say that its position was identical to that of Honduras in the case of 1988. On the other hand, in the Border and Transborder Armed Actions case, Nicaragua argued against Honduras that Art. XXXI of the Bogota Pact came under Art. 36, para. 1, of the Statute, providing a reason why it was to be deemed a reservation to the Treaty with regard to the jurisdiction of the Court. Cf. Case concerning Border and Transborder Armed Actions, *ICJ Reports*, 1988, 84.

keeping in mind the consequences of its aforesaid finding, it preferred to point out that

“There is however no need to pursue this argument. Even if the Honduran reading of Article XXXI be adopted, and the article be regarded as a collective declaration of acceptance of compulsory jurisdiction made in accordance with Article 36, paragraph 2, it should be observed that declaration was incorporated in the Pact of Bogotá as Article XXXI. Accordingly, it can only be modified in accordance with the rules provided for the Pact itself. Article XXXI nowhere envisages that the undertaking entered into by the parties to the Pact might be amended by means of a unilateral declaration made subsequently under the Statute, and the reference to Article 36, paragraph 2, of the Statute is insufficient in itself to have that effect.”³³

The Court concluded by stating that the said silence was all the more significant since the Pact clearly determined the obligations of the parties. The commitments contained in Art. XXXI applied *ratione materiae* to the disputes enumerated in its text and *rationes personae* to the American States parties to the Pact, while remaining valid *rationes temporis* so long as the present instrument was in force between those states.³⁴

With this statement, the International Court has made it abundantly clear that it considers Art. XXXI of the Pact of Bogotá to be a treaty provision conferring jurisdiction on the Court with a text similar to declarations of acceptance of compulsory jurisdiction, to be in fact a *compromissory* clause, one that is deemed to be acceptance of the Court’s jurisdiction under Art. 36, para. 1, of the Statute rather than under para. 2.³⁵

Thus, in the Border and Transborder Armed Actions case, the Court found that Art. XXXI of the Pact of Bogotá could not be considered to be a collective declaration of acceptance, yet it took no definite stand on whether it was possible

³³ Cf. Case concerning Border and Transborder Armed Actions, *ICJ Reports*, 1988, 84.

³⁴ *Ibid.*

³⁵ A similar view was held by Jiménez de Aréchaga, a most prominent international expert of international law of Latin America and a former member of the Court, who wrote that, despite the similarity of terminology, Art. XXXI of the Bogota Pact was a document coming under Art. 36, para. 1, of the Statute. Yet he added that in their mutual relations, the Latin American states, having regard to the close historical and cultural ties between them, placed the Court’s compulsory jurisdiction on much stronger foundations than those ensuing from the system of declarations under Art. 36, para. 2, of the Statute.

Cf. Jiménez de Aréchaga, E.: The Compulsory Jurisdiction of the International Court of Justice under the Pact of Bogotá and the optional clause. In: *International Law at a Time of Perplexity. Essays in Honour of Shabtai Rosenne* (ed. Yoran Dinstein), Martinus Nijhoff Publishers, Dordrecht–Boston–London, 1989, 356–357.

to accept the Court's compulsory jurisdiction by a collective declaration of acceptance.³⁶

Without elaborating on problems relating to eventual collective optional clause declarations, we wish to note that recognition of Art. XXXI of the Bogotá Pact as a collective declaration of acceptance of compulsory jurisdiction could have entailed interesting consequences. In the first place, the Court's compulsory jurisdiction would have operated not only in the inter se relations of the states parties to the Pact of Bogotá, but also in relations between the rest of states parties to the regime of the optional clause. Moreover, it would have raised the question of how such a collective declaration of acceptance is related to individual optional clause declarations by the Latin American states parties to the Optional Clause system. This problem should not be treated as a speculative one, for 13 of the states parties to the Pact of Bogotá have made individual declarations, many of them with reservations attached thereto. Consequently, there is a need to answer the question whether the basis for the Court's jurisdiction is provided by individual declarations of acceptance or by the Pact of Bogotá as a collective declaration of acceptance in cases where a state that is party to the Optional Clause system intends to institute proceedings against a state that is a party to the Pact of Bogotá and at the same time has made an individual declaration of acceptance. This may give rise to a problem, particularly when it is borne in mind that certain disputes are excluded from the Court's jurisdiction by reservations attached to individual declarations of acceptance, while such disputes may still happen to come under the jurisdiction of the Court on the basis of a collective declaration of acceptance.

4. Ratification of declarations of acceptance

In relation to the rather few formal requirements for declarations accepting the compulsory jurisdiction of the two World Courts, mention should also be made of the fact that, during the existence of the PCIJ, a number of states made their

³⁶ However, some members of the Court, including Judge Oda, expressly conceded the possibility of collective recognition of compulsory jurisdiction. According to the Japanese judge, acceptance of jurisdiction under Art. 36, para. 1, of the Statute can, in the case of certain general treaties on dispute settlement, can be equated, in effect, with acceptance of the Court's jurisdiction under Art. 36, para. 2, of the Statute, but such an obligation must be assumed in an unequivocal manner. He instanced the 1949 Revised General Act for the Pacific Settlement of Disputes and the European Convention on Peaceful Settlement of Disputes. See Judge Oda's individual opinion. *ICJ Reports*, 1988, 124.

declarations subject to ratification. In other words, a state did not recognize compulsory jurisdiction under Art. 36 of the Statute as binding on itself until after it had ratified its declaration. Incorporation of such reservations in declarations of acceptance was actually superfluous as declarations of acceptance cannot be deemed to be treaties and there is no rule requiring ratification thereof. Furthermore, as Hudson wrote, "...both the English and French versions of the optional clause refer to the recognition or acceptance of jurisdiction "from this date" (Fr., *dès à présent*), i.e., from the date of the declaration, it would seem that the declaration was intended to take effect at the time of signature."³⁷ This notwithstanding, a number of states made their declarations subject to ratification, as noted earlier. Interestingly, there were also cases in which a state ratified its declaration, although the instrument did not call for ratification. Some of the relevant cases include Bulgaria's declaration of 1921, Ethiopia's declaration of July 12, 1926, and Lithuania's declaration of October 5, 1921.

The fact that, during the existence of the PCIJ, provisions in declarations of acceptance for ratification thereof were rather frequent, may in all certainty be attributed to unestablished practice concerning the declarations under Art. 36 para. 2. This seems to be confirmed by the fact that, of all the declarations currently in force, only the Belgian declaration of 1958 provides for ratification.

Numerous optional clause declarations expressly requiring ratification were not ratified at the time of the PCIJ and, therefore, did not enter into force. Cases in point are the declarations of Costa Rica, Liberia and Luxembourg in 1921, of Latvia in 1923 and of France in 1924,³⁸ of Guatemala in 1926, of Czechoslovakia in 1929, of Argentina in 1935, of Iraq in 1938 and of Egypt and Hungary in 1939.

Though not required, inclusion of reservations concerning ratification of acceptance was by all means of great importance as *declarations containing such reservations could not enter into force until ratification thereof*. That situation was further complicated by the fact that—since the Protocol of Signature of the Statute of the PCIJ was to be ratified—the declaration of a state could not come into force until a ratification of the said Protocol. Consequently, if a state ratified its declaration of acceptance earlier than the Protocol of Signature of the Statute, the declaration could not enter into force.

It was nearly four decades after the dissolve of its predecessor that the International Court of Justice was confronted with the problems concerning

³⁷ Cf. Hudson: *The Permanent Court ... op. cit.*, 452.

³⁸ On the reasons for the non-ratification of the French declaration, see Dreyfus, S.: *Les déclarations souscrites par la France aux termes de l'article 36 du Statut de la Cour Internationale de la Haye. Annuaire Francais de droit International*, 1959, 259.

ratification of the Protocol of Signature of the Statute of the PCIJ in the Case concerning Military and Paramilitary Actions in and against Nicaragua (Nicaragua v. United States) in the 1980s. In that case, the dispute centred on, inter alia, the validity of a declaration of acceptance made by Nicaragua between the two world wars. Nicaragua signed the Protocol of Signature of the Statute of the PCIJ in September 1929 and made a declaration under Art. 36, para. 2, of the Statute. However, the Protocol of Signature of the Statute had not yet been ratified, and it was more than 10 years later, on November 29, 1939, that Nicaragua notified the Secretary-General of the League of Nations by cable that “the Statute and the Protocol” had been ratified and that the instrument of ratification would be transmitted to Geneva. However, according to available information, that instrument of ratification did not reach the League of Nations.

In view of all this, the United States contended, in the Case concerning Military and Paramilitary Activities in and against Nicaragua, that Nicaragua had never become a party to the Statute of the PCIJ and was therefore not in a position to make an effective acceptance of the compulsory jurisdiction of the PCIJ.³⁹ On the other hand, Art. 36, para. 5, of the Statute could not consequently transfer the legal effects of the 1929 Nicaraguan declaration to the International Court of Justice, since the relevant article of the Statute did not cover *but the declarations submitted to the PCIJ and “still in force.”*⁴⁰

Contrary to this, Nicaragua construed that the provision of the Statute was designated to exclude from the operation of the article only declarations which had already expired and had no bearing whatever on a declaration like that of Nicaragua, that had not expired, but which had not been perfected for various reasons at the time. In the view of the Nicaraguan Government, Nicaragua was in exactly the same situation under the new Statute as it had been at the time of the old Statute, and in both cases the ratification of the Court’s Statute would perfect its 1929 declaration.⁴¹

On this point, the Court held “...that Nicaragua having failed to deposit its instrument of ratification to the Protocol of Signature of the Statute of the Permanent Court, was not a party to that treaty, Consequently the Declaration made by Nicaragua in 1929 had not acquired binding force prior to such effect as Article 36, paragraph 5, of the Statute of the International Court of Justice might produce.”⁴²

³⁹ Case concerning Military and Paramilitary Activities in and against Nicaragua, *ICJ Pleadings*, Vol. II, 11–17.

⁴⁰ *Ibid.*, 18–29.

⁴¹ *Ibid.*, Vol. I, 63–74.

⁴² *ICJ Reports*, 1984, 404.

On the basis of the findings of the International Court of Justice in the Nicaraguan case, it can be stated that, according to the Court, the ratification of the new Statute had the same effect in the case of Nicaragua as if the Protocol of Signature of the old Statute had been ratified.

The Court's reasoning boils down to the fact that, at the time the new Statute came into force, Art. 36, para. 5, of the Statute transmitted to the ICJ the legal effect of optional clause declarations made to the PCIJ and still in force.

The related arguments adduced by the Court can be questioned in certain aspects, if only for the reason that the English and French texts of Art. 36, para. 5, of the Statute are somewhat different, the English version reading "declarations ... which are still in force" whereas the French "déclarations ... pour une durée qui n'est pas encore expirée" is not the equivalent of the former (encore en vigueur), but can be rendered as "declarations ... for a period not yet expired".⁴³ Both texts refer, in point of fact, to declarations which had not yet lapsed at the time of the entry into force of the new Statute, and as such were still applicable. However, in the case of the Nicaraguan declaration, what was at issue was not the non-expiration of the declaration at the time of the new Court's Statute or the continuing effect thereof, for during the existence of the PCIJ this declaration had never become effective in reality and was therefore inapplicable. In our view, the argument that Nicaragua was for decades regarded by the international community as a state party to the Court's Statute and was recorded in the different publications of the Court as a state party to the optional clause system, would have appeared much more convincing in favour of the applicability of the Nicaraguan declaration in that particular case. Both Nicaragua and the other states parties to the optional clause system agreed with this, that is to say that Nicaragua had the clear intention to be a party to the compulsory jurisdiction of the Court and that the other members of the international community were in agreement on this point.⁴⁴

5. Problems relating to deposit of declarations

As mentioned earlier, the San Francisco Conference inserted a new paragraph in Art. 36 of the Statute, which provides that declarations of acceptance are to be deposited with the Secretary-General of the United Nations, who is to

⁴³ See the individual opinion of Judge Jennings. *ICJ Reports*, 1984, 537–539.

⁴⁴ It should be noted that Judge Jennings rejected this argument, saying that the Registrar of the Court performs a single administrative function by listing the states that are parties to the system of the optional clause in the yearbooks.

circulate thereof to the parties to the Statute and the Registrar of the Court. The Statute contains nothing more and does not specify the date at which declarations of acceptance enter into force or begin to take legal effect.

According to the pertinent literature and the Court, para. 4 of Art. 36 essentially refers to two elements that are practically independent of each other.⁴⁵ On the one hand, declarations accepting the Court's compulsory jurisdiction are to be deposited by the declaring state with the Secretary-General and, on the other hand, there is the duty incumbent on the Secretary-General to transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

Rosenne is of the view that the deposit of declarations of acceptance with the Secretary-General entails the following consequences for the declaring state: 1) the declaration becomes effective *rationis personae* on the day of deposit except where the instrument contains a special reservation in this respect; 2) if the declaration requires some additional act, such as ratification, such an additional act is also to be performed through the agency of the Secretary-General, namely the instrument of ratification is to be transmitted to the Secretary-General and its legal effects arise from the date of that deposit; 3) the terms on which the compulsory jurisdiction are accepted by the declaring state at a given moment are those terms last deposited with the Secretary-General; 4) while the said provision of the Statute refers to the deposit of declarations, it also applies to modification, withdrawal and of denunciation, etc. of declarations.⁴⁶

The problems relevant to the deposit of declarations of acceptance with the Secretary-General have been considered by the International Court in several cases. The best-known case of this category is the Right of Passage Through Indian Territory, in which Portugal made a declaration of acceptance on December 19, 1955, and filed an application with the Court against India under the Optional Clause a few days later, on December 22, 1955. India contended that the filing of the Portuguese application violated the generally recognized principle of equality, mutuality and reciprocity to which India was entitled under the optional clause, as the Portuguese application had been filed before the expiration of a period of time—between the acceptance by Portugal of the Court's compulsory jurisdiction and the filing of the application—which, under normal circumstances, would have enabled the Secretary-General to

⁴⁵ Cf. Rosenne, S.: *The Law and Practice of the International Court*. A.W. Sijthoff-Leyden, 1963, 381.

⁴⁶ *Ibid.*, 382.

transmit the Portuguese declaration to the states parties to the Statute of the Court, including India.⁴⁷

The Court found that the filing of the Portuguese application on December 22, 1955, was not contrary to the Statute and constituted no violation of India's rights. It stated that "...by the deposit of its Declaration of Acceptance with the Secretary-General, the accepting State becomes a Party to the system of the Optional Clause in relation to the other declaring States, with all the rights and obligations deriving from Article 36. ... The legal effect of a Declaration does not depend upon subsequent action or inaction of the Secretary-General."⁴⁸ The Court pointed out that "...unlike some other instruments, Article 36 provides for no additional requirement, for instance, that the information transmitted by the Secretary-General must reach the Parties to the Statute, or that some period must elapse subsequent to the deposit of the Declaration before it can become effective. Any such requirement would introduce an element of uncertainty into the operation of the Optional Clause system. The Court cannot read into the Optional Clause any requirement of that nature."⁴⁹

Several members of the Court objected to this passage of the judgement. In his dissenting opinion, Judge Badawi stressed the contractual nature of the regime that was established on the basis of the optional clause and tried to prove that "The notification of Declarations to the Secretary-General, or their deposit with him and his obligation to communicate them to other States, are merely intended to take place of direct communication."⁵⁰ Since the declaration was made on the day preceding the filing of the application, no one could suppose that the Secretary-General had been able to transmit the declaration to the other states within 24 hours, the result being a situation as if no declaration of acceptance had been made.⁵¹ In his dissenting opinion, *ad hoc* Judge Chagla argues that Art. 36, para. 4, of the Statute consisted of two parts, one making it incumbent upon the declaring states to deposit declarations with the Secretary-General, and the other incumbent upon the Secretary-General for the transmission copies thereof to the states parties to the Statute and to the Registrar of the Court. The *ad hoc* Judge found it objectionable that the Court's decision had deemed only the first element to be mandatory, for, in his view, it would have been absolutely necessary that a certain period of time

⁴⁷ See India's second preliminary objection.

⁴⁸ *ICJ Reports*, 1957, 146.

⁴⁹ *Ibid.*, 147.

⁵⁰ *ICJ Reports*, 1957, 155.

⁵¹ *ICJ Reports*, 1957, 156.

should elapse between making the declaration and filing the application.⁵² In the 1960s, Rosenne also made the point that, during a future revision of the Statute, it would be worthwhile considering the introduction of a short period between the date of deposit of declarations and the date on which such instruments begin to produce legal effects.⁵³

More than 40 years after its decision in the Right of Passage case, the Court was again faced with the problem of a dispute being submitted to it under the optional clause before the respondent state could have been informed of the applicant state's accession to the system of the optional clause.

This problem arose in the second part of the 1990s in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria, because on March 3, 1994, Cameroon made a declaration accepting the Court's compulsory jurisdiction and the United Nations Secretary-General transmitted it to the parties to the Statute eleven-and-a-half months later. Consequently, when Cameroon's application was filed on March 29, 1994, the respondent state, Nigeria did not know or was not in a position to know that Cameroon had acceded to the optional clause system.⁵⁴ This led Nigeria to conclude that Cameroon "acted prematurely", had violated "its obligation to act in good faith ..., acted in abuse of the system established by Art. 36, para. 2, of the Statute". Nigeria asserted that the Court's decision in the Right of Passage case was an isolated one and that it was time the Court revised its findings in this case in connection with the making of optional clause declarations. It stressed that the interpretation of Art. 36, para. 4, of the Statute in 1957 should be reconsidered in the light of changes that had since taken place in the law of treaties, and in this context it referred to Art. 78 of the 1969 Vienna Convention on the Law of Treaties, which provides:

"Except as the treaty or the present Convention otherwise provides, any notification or communication to be made by any State under the present Convention shall:

...

c) if transmitted to a depositary, be considered as received by the State for which it was intended only when the latter State has been informed by the depositary."

⁵² *ICJ Reports*, 1957, 169–170.

⁵³ Cf. Rosenne: *op. cit.*, 381.

⁵⁴ The applicant state, Cameroon, founded the Court's jurisdiction on the Nigerian declaration of acceptance of August 14, 1965, and on the Cameroonian declaration of acceptance of March 3, 1994.

No matter how logical the above-mentioned arguments may appear to be, the elements thereof referring to the law of treaties may be strongly questioned, notably on the ground that, during the elaboration of the 1969 Vienna Convention on the Law of Treaties, the International Law Commission, in dealing with deposit of instruments of ratification, accession, etc., referred precisely to the findings of the ICJ in the Right of Passage case, stating that in an analogous situation, notably in respect of the entry into force of declarations made under Art. 36, para. 2, of the Statute, the Court had considered the date of deposit of the relevant instruments to be the determinate factor.⁵⁵

In the judgement on the preliminary objections, the Court notes "...that régime for depositing and transmitting declarations of acceptance of compulsory jurisdiction laid down in Article 36, paragraph 4, of the Statute of the Court is distinct from the régime envisaged for treaties by the Vienna Convention."⁵⁶ Then, repeating the findings of the Nicaraguan case, it emphasised "Thus the provisions of that Convention may only be applied to declarations by analogy."⁵⁷ Indeed, the Court said nothing more, and it examined Art. 78 of the Vienna Convention on notifications and communications, Art. 16 on exchange of instruments of ratification, acceptance and accession, and Art. 24 on the entry into force of treaties. The Court found that the provisions of the Vienna Convention did not have the scope that Nigeria inferred on them. Regarding Art. 78, the Court held that this article "...is only designated to lay down the modalities according to which notifications and communications should be carried out. It does not govern the conditions in which a State expresses its consent to be bound by a treaty and those under which a treaty comes into force, those questions being governed by Articles 16 and 24 of the Convention."⁵⁸ Articles 16 and 24 contain a general rule, notably that, unless otherwise provided by a treaty, a state's consent to being bound by a treaty is expressed by the deposit of the instrument of ratification, accession, approval, etc. and the treaty comes into force in respect of that state on the day of deposit. The Court emphasised that these rules of the Vienna Convention correspond to the solution adopted by the Court in the Case concerning the Right of Passage through Indian Territory and that this solution should be upheld.⁵⁹

⁵⁵ Cf. *The Vienna Convention on the Law of Treaties*. Dokumente (Hrsg. Dietrich Rauschnig). Alfred Metzner Verlag, Frankfurt am Main, 1978, 159.

⁵⁶ Case concerning the Land and Maritime Boundary between Cameroon and Nigeria. *ICJ Reports*, 1988, 293.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, 294.

In the dispute between Cameroon and Nigeria, Vice-President Weeramantry, among the members of the Court, voiced his opinion that the Court's decision in the case concerning the Right of Passage through Indian Territory should be revised. He adduced arguments similar to those of Judge Chagla in the Right of Passage case, emphasizing that, of the actions prescribed in para. 4 of Art. 36, the Court attached importance only to one, namely the deposit of declarations with the Secretary-General, and actually disregarded the other, namely the transmission of declarations to the parties to the Statute and to the Registrar of the Court. Judge Weeramantry summed up in 8 paragraphs the reasons why he thought it necessary to revise the findings in the Right of Passage case.⁶⁰ Judges Koroma and Ajibola similarly stated the case for revision of the findings contained in the judgement of 1957, saying that international law had developed considerably since the 1950s and that the Court could not choose to ignore that fact.⁶¹

Thus, for its part in the Land and maritime Boundary case, the Court maintained its view as set forth in the Right of Passage case and stated again that a declaring state should not be concerned with the actions of the Secretary-General or with his performance or non-performance thereof, that "The legal effect of Declarations does not depend upon subsequent action or inaction of the Secretary-General." Unlike other documents, Art. 36 of the Statute prescribes no additional requirement whatsoever, such as the information transmitted by the Secretary-General to reach the parties to the State or the entry into force of a particular declaration after the lapse of a specified period of time.⁶² The Court expressed that, in contrast to Nigeria's contention, its decision in the Right of Passage case could not be regarded as an isolated one as its findings in this case had been reaffirmed by those in the cases concerning the Temple of Preah Vihear and the Military and Paramilitary Activities in and against Nicaragua.

Furthermore, in the cases filed by Yugoslavia against 10 NATO member states involving legality of use of force, the Court followed its legal practice that was established in the Right of Passage case.⁶³ Considering the political background of the applications submitted by the repressive Milosevic regime against the NATO member states, we believe that, if the Court had wished to depart from its earlier legal practice in the least measure, these cases would have offered a good opportunity for it to abandon its position as expressed in

⁶⁰ Cf. *ICJ Reports*, 1998, 364–367.

⁶¹ Cf. *ICJ Reports*, 1998, 379–380. and 395–397.

⁶² *ICJ Reports*, 1958, 146–147.

⁶³ See fn. 7 on this point.

the Right of Passage case. In all likelihood, the approval of the international community would have been won by some sort of statement by the Court to the effect that Yugoslavia's being a party to the optional clause system at the time of filing the applications and hence its right to submit disputes to the Court under the optional clause were strongly questionable. However, in the cases concerning the Legality of the Use of Force, in deciding on the interim measures of protection, the Court did not concern itself with this issue and accepted the right of Yugoslavia to file an application against 10 NATO states 4 days after having made its declaration of acceptance in April 1999.

6. The United Nations Secretary-General and declarations of acceptance

In relation to the deposit of optional clause declarations of acceptance with the Secretary-General of the United Nations, it is worthwhile to touch briefly on the Secretary-General's actions connected with declarations and chiefly on how similar his actions are to those associated with treaties.

In this context we should examine two of the said functions related to treaties. The Secretary-General's first function is a general, individual and special one, based on Art. 102. of the United Nations Charter and applies to all treaties deposited with him. Its essence can be said to consist of securing due publicity for treaties.⁶⁴ The other function is related exclusively to those treaties of which the Secretary-General is the depositary, is governed by the provisions of the Vienna Convention on the Law of Treaties, and is the same in respect of the Secretary-General as in respect of any other depositary.⁶⁵

The Secretary-General's functions related to declarations of acceptance are similar in some measure to those connected with the deposit of treaties. In both cases, the Secretary-General receives certain documents and transmits them to specified states. His functions related to optional clause declarations are practically fulfilled by these actions, but his functions as depositary involve much more than this and are much more substantive. On this point, it is worthwhile to keep in mind what Humphrey Waldock stated about the depositary's function during the elaboration of the 1969 Vienna Convention on the Law of

⁶⁴ For more detail on this point see: Kelsen, H.: *The Law of the United Nations*. Stevens and Sons Limited, London, 1951, 696–705, and Lord McNair: *The Law of Treaties*. At the Clarendon Press, Oxford, 1961, 178–190. Also see General Assembly resolution 97 (1) of 14 December 1946 as amended by resolutions 364 B (IV), 482 (V) and 33/141 A.

⁶⁵ The depositary's functions are governed by Art. 77 of the 1969 Vienna Convention on the Law of Treaties.

Treaties, namely that “The regular performance of the duties of the depositary is of critical importance to the operation of the modern system of multilateral treaties. Nor does it seem correct to regard the provisions of article 29⁶⁶ as purely procedural; for they establish not only the duties of depositaries but also the rights of the interested States with respect to the procedure.”⁶⁷

The question at issue is whether, in relation to treaties, the depositary also has the function of examining the instruments deposited with him, e.g., from the point of view of whether they are in conformity with the treaty, and if they are not, he may call the attention of states to such deficiencies, etc.⁶⁸ The Secretary-General as depositary may likewise have a highly important function in determining the dates at which treaties enter into force. Such is the case particularly with treaties containing reservations whose admissibility is not covered by a particular treaty.⁶⁹

On the other hand, the Secretary-General’s functions concerning optional clause declarations are limited to receiving declarations and transmitting them to the Registrar of the Court and to the parties to the Statute. Declarations henceforward pass out from the Secretary-General’s purview, for, as mentioned above, the Secretary-General has no additional functions related to declarations of acceptance owing to the fact that reservations or limitations attached to declarations of acceptance need no approval or consent by the other states that are parties to the optional clause system and that, as the Court has emphasized in several cases, the only formal requirement for declarations is that they be deposited with the Secretary-General.

In light of the foregoing, it can be reasonably claimed that the Court was right in upholding its view that declarations of acceptance enter into force on the day of deposit with the Secretary-General.

The Court’s position is justified by the fact that an element of uncertainty would be introduced into the system⁷⁰ by accepting, as the date of entry into force of declarations of acceptance, the date of receipt of declarations by the parties to the Statute or to the optional clause system, because in that case a

⁶⁶ At the time of Waldock’s IV. Report, or the draft treaty of 1962, the provisions on the depositary’s functions were contained in Art. 29.

⁶⁷ *The Vienna Convention ...*, *op. cit.*, 492.

⁶⁸ Cf. Bastid, S.: *Les traités dans la vie internationale*. Economica, Paris, 1985, 77–78.

⁶⁹ Cf. Imbert, P.H.: A l’occasion de l’entrée en vigueur de la Convention de Vienne sur le droit de Traités. *Annuaire Français de Droit International*, 1980, CNRS, Paris, 524–541.

⁷⁰ For a discussion on this point, see the Case concerning the Land Maritime Boundary Line between Cameroon and Nigeria. *ICJ Reports*, 1998, 395–396. para. 35.

declaration would in fact enter into force in different periods, depending on the date at which the individual states receive the relevant notification.

If, however, declarations were to become effective after the lapse of a reasonable period of time, as was proposed by many, the question naturally arises of what that reasonable period—30 days or 3 months—should be. Yet the example of Cameroon's declaration of acceptance shows that not even a few months is necessarily sufficient for declarations to reach the states that are parties to the Statute. Thus, the significance of the deposit of declarations with the Secretary-General arises due to the fact that, as is suggested by Rosenne, the date at which declarations become effective and hence the Court's jurisdiction, both *rationes personae* and *rationes material*, are linked to the day of deposit.

It can be stated that the formal questions concerning declarations accepting the optional clause have emerged in a number of cases. The two Courts have recognized as valid declarations of practically any wording regardless of their content, their date of making and other circumstances. Disputes actually arose as to the entry into force of declarations, and, under its latest practice in the dispute between Cameroon and Nigeria, the ICJ reaffirmed the postulate, enunciated in its earlier decisions, that the only formal requisite for declarations of acceptance is that they be deposited with the Secretary-General.