

**SUMMARY: MILITARY AND PARAMILITARY ACTIVITIES IN AND AGAINST  
NICARAGUA, NICARAGUA V UNITED STATES, JURISDICTION AND ADMISSIBILITY,  
JUDGMENT, (1984) ICJ REP 392; ICGJ 111 (ICJ 1984)  
26 NOVEMBER 1984**

**CONCERNED STATUTES/TREATIES:**

**ICJ STATUTE, ARTICLE 36:**

**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.
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.**

**PCIJ, ARTICLE 36, PARAGRAPH 2:**

The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the Protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of 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.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

**1955 TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION** that stated:

2. Any dispute between the Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the Parties agree to settlement by some other pacific means.

### **PROCEDURAL HISTORY:**

#### **1. NICAURAGUA'S JURISDICTION:**

##### **A. Intent to submit to compulsory jurisdiction of PCIJ:**

September 1929, under Article 36, paragraph 2, of the Statute of the Permanent Court declaration which read :

“On behalf of the Republic of Nicaragua I recognize as compulsory unconditionally the jurisdiction of the Permanent Court of International Justice.

- B. Passed domestic laws in the mid 1930's ratifying the above and 29 November 1939, sent telegram to the Secretary-General of the League of Nations :

Statute and Protocol Permanent Court International Justice The Hague have already been ratified. Will send you in due course Instrument Ratification. Relations.

##### **C. Instrument ratification never received. Submission was never perfected.**

- D. 1945 became an original Member of the United Nations, having ratified the Charter on 6 September 1945. 24 October 1945 the Statute of the ICJ came into force.

- E. Subsequent yearbooks and reports produced by UN listed Nicaragua as having submitted to jurisdiction, but without perfection.

- F. Other States essentially acquiesced, including the USA, although there was conflicting evidence of Nicaragua's state practice raised by the USA and a claimed estoppel that the Court ultimately rejected.

#### **2. USA'S JURISDICTION:**

- A. Accepted ICJ Jurisdiction by Declaration in August, 1946 with a reservation that it would:

“remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate this declaration”.

In addition, it also included a reservation that stated jurisdiction shall not extend to:

“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 of America specially agrees to jurisdiction”.

- B. On 6 April 1984, 3 days before Nicaragua’s Application, notified the UN that:

“the aforesaid declaration shall not apply to disputes with any Central American State or arising out of or related to events in Central America, any of which disputes shall be settled in such manner as the parties to them may agree.

Notwithstanding the terms of the aforesaid declaration, this proviso **shall take effect immediately** and shall remain in force for two years, so as to foster the continuing regional dispute settlement process which seeks a negotiated solution to the interrelated political, economic and security problems of Central America.”

## **LEGAL ISSUES:**

### **1. 1929 DECLARATION**

The Court found the 1929 declaration was valid, but had not become binding.

Though the necessary steps had been taken at national level for ratification, the indispensable step of ratification never occurred.

Nicaragua, was therefore not a party to that treaty.

Even so, the declaration could have become binding at any time by ratification because Nicaragua's declaration was made “unconditionally”; it was valid for an unlimited period and **had a potential effect which could be maintained indefinitely.**

Thus, at the moment that Nicaragua became a party to the Statute of the new Court, its 1929 Declaration was valid.

### **2. WHETHER OR NOT ART. 36, PARAGRAPH 5 WOULD APPLY:**

- A. “Under” and “which are still in force”

The Court held that “under” would cover a declaration made in the circumstances of Nicaragua's declaration, that **a State did not have to be a party to the treaty by ratification.**

Regarding “still in force”, the court analyzed the French phrases upon which the language was based in light of **the policy that the paragraph was intended to maintain the greatest possible continuity** between it and the Permanent Court and ensure that the replacement of one Court by another should not result in a step backwards in adopting a system of compulsory jurisdiction.

**All that was needed was a certain “validity”** which could be preserved or destroyed, which the 1929 declaration possessed.

B. **UN Charter:**

The court emphasized that Nicaragua duly signed and ratified the Charter of the United Nations.

Though the consent given in 1929 to the jurisdiction of the Permanent Court had not become fully effective in the absence of ratification, the **Court may apply to Nicaragua what it stated in the case of the Aerial Incident of 27 July 1955:**

"Consent to the transfer to the International Court of Justice of a declaration accepting the jurisdiction of the Permanent Court may be regarded as effectively given by a State which, having been represented at the San Francisco Conference, signed and ratified the Charter and thereby accepted the Statute in which Article 36, paragraph 5, appears."

Nicaragua may therefore be **deemed to have given its consent to the transfer of its 1929 declaration to the International Court of Justice when it signed and ratified the UN Charter.**

C. **UN Publications**

For nearly 40 years, they regularly placed Nicaragua on the list of states that recognized the compulsory jurisdiction of the Court by virtue of Article 36, paragraph 5.

The point was not that the Court in its administrative capacity took a decision as to Nicaragua's status which would be binding upon it in its judicial capacity, but that **the States concerned — first and foremost, Nicaragua — had every opportunity of accepting or rejecting the thus-proclaimed applicability of Article 36, paragraph 5, to the Nicaraguan Declaration of 1929.**

**In the Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua), Nicaragua did not declare that it was not bound by its 1929 Declaration.** If the Court considers that it would have decided that

Nicaragua would have been bound in a case in which it was the Respondent, it must conclude that its jurisdiction is identically established in a case where Nicaragua is the Applicant.

## **2. ARTICLE 36, PARAGRAPH 2:**

The Court also found **Nicaragua's conduct in relation to the UN actions/publications supported an independent finding of jurisdiction** under Article 36, paragraph 2.

If the Court were to require a separate declaration under Article 36, paragraph 2, it would penalize Nicaragua for having **attached undue weight** to the information given by the Court and the Secretary-General of the United Nations that Nicaragua was bound by its 1929 Declaration.

Nicaragua was in an exceptional position. Its **acquiescence constituted a valid mode of manifestation of its intent to recognize the compulsory jurisdiction** of the Court under Article 36, paragraph 2.

Accordingly, Nicaragua is, vis-à-vis the United States, a State accepting "the same obligation" under that Article.

## **3. US 1946 DECLARATION AND THE 1984 NOTIFICATION**

### **A. 6 month notice clause**

The United States argued **the Nicaraguan declaration, being of undefined duration, was subject to immediate termination**. As a result, Nicaragua had **not accepted "the same obligation"** as itself.

Therefore, the **principle of reciprocity** would allow immediate temporary rescission of the 1946 declaration of jurisdiction, at least with respect to Nicaragua. (Not complete termination as set forth in the 1946 declaration itself.)

The court disagreed. It noted the US 1946 declaration was completely its own doing.

Citing to the *Nuclear Tests* cases, the court stated:

Unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. . . . **When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking.**

**Reciprocity is concerned with the scope and substance of commitments entered into, not the formal conditions of their creation, duration or**

**extinction.**

Reciprocity enables the State which has made the wider acceptance of the jurisdiction of the Court to rely upon the reservations to the acceptance laid down by the other party. There the effect of reciprocity ends.

The fact that the Nicaraguan declaration contained no express restriction was inconsequential and the 6 month notice clause would apply.

B. Multilateral treaty:

The term “affected” is subject to interpretation.

The neighboring states the US defined as “affected” had all accepted jurisdiction and were free to make applications or intervene.

More importantly, **the question of what States may be “affected” by the decision on the merits is not in itself a jurisdictional problem, but is a question concerning matters of substance relating to the merits of the case.**

Since the multilateral treaty reservation did not possess, in the circumstances of the case, an exclusively preliminary character, under Article 79, paragraph 7, of the Rules of Court, there was no obstacle for the Court to entertain the proceedings instituted by Nicaragua.