



# ASPECTS OF THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE

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Article history:	Abstract:
<p><b>Received:</b> June 14<sup>th</sup> 2023 <b>Accepted:</b> July 11<sup>th</sup> 2023 <b>Published:</b> August 20<sup>th</sup> 2023</p>	<p>The article analyzes the international legal aspects of the jurisdiction of the International Court of Justice. When analyzing this topic, attention is paid, first of all, to the study of jurisdiction in disputed cases and jurisdiction to issue advisory opinions, thereby studying the international experience of States and organizations on filing an application for recognition of the court's jurisdiction as mandatory, attaching importance to the role of the international regulatory framework of this issue, for example, the Statute of the International Court of Justice. Also, the issues of the possibility of submitting an application and the specifics of submitting an application of the Republic of Uzbekistan were considered. In addition, the article presents the international experience of States from the history of the cases considered by the International Court of Justice, with what reservations, conditions and on the basis of which document they submitted applications. The main purpose of the article is to reveal the legal essence of the international legal aspects of the jurisdiction of the International Court of Justice, methods and methods of its recognition. Based on the research done, a legal conclusion was made on the scientific topic of the article.</p>

**Keywords:** The International Court of Justice, special agreement, the contract, unilateral statement, jurisdiction to issue advisory opinions, jurisdiction in disputed cases, the Statute of the Court, *ratione temporis*, *ratione personae*, *ratione materiae*, the possibility of submitting an application of the Republic of Uzbekistan.

## INTRODUCTION

### Jurisdiction in disputed cases:

The International Court of Justice of the United Nations has the right to consider a case only if the relevant States have agreed to become a party to the proceedings in Court (the principle of consent of the parties). The State may express its consent in the following ways:

- **Special agreement.** It is concluded by the parties to the dispute when they agree to jointly submit the dispute to the Court.
- **An article in the contract.** Some treaties contain articles (jurisdictional articles) in which a State party undertakes in advance to recognize the jurisdiction of the Court in the event of a dispute with another State party regarding the interpretation or application of the treaty in the future.
- **Unilateral statement.** A declaration by a State Party to the Statute of the Court recognizing the Court's jurisdiction as binding on any other State that has assumed the same obligation.

The condition for the transfer of the case to the Court is contained in the Charters of such specialized organizations as FAO, WHO, UNESCO, in conventions on crimes of an international nature, in conventions in the field of international

environmental law and in some other international treaties. In total, approximately 300 treaties provide for the jurisdiction of the court to settle disputes related to their application or interpretation[1].

As of August 1, 2022, unilateral declarations on the recognition of the Court's jurisdiction as mandatory, made by seventy—three UN member States, were in force. Most of these statements contain reservations excluding certain categories of disputes from their scope. In some cases, such categories, in particular, include disputes: with certain States; arising in a certain period of time; of a certain nature, etc. Of the five permanent members of the Security Council, only one (Great Britain) has made a statement that continues to act until the reverse statement. France and the United States have previously done this, but they have withdrawn their statements, while China and Russia have never made such statements. The UK's statement stipulates a number of categories of disputes in respect of which the jurisdiction of the Court is not recognized by it.

At the same time, a State that has recognized the jurisdiction of the Court may, after being subpoenaed by another State, consider that such jurisdiction is not applicable because, in its opinion:

- there is no dispute with this other State



• or because the dispute is not of a legal nature or because his consent to recognize the jurisdiction of the Court is not applicable to the dispute under consideration.

In this case, the Court resolves the issue in a preliminary decision.

The Court's decisions are binding, but only for the States involved in the dispute, and only in this case. The obligation to comply with the decision of the International Court of Justice in a case in which a UN Member State is a party is imposed on it by the UN Charter. The Court's decisions are final and not subject to appeal, but they can be reviewed on the basis of newly discovered circumstances.

#### **Jurisdiction to issue advisory opinions:**

In addition to the judicial function, the International Court of Justice performs an advisory function. According to paragraph 1 of Article 96 of the UN Charter, the General Assembly or the Security Council may request advisory opinions from the International Court of Justice "on any legal issue."

In addition, in accordance with paragraph 2 of Article 96 of the Charter, the General Assembly may grant permission to request advisory opinions of the Court and other UN bodies and specialized agencies. However, their requests should be limited only to those legal issues that arise within their sphere of activity[2].

Currently, this right has been granted to three UN bodies (the Economic and Social Council, the Trusteeship Council and the Inter-Sessional Committee of the General Assembly) and 16 institutions (UNESCO, the International Labour Organization, the World Health Organization, the World Bank, the International Civil Aviation Organization, etc.)

#### **MATERIALS AND METHODS**

**According to article 36 of the Statute of the Court, its jurisdiction includes the following facts[3]:**

**1.** The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

**2.** 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 in all 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 or extent of the reparation to be made for the breach of an international obligation.

**3.** The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

**4.** 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.

**5.** Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

**6.** In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

#### **RESEARCH RESULTS**

##### **Declarations of States recognizing the Court's mandatory jurisdiction:**

In accordance with Paragraph 2 of Article 36 of the Statute of the Court, a State Party to the Statute may at any time deposit with the UN Secretary-General a declaration that it recognizes "without special agreement, ipso facto, with respect to any other State that has adopted the same obligation, the Court's jurisdiction is binding on all legal disputes concerning:

**(a)** Interpretation of the treaty;

**(b)** Any matter of international law;

**(c)** The existence of a fact which, if established, would constitute a breach of an international obligation;

**(d)** The nature and extent of the compensation due for the breach of an international obligation."

##### **International cases:**

In practice, States most often formulate three categories of conditions[4]:

➤ *ratione temporis*,

➤ *ratione personae*,

➤ *ratione materiae*.



The condition **ratione temporis** is related to the establishment of a certain time in the application: for example, the recognition of the jurisdiction of the Court only for disputes that arose after the date of this application.

**Australia and the United Kingdom**, for example, according to their statements, do not recognize the jurisdiction of the Court for disputes in respect of which the other party to the dispute has agreed to the mandatory jurisdiction of the Court, deposited less than 12 months before applying to the Court. This condition is obviously aimed at ensuring that immediately after the recognition by another State of the jurisdiction of the Court, Australia and The UK could have been protected from his unexpected appeal to the Court.

The second category of conditions – **ratione personae** – imposes certain restrictions on the recognition of the jurisdiction of the Court with respect to the other party to the dispute. For example, a State declares that it agrees to the jurisdiction of the Court, with the exception of disputes with States A and B. An example of the use of this condition can be statements by Canada and the United Kingdom, which exclude disputes with States that are and former members of the British Commonwealth of Nations from the jurisdiction of the Court.

**The question arose:** are such conditions discriminatory, contrary to the principle of sovereign equality of States? Thus, **Pakistan**, in the case concerning the 1999 air incident, argued that a similar condition provided for in India's statement with respect to **the British Commonwealth of Nations** has no legal force due to its contradiction to the "principle of sovereign equality", "the universal nature of the rights and obligations of UN members". However, the Court did not agree with this argument, emphasizing the right of the State, through the condition **ratione personae**, to choose its "partners" in disputes with which it is ready to recognize the jurisdiction of the Court[5].

The third category of conditions for recognizing the jurisdiction of the Court on the application – **ratione materiae** – is related to the substance of the dispute. For example, **Australia's** Declaration of March 22, 2002 provides that the Court's jurisdiction does not extend to disputes concerning the delimitation of maritime areas, as well as to cases related to the delimitation, including the territorial sea, the exclusive economic zone and the continental shelf, or arising from disputes concerning or relating to the use of any disputed part of such a marine the area before the implementation of the delimitation. **Germany** in its statement on art. 36 of the Statute excluded from the jurisdiction

of the Court disputes related to "the deployment of armed forces abroad, participation in such deployment or making decisions on it," as well as "the use for military purposes of the territory of Germany, including its airspace, as well as maritime areas covered by the sovereign rights and jurisdiction of Germany." This category includes conditions that exclude disputes from the jurisdiction of the Court, the subject of which belongs to the internal competence of the State.

Thus, **Canada** refused to submit to the Court "disputes on issues that, in accordance with international law, are exclusively within the competence of Canada." Some States reserve the right to determine which issues fall within their domestic competence, without referring to the norms of international law. This condition, called the "**Connally reservation**" in honor of the American senator who formulated it, will be discussed in detail later. Although some of the above conditions are not provided for **expressis verbis** in par. 3 art. 36 of the Statute, in a number of Court decisions (the Nicaragua case; the Case on Jurisdiction over Fisheries; the case concerning the 1999 Air Incident), their admissibility was confirmed[6].

A State that has not recognized the jurisdiction of the Court by means of a declaration, according to Article 36 of the Statute, cannot rely on the fact that another State has made such a declaration to settle a dispute with it in Court. This rule also applies in the context of the conditions provided for in such a statement. The principle of reciprocity here is a way of realizing equality: a State that has recognized the jurisdiction of the Court through a unilateral declaration, according to Article 36 of the Statute, is protected from the use of such a declaration against its interests by those States that have agreed to the jurisdiction of the Court to a lesser extent. The statements of States on the recognition of the jurisdiction of the Court, of course, differ from each other, and in each case the task arises for him: to determine the legal framework of the consent of a particular State to the jurisdiction of the Court in this dispute, taking into account the comparison of the statements of the participants in this proceeding. The recognition by two States of the jurisdiction of the Court by means of a declaration does not mean that one of them will be able to submit to the Court any dispute between them, unless it is an unconditional declaration.

For example, **Slovakia and Germany**, in their applications for recognition of the jurisdiction of the Court, indicated as conditions that they could revoke it at any time, and the right of such revocation is effective from the date of notification of this. Such conditions do not lead to legal stability.



The possibility of immediate withdrawal of the application or making changes to it is available only when it is explicitly indicated in the text of the application. Otherwise, when withdrawing on the basis of the principle of good faith, a reasonable time must be observed. Is it implied that the consent of the State to the jurisdiction of the Court is irrevocable before the expiration of the prescribed period? Or until the State notifies of the termination of the application for recognition of the jurisdiction of the Court? The contractual relationship between the parties and the binding jurisdiction of the Court resulting therefrom are established ipso facto and without a special agreement by virtue of the fact that the declaration was made... On the same day, the consensual bond, which is the basis of the optional clause, enters into force between the States concerned." That is, when a State recognizes the jurisdiction of the Court in accordance with Paragraph 2 of Article 36 of the Statute, consent to such jurisdiction extends to relations with States that have previously acceded to the same clause; at the same time, such recognition becomes, figuratively speaking, a permanent "offer" to other States that have not yet recognized jurisdiction under paragraph 2 of Article 36 of the Statute[7]. When another of them "accepts" such an "offer" by means of a statement in accordance with paragraph 2 of Article 36 of the Statute, the fulfillment of other conditions, including the expiration of a reasonable period, according to legal experts, is not required. At the same time, the procedure provided for in paragraph 4 of Article 36 of the Statute (on depositing an application for recognition of jurisdiction with the UN Secretary-General) is not identical to the legal regime of notifications and communications established by paragraph (c) of Article 78 of the Vienna Convention on the Law of Treaties (in the latter case, confirmation by the depositary of receipt of the notification or message is provided).

## **CONCLUSION**

### **The possibility of submitting an application of the Republic of Uzbekistan:**

The Republic of Uzbekistan may submit an application, which continues to be valid until the return application, to the International Court of Justice on the following grounds:

- 1) when creating a special agreement with the second party.
- 2) when filing a unilateral application in accordance with paragraph c of paragraph 2 of Article 36 of the Statute of the Court;
- 3) with the consent and recognition of the jurisdiction of the Court of thesecond party.

### **Specifics when submitting an application by the Republic of Uzbekistan:**

1. So that the statement does not create difficulties in the interpretation and application of "temporal conditions" (for example, the designated effect of the condition "for a certain time").

2. The absence of contradictory assessments of the status of certain conditions designated by the State during the implementation of Part 3 of Article 36 of the Statute.

3. The absence of such broad conditions in the declaration of States that negate the very declaration of recognition of the jurisdiction of the Court. So, according to Article 36 of the Statute, the statements of States "may be unconditional, or on the terms of reciprocity on the part of certain States, or for a certain time." Strictly speaking, the Statute indicates only two types of possible conditions:

- 1) the condition of reciprocity;
- 2) the condition for the validity of the application for a certain time. In this regard, the question arises about the permissibility of other types of conditions included by States in the text of statements (for example, the condition on the exclusion of disputes of a certain type from the jurisdiction of the Court).

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**World Bulletin of Management and Law (WBML)**  
**Available Online at:** <https://www.scholarexpress.net>  
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**ISSN: 2749-3601**

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