

*POLAND AND THE INTERNATIONAL COURT  
OF JUSTICE — TODAY*

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It is a rare thing that the postulates put forward by a doctrine, even by advisory bodies, were promptly introduced into practice. Therefore, it is worth pointing out that Poland's voice of the Polish doctrine in the matter of ICJ jurisdiction was taken into consideration. On September 25, 1990, a suggestion that Poland declared an acceptance of the compulsory ICJ jurisdiction<sup>1</sup> — made cautiously in the «Państwo i Prawo» journal and supported by resolutions of the Polish group of the International Law Association and the Team of International Law of the Legislative Council — was accepted<sup>2</sup>. On this day such a declaration was officially deposited with the UN General Secretary on behalf of the Republic of Poland.

This fact was preceded by important events that took place in Poland. As a result of the changes of the Polish Constitution of December 29, 1989, the Republic of Poland was defined as „a law-abiding state” (Rechtsstaat — Art. 1). From the point of view of such a concept of state an acceptance of the compulsory ICJ jurisdiction is self-evident.

Minister Krzysztof Skubiszewski, a committed follower of compulsory ICJ jurisdiction, announced a submission by Poland a relevant declaration already during the debate of the UN General Assembly in the autumn of 1989 and later in 1990 during a similar debate he declared that Poland had already accepted the ICJ compulsory jurisdiction. As a result Poland has become the fifty-second state in which the ICJ compulsory jurisdiction is in force according to Article 36, paragraph 2 of the ICJ Statute<sup>3</sup>. Poland was the first country of Central-Eastern Europe to deposit such a declaration.

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<sup>1</sup> Cf the conclusions in the paper by R. Szafarz, *Obowiązkowa jurysdykcja Międzynarodowego Trybunału Sprawiedliwości na podstawie klauzuli fakultatywnej [Compulsory Jurisdiction of the International Court of Justice based on the Facultative Clause]*, „Państwo i Prawo”, 1989, No. 2, pp. 57 — 63.

<sup>2</sup> The ILA Polish group established a special working team for the elaboration of a proper declaration. The members of the team were Professor K. Skubiszewski, Professor K. Wolfke and the author of the present paper. The results of the work of the team were handed over to the Team of International Law, Legislative Council.

<sup>3</sup> Apart from 48 states mentioned in the paper cited in footnote 1 above (p. 57, footnote 2), the declarations were deposited by Nauru, Zair, Guinea-Bissau and Poland. The texts of the declaration in the „International Court of Justice Yearbook”, 1988 — 1989, pp. 60-95.

It is worthwhile to analyse what is the scope of obligations undertaken by Poland as compared with those contained in the declarations of other states.

Here follows the full text of the Polish declaration:

„In accordance with article 36, paragraph 2 of the Statute of the International Court of Justice, I hereby declare, on behalf of the Government of the Republic of Poland and without special agreement, in relation to any other state accepting the same obligation and subject to the sole condition of reciprocity, the jurisdiction of the International Court of Justice in all legal disputes other than:

- a) disputes prior to the date of this declaration or disputes arisen out of facts or situations prior to the same date;
- b) disputes with regard to the territory or state boundaries;
- c) disputes with regard to pollution of the environment unless the jurisdiction of the International Court of Justice results from the treaty obligations of the Republic of Poland;
- d) disputes with regard to foreign liabilities of debts;
- e) disputes with regard to any State which has made a declaration accepting the compulsory jurisdiction of the International Court of Justice less than twelve months prior to the filing of the application bringing the dispute before the Court;
- f) disputes in respect whereof parties have agreed, or shall agree, to have recourse to some other method of peaceful settlement;
- g) disputes relating to matters which, by international law fall exclusively within the domestic jurisdiction of the State.

This declaration shall be valid for a period of five years and be automatically prolonged thereafter for further periods of one year if not denounced by notification addressed to the Secretary General of the United Nations taking effect after six months from the moment of such notification.

The Government of the Republic of Poland also reserves its right to add, by means of a notification addressed to the Secretary General of the United Nations and taking effect after six months from the moment of such notification, new reservations or supplements, or to amend or withdraw, any of the foregoing reservations.

Warsaw, 21 September, 1990.

Krzysztof Skubiszewski  
Minister of Foreign Affairs”.

Like the overwhelming majority of declarations, the Polish declaration consists of three parts. Part one is a general formulation of the obligations made under the optional clause under Article 36, paragraph 2, ICJ Statute. Part two contains some restrictions of the content of this general obligation which in the ICJ judgements and the literature are named reservations. In the Polish declaration there are seven such reservations. In part three some formal conditions are specified.

As far as the first part of the declaration is concerned it is worth emphasizing that the Government of the Republic of Poland approved the text of the declaration and entitled Minister K. Skubiszewski to submit it<sup>4</sup>. Another important element is a mention of the condition of reciprocity. Perhaps the formulation „in relation to any other State accepting same obligation” (as it is in some declarations) would be enough. However, an additional reference to the condition of reciprocity even *ex abundanti cautela*, makes the problem quite clear and means that also the reservations of the two parties to the dispute will be taken into consideration by the ICJ when a given issue is settled. Each of the parties to the dispute may refer to the reservations of its own or of the other party. As a result the ICJ jurisdiction will be extended as far as the obligations following from the declarations of the two parties to the dispute will cover the same field.

<sup>4</sup> Cf. the report by B. Warzęcka on the meeting of the Council of Ministers of 17, September, 1990, entitled: *Pieniądze i kultura [Money and Culture]*, „Rzeczpospolita” of 18, September, 1990, pp. 1 — 2.

In the general part of the Polish declaration like in Article 36, paragraph 2 of the ICJ Statute „the disputes of the legal nature” are discussed. However, it does not mean that a dispute must be devoid of the political aspects on order to be subject to the ICJ jurisdiction. On the other hand, it means that only the legal aspects of concrete disputes will be subject to the Court jurisdiction. The ICJ may give judgements only in the cases of legal disputes.

As I have already mentioned, part two of the Polish declaration contains seven reservations. Only very few declarations contain no reservations (e.g. declarations of Nigeria, Costa Rica, the Dominican Republic)<sup>5</sup>. The majority of declarations has from one to fifteen reservations. For instance, India made 15 reservations.

The first reservation in the Polish declaration says that Poland subjects to the ICJ jurisdiction only its future disputes. Such a reservation is found in many declarations of other States and in the case of Poland it has a strong justification. The Republic of Poland will not submit to the Court jurisdiction those disputes which were started in the period of the Polish People's Republic.

The reservations contained in point b) of the Polish declaration are not so frequent in the declarations of other States. This is quite understandable since Poland is particularly sensitive to all problems connected with its territory and boundaries.

Reservations with regard to pollution of the environment, particularly to the maritime environment, occur sporadically in the declarations of other States. It should be stressed that the formulation of point c) of the Polish declaration is a specific Polish concept. It should be also added that so far Poland has not signed any treaty on the protection of the environment containing a judicial clause which provides for the ICJ competences. Therefore, by virtue of point c) all disputes with regard to pollution of the environment in which Poland might be involved, do not fall under the ICJ jurisdiction. This reservation probably resulted from the state of environment in Poland on the one hand, and Poland's financial situation on the other. It must be added here that compensations for environmental damages are very high. Also the financial situation is the principal reason for the reservation in point d) of the Polish declaration. It is worth pointing out that Poland was the first State to place such a reservation in its declaration.

The reservation in point e) is to protect Poland from some abuses. The declarations take effect on the day of their deposition with the UN General Secretary (who notifies about this fact parties to the ICJ Statue during the period of three months) and it may occur that the application made by one State will reach the sued State earlier than the text of the declaration<sup>6</sup>. Great Britain was the first State to include such a reservation in its declaration. A number of other States followed in its wake.

The reservations with regard to other methods of peaceful settlement of dis-

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<sup>5</sup> I am basing on the texts of the declaration published in the „International Court of Justice Yearbook”, *op. cit.*, pp. 60 — 95.

<sup>6</sup> This was the case in the dispute between Portugal and India concerning the transit on the India's territory (1955-1960). India received the Portuguese statement of claim ealier than the text of the declaration.

putes contained in point f) of the Polish declaration is self-understandable and occurs in many declarations of other States.

Point g) contains a reservation with regard to domestic jurisdiction. In practice among the all formulations of this reservation the one found in the Polish declaration (and in the declarations of some other States too) is the most accurate, since it emphasizes that the whole problem must be considered against international law. Let us add here that the worst is the subjective formulation, since it simply suggests ill-will. It was contained for the first time in the US declaration which today is not binding any more. According to this formulation all disputes which in the meaning accepted by the United States fall within their domestic jurisdiction were beyond the ICJ jurisdiction<sup>7</sup>. Today a similar formulation may be found in the declarations of Malawi, Mexico, Liberia, Philippines and Sudan.

One may ask a question whether the reservation in point g) of the Polish declaration is necessary at all. It seems quite obvious that in all disputes which according to international law fall within the domestic jurisdiction the International Court of Justice must admit its lack of competences without referring to a reservation. On the other hand, an inclusion of such a reservation in the declaration facilitates to obtain an agreement of the proper domestic organs to make the declaration on behalf of a relevant State.

Generally speaking the quantity and quality of the reservations contained in the Polish declaration place it among the valuable declarations. However, a general value of a declaration results both from the scope of problems covered by the declaration and its durability as well. And here we come to the third part of the Polish declaration.

Taking into consideration the fact that a number of declaration provides that they may be withdrawn or changed in any moment and, what is more, with the immediate effect of withdrawal or change, the Polish concept deserves a high estimation. Poland has followed the western standards. The declarations of Denmark, Finland, Luxemburg, Holland, Norway and Sweden (but not of Great Britain) provide that they will be taking effect unconditionally through the period of five years and will be automatically prolonged for further five-year periods with a possibility of withdrawal six months before the end of the successive period. The Polish formulation differs in one point — that is that it will be prolonged for one-year periods after the five-year period of unconditional validity. The obligations following from this formulation are only insignificantly slighter.

According to the last clause of the Polish declaration, any changes may be introduced into it also in the five-year period of unconditional binding. All introduced changes take effect only after six months from the date of their notification. An interpretation of the discussed clause seems to suggest that the changes which are not supplements cannot be introduced into the formal conditions of the declaration. This additionally reinforces the introduced concept.

Generally speaking, the contents of the Polish declaration may be considered

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<sup>7</sup> The formulation „in the meaning accepted by the United States” contained in the US declaration is frequently termed in the literature „Connally reservation” or „Connally amendment” after the name of the senator who suggested it.

as correct from the legal point of view. This is one of the important manifestations of prevalence of international law over politics. On the other hand, the reservations made prove great responsibility in undertaking new important international obligations.

It is worth pointing out that declarations made under Article 36, paragraph 2 of the ICJ Statute as well as judicial clauses contained in the treaties are quite different sources of the ICJ compulsory jurisdiction. As a result all disputes resulting from an interpretation of and/or application of the treaties to the judicial clauses of which Poland has made reservations<sup>8</sup>, can be settled by the ICJ on the basis of the Polish declaration and the declaration of the State-party to the dispute.

However, most frequently the States which are parties to a given treaty are not the same States which made their declarations under Article 36, paragraph 2 of the ICJ Statute. Therefore a postulate to withdraw by Poland its earlier reservations with regard to the treaty judicial clauses is still timely.

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<sup>8</sup> The Institute of International Law at its Neuchâtel session in 1959 adopted resolution No. 3 recommending these formal conditions to be included into the declarations. Cf. „Annuaire de ITDI”, Vol. 2, 1959, pp. 360. In the literature a similar postulate was made by H.W. Briggs, *Reservations to the Acceptance of Compulsory Jurisdiction of the International Court of Justice*, „Recueil des Cours”, Vol. 1 (93), 1958, p. 279; R.P. Anand, *Compulsory Jurisdiction of the International Court of Justice*, London 1961, p. 257; F. de Pauw, *La déclaration belge du 3 Avril 1958 acceptant la juridiction obligatoire de la Cour Internationale de Justice*, „Revue de Droit International”, 1966, No. 1, p. 124.