

NEW DECLARATIONS OF ACCEPTANCE BY FRANCE AND INDIA OF THE JURISDICTION OF THE WORLD COURT UNDER ARTICLE 36(2) OF ITS STATUTE

THE Statute of the World Court provides that the Court's jurisdiction comprises all cases which the parties refer to it and all matters provided for in the Charter of the United Nations or in treaties and conventions in force.¹ Jurisdiction conferred by treaties, an excellent example of which is that of numerous two-party treaties of commerce and navigation to which the United States is a party, has increased rapidly and reached impressive proportions.

Jurisdiction "compulsory ipso facto and without special agreement" is provided in the second paragraph of article thirty-six for cases involving broadly inclusive categories of disputes viewed as strictly "legal" in character²—namely, "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 and extent of the reparation to be made for the breach of an international obligation." Declarations accepting such jurisdiction may be made on behalf of states parties to the Court's Statute in relation to other states accepting the same obligation and may be made "unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time."

Despite these stated rules of acceptance, states have appended to their declarations of acceptance various un contemplated reservations. The United States was the first to attempt such reservation with the additional reservation that the existence of the contingency (in this case, a matter in dispute involving domestic jurisdiction) should be determined by itself and not by the Court. Half a dozen other states, among them France and India, followed the precedent set by the United States. In the *Case of Certain Norwegian Loans*,³ the World Court

¹ Statute of the Court, art. 36(1).

² For the texts of all declarations of acceptance in force at the time of its publication, see [1958-1959] I.C.J. Y.B. 205-27. Thirty-eight states are listed. India has since been added. On February 8, 1957, India had terminated a previous declaration dated January 9, 1956.

³ [1957] I.C.J. Rep. 9, 27.

held that, as a matter of reciprocity, should a state make such a reservation, the other party to a dispute with it could claim the same reservation.

In 1959, France and India made new declarations of acceptance in which they omitted the provision for themselves determining whether a dispute involved a matter of domestic jurisdiction. The declaration of France excepts "disputes relating to questions which *by international law* fall exclusively within the domestic jurisdiction."⁴ The declaration of India simply omits any self-determining condition.

The texts of the French and Indian declarations follow:

DECLARATION⁵

10 July 1959

On behalf of the Government of the French Republic, I accept as compulsory *ipso facto* and without special agreement, in relation to other Members of the United Nations which accept the same obligation, that is to say, on condition of reciprocity, the jurisdiction of the Court, in conformity with Article 36, paragraph 2, of the Statute, for a period of three years and thereafter until such time as notice may be given of the termination of this acceptance, in all disputes which may arise in respect of facts or situations subsequent to this declaration, with the exception of:

- (1) disputes with regard to which the Parties may have agreed or may agree to have recourse to another method of peaceful settlement;
- (2) disputes relating to questions which by international law fall exclusively within the domestic jurisdiction;
- (3) disputes arising out of any war or international hostilities and disputes arising out of a crisis affecting the national security or out of any measure or action relating thereto;
- (4) disputes with any State which, at the date of occurrence of the facts or situations giving rise to the dispute, has not accepted the compulsory jurisdiction of the International Court of Justice for a period at least equal to that specified in this declaration.

(Signed) Couve de Murville

⁴ Emphasis supplied.

⁵ Translation from the French.

Permanent Mission of India
to the United Nations
3 East 64th Street
New York 21, New York
14 September 1959

Excellency,

I have the honour, by direction of the President of India, to declare on behalf of the Government of the Republic of India that they accept, in conformity with paragraph 2 of Article 36 of Statute of the Court, until such time as notice may be given to terminate such acceptance, as compulsory *ipso facto* and without special agreement, and on the basis and condition of reciprocity, the jurisdiction of the International Court of Justice over all disputes arising after the 26th January 1950 with regard to situations or facts subsequent to that date, other than:

- (1) Disputes in regard to which the Parties to the dispute have agreed or shall agree to have recourse to some other method of settlement.
- (2) Disputes with the Government of any State which, on the date of this Declaration, is a Member of the Commonwealth of Nations.
- (3) Disputes in regard to matters which are essentially within the jurisdiction of the Republic of India.⁶

⁶ The change India made by omitting the words undertaking to reserve for itself the determination whether a particular dispute was one in regard to matters within its domestic jurisdiction is substantially the same change as that proposed for the United States in a resolution (S. Res. 94, 86th Cong., 1st sess., Cong. Rec., p. 4511, Mar. 24, 1959) introduced by Senator Humphrey, now pending in the Committee on Foreign Relations as follows: "*Resolved (two-thirds of the Senators present concurring therein)*, That Senate Resolution 196 of the 79th Congress, 2d session, agreed to August 2, 1946, is hereby amended to read as follows:

"*Resolved (two-thirds of the Senators present concurring therein)*, That the Senate advise and consent to the deposit by the President of the United States with the Secretary General of the United Nations, of a declaration under paragraph 2 of article 36 of the Statute of the International Court of Justice recognizing as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising 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 or extent of the reparation to be made for the breach of an international obligation;

"*Provided*, That such declaration shall not apply to—

"a. disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future; or

"b. *disputes with regard to matters which are essentially within the domestic juris-*

- (4) Disputes concerning any question relating to or arising out of belligerent or military occupation or the discharge of any functions pursuant to any recommendation or decision of an organ of the United Nations, in accordance with which the Government of India have accepted obligations.
- (5) Disputes in respect of which any other party to a dispute has accepted the compulsory jurisdiction of the International Court of Justice exclusively for or in relation to the purposes of such dispute; or where the acceptance of the Court's compulsory jurisdiction on behalf of a party to the dispute was deposited or ratified less than twelve months prior to the filing of the application bringing the dispute before the Court.
- (6) Disputes with the Government of any State with which, on the date of an application to bring a dispute before the Court, the Government of India has no diplomatic relations.

I have the honour to be, with the highest consideration,

Your Excellency's obedient servant,

(Signed) C. S. Jha

(C. S. Jha)

Permanent Representative of India
to the United Nations

His Excellency
Mr. Dag Hammarskjold
Secretary-General
United Nations
New York

diction of the United States; or

"c. disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States specially agrees to jurisdiction.

"*Provided further*, That such declaration shall remain in force until the expiration of 6 months after notice may be given to terminate the declaration." (Emphasis added.)

See note 2, *supra*.