

Session of Neuchâtel – 1959

Compulsory Jurisdiction of International Courts and Tribunals

(Twenty-fourth Commission, Rapporteur : Mr C. Wilfred Jenks)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Having examined the present situation as regards the compulsory jurisdiction of international courts and arbitral tribunals ;

Convinced that the maintenance of justice by submission to law through acceptance of recourse to international courts and arbitral tribunals is an essential complement to the renunciation of recourse to force in international relations ;

Considering that more general acceptance of compulsory jurisdiction would be an important contribution to respect for law and noting with concern that at the present time the development of such jurisdiction lags seriously behind the needs of satisfactory administration of international justice ;

Recognising the importance of confidence as a factor in the wider acceptance of international jurisdiction ;

Considering it essential that Article 36, paragraph 2, of the Statute of the International Court of Justice should remain an effective means for securing progressively more general acceptance of the compulsory jurisdiction of the Court ;

Recalling the Resolutions concerning the principle of compulsory jurisdiction adopted by the Institute in 1877, 1904, 1921, 1936, 1937, 1954, 1956 and 1957, and enumerated in the Annex to the present Resolution, and in particular the *voeu* concerning the reservation in respect of matters of domestic jurisdiction adopted at Aix-en-Provence in 1954 and the Resolution concerning a model clause conferring compulsory jurisdiction on the International Court of Justice for inclusion in conventions adopted at Granada in 1956 ;

Adopts the following Resolutions :

1. In an international community the members of which have renounced recourse to force and undertaken by the Charter of the United Nations to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered, recourse to the International Court of Justice or to another international court or arbitral tribunal constitutes a normal method of settlement of legal disputes as defined in Article 36, paragraph 2, of the Statute of the International Court of Justice.

Consequently, recourse to the International Court of Justice or to another international court or arbitral tribunal can never be regarded as an unfriendly act towards the respondent State.

2. It is of the highest importance that engagements to accept the jurisdiction of the International Court of Justice undertaken by States should be effective in character and should not be illusory. In particular, States which accept the compulsory jurisdiction of the Court in virtue of Article 36, paragraph 2, of the Statute should do so in precise terms which respect the right of the Court to settle any dispute concerning its own jurisdiction in accordance with the Statute and do not permit States to elude their submission to international jurisdiction.

It is highly desirable that States having excluded from their acceptance of the compulsory jurisdiction of the International Court of Justice in virtue of Article 36, paragraph 2, of the Statute of the Court matters which are essentially within their domestic jurisdiction as determined by their own government, or having made similar reservations, should withdraw such reservations having regard to the judgments given and opinions expressed in the *Norwegian Loans* and *Interhandel* Cases and to the risk to which they expose themselves that other States may invoke such reservations against them.

3. In order to maintain the effectiveness of the engagements undertaken, it is highly desirable that declarations accepting the jurisdiction of the International Court of Justice in virtue of Article 36, paragraph 2, of the Statute of the Court should be valid for a period which, in principle, should not be less than five years. Such declarations should also provide that on the expiration of each such period they will, unless notice of denunciation is given not less than twelve months before the expiration of the current period, be tacitly renewed for a new period of not less than five years.

4. With a view to ensuring the effective application of general conventions, it is important to maintain and develop the practice of inserting in such conventions a clause, binding on all the parties, which makes it possible to submit disputes relating to the interpretation or application of the convention either to the International Court of Justice by unilateral application or to another international court or arbitral tribunal; this clause might be based on the provisions of the Resolution concerning a model clause conferring compulsory jurisdiction on the International Court of Justice for inclusion in conventions adopted by the Institute in 1956.

5. In the interest of world economic development it is desirable that economic and financial agreements concerning development schemes, whether concluded between States or concluded with States by international organisations or international public corporations, should contain a clause conferring on the International Court of Justice (so far as the Statute of the Court allows) or on another appropriate international court or arbitral tribunal compulsory jurisdiction in any dispute relating to their interpretation or application.

6. Without prejudice to the possibility of international remedies being made available directly to private parties, certain economic and financial agreements between States could usefully contain a general provision for compulsory jurisdiction in respect of claims brought by one of the States concerned (either acting on its own behalf or espousing a claim on behalf of one of its nationals) against one of the other States concerned.

Voeu

The Institute of International Law

Draws the attention of institutions responsible for legal education, of professional bodies of jurists and legal practitioners, and of all those engaged in the publication of judicial decisions to the need for strengthening the confidence of peoples and governments in international adjudication by promoting wider and more thorough knowledge of the working and decisions of the International Court of Justice and other international courts and arbitral tribunals ; and

Expresses the hope that public and private bodies, both national and international, will consider what measures should be taken to promote wider diffusion of the decisions of international courts and tribunals among jurists and legal practitioners.

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(11 September 1959)

ANNEX

Resolutions and Voeu of the Institute on the Principle of Compulsory Jurisdiction

1. Resolution on the compromis clause to be inserted in treaties (12 September 1877, Zurich Session)
*Tableau general*¹ No 45, p. 145 ; *Annuaire* 2 (1878), p. 160.
2. Resolution on recourse to the Permanent Court of Arbitration (26 September 1904, Edinburgh Session)
Tableau general No 46a, pp. 145, 146 ; *Annuaire* 20 (1904), p. 210.
3. Resolution on signature of the optional clause of the Permanent Court of International Justice (6 October 1921, Rome Session).
Tableau general N° 52, pp. 159, 160 ; *Annuaire* 28 (1921), pp. 201, 202.
4. Resolution on the extension of compulsory arbitration (14 October 1929, New York Session).
Tableau general N° 46b, pp. 146, 147 ; *Annuaire* 35 (1929), II, pp. 303, 304.
5. Resolution on the jurisdictional clause in conventions of international unions, notably those relating to industrial property and literary and artistic property (24 April 1936, Brussels Session)
Tableau general N° 88, pp. 273-276 ; *Annuaire* 39 (1936), II, pp. 305-310.
6. Resolution on the legal nature of advisory opinions of the Permanent Court of International Justice and on their value and significance in international law (3 September 1937, Luxembourg Session).
Tableau general N° 55, pp. 162, 163 ; *Annuaire* 40 (1937), pp. 272, 273.
7. *Voeu* concerning the reservation in respect of matters of domestic jurisdiction (29 April 1954, Aix-en-Provence Session).
Tableau general N° 2b, p. 4 ; *Annuaire* 45 (1954), II, p. 293.
8. Resolution concerning a model clause conferring compulsory jurisdiction on the International Court of Justice for inclusion in conventions (17 April 1956, Granada Session).
Tableau general N° 53, pp. 160, 161 ; *Annuaire* 46 (1956), pp. 360-362.
9. Resolution on judicial redress against decisions of international organisations (25 September 1957, Amsterdam Session)
Annuaire 47 (1957), II, pp. 476-479.

¹ *Tableau général des Résolutions (1873-1956)*, Bâle, 1957.