

Conditions Made by States

The major reservations of Canada have to do with those disputes arising between members of the Commonwealth of Nations and those arising out of the Second World War. The United Kingdom, Australis, New Zealand, and South Africa have generally the same restrictive conditions; Canada applies several other reservations which are of no particular importance.

Forty-seven states, including all the communist states, have not accepted the compulsory jurisdiction of the Court, and few of the newer member-states of the United Nations, particularly in Asia and Africa, have taken action under Article 36, the section dealing with jurisdiction of the Statute of the International Court of Justice. While positive progress has been made to bring about the application of Rule of Law internationally, it is clear from the stage of development existing in the domestic systems of states that it will not be attained until all states accept compulsory jurisdiction of the Court over all legal disputes between state and state.

Recently there have been several signposts which offer evidence of a resurgence of interest in the Court, and there is reason to feel hopeful that the international community of nations will tend to move gradually towards the universality of the Rule of Law.

As an example, the United States' acceptance of the compulsory jurisdiction of the Court is subject to a reservation which excludes from the Court's jurisdiction matters falling within the domestic jurisdiction of the United States, as determined by the United States, and I emphasize the words.

The Charter of the United Nations specifically provides that:

"Nothing in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the Charter."

Because of this provision it might be argued that such a reservation by the United States does not detract from the compulsory jurisdiction of the Court. Such is not the case, as there are two classes of domestic jurisdiction reservations -- one which leaves it to the Court, as does Canada, to decide what is a domestic matter, and the other which reserves the right to the state to decide the question.

Some consideration has been given in the United States to bring the American reservation into line with that in effect in Canada, and a resolution to this effect has been tabled in the United States Senate.