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BOOK REVIEW

Lamm Vanda: **A Nemzetközi Bíróság kötelező joghatósági rendszere** [The Compulsory Jurisdiction of the International Court of Justice]. Közgazdasági és Jogi Könyvkiadó, Budapest, 2005. 331 p.[1]

Professor Vanda Lamm, Director of the Institute for Legal Studies of the Hungarian Academy of Sciences, has published her third book on the problems of international adjudication. The volume elaborates on the regime of compulsory jurisdiction of the Permanent Court of International Justice, which was set up in the wake of World War One, and of the United Nations International Court of Justice, which replaced the former after the second conflagration, by studying the practice of States, the decisions of the two Courts, and exploring and probing into the whole spectrum of the pertinent literature.

The peaceful relations among States means not simply the lack of the use force, as it would be equivalent to a continuous maintenance of the status quo. That is impossible, however, for the different economic and social processes result in an inevitable transformation of interstate relations. To achieve genuine peace, it is necessary to open up a possibility for peaceful change without upsetting the legally regulated system of relations between the States concerned, Under such circumstances paramount importance is attached to creating a delicate balance between the dynamics of change and the need for stability. This in turn is hardly conceivable without international legal disputes, the settlement of which calls for a relative equilibrium between subordination and superordination of States in respect to the settlement of a concrete conflict: small and large States may equally advance international legal arguments before an independent and impartial forum. Settlement of interstate disputes by international judicial fora, primarily the International Court of Justice, is therefore a matter of the utmost importance.

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[1] Earlier volumes by the author: *Az államok közötti viták rendezésének története* (History of the Settlement of Interstate Disputes). Budapest, Akadémiai Kiadó, 1990.; and *A Nemzetközi Bíróság ítéletei és tanácsadói véleményei 1945–1993* (Judgements and Advisory Opinions of the International Court of Justice 1945–1993). Budapest, Közgazdasági és Jogi Könyvkiadó, 1995.

However, as is also stated by Vanda Lamm, States are averse to having grave conflicts that affect the core and substance of their sovereignty submitted to an international judicial forum. What are the reasons for misgivings about independent and impartial fora? The first reason, well illustrated by Vanda Lamm, is the fact that surrender of control over decisions is understood by States to mean reducing their power, which, if that course is taken, becomes objective, incapable of being influenced and impossible to modify or to overbid. Since a judicial forum decides according to international law, it takes a dispute from the complex system of relations between the States parties, thereby failing to consider, e.g., the importance of economic relations between the two States, the foreign policy influences on them within an eventual common system of alliance, the effects exerted by the two prime ministers belonging to a common family of political parties, and so on. Moreover, a forum formally functioning as a court is bound to create a winner and a loser, which carries domestic policy risks. As against this, in the case of third-party involvement as another chief diplomatic way of conflict settlement beside negotiations, a great power playing such a middleman role may offer guarantees for bringing about a stable settlement and provide services for the parties to the dispute, which tend to compensate for any loss that may be associated with the agreement. All this is absent from a decision by an international judicial forum.

Accordingly, in contrast to domestic courts, the jurisdiction of international judicial fora is based on the express consent of the disputant States. Such was/is also consequently the case when the jurisdiction of the Permanent Court of International Justice was, or that of the United Nations International Court of Justice is, accepted. Under the optional clause contained in the Statute, States could or can, by making a unilateral declaration, recognize the jurisdiction of these two fora in respect of their disputes with other States having made such a declaration. The monograph discusses the optional clause as well as the special features, the theoretical and practical issues, and the procedural problems connected declarations accepting jurisdiction.

The first chapter sums up the history of international arbitration, with particular attention devoted to the ways and means of attaining compulsory international adjudication. At The Hague Second Peace Conference early in the 20th century it was believed possible to achieve compulsory international adjudication only in legal matters, and not in political issues, with even exceptions to be allowed to matters affecting the vital interests, the independence and the honour of States.

The second chapter discusses the history of the elaboration of the optional clause and its concept. The members of the 1920 Committee of Jurists entrusted

with drawing up the draft on the international judicial forum to be established gave different interpretations of Art. XIV of the Covenant of the League of Nations as to whether or not that Article provided for compulsory jurisdiction. The long-drawnout debate was concluded with the adoption of the Brazilian jurist Fernandez's proposal as embodied in Article 36, of the Statute of the Permanent Court of International Justice. Under this Article, States may declare that they accept the jurisdiction of the Court in all legal disputes concerning the interpretation of a treaty, any question of international law, the existence of any fact which, if established, would constitute a breach of an international obligation, and the nature or extent of the reparation to be made for the breach of an international obligation. Such declarations may be made unconditionally or on condition of reciprocity, or for a certain time. Two and a half decades later, at the San Francisco Conference elaborating the Charter of the United Nations, the small and middle powers seemed inclined to establish compulsory international adjudication, but it was categorically refused by the United States and the Soviet Union. While effecting minor changes and spelling out functional continuity between the two Courts, the Conference took over the earlier wording of the optional clause for the new Court. The author points out that the system constituted by declarations of acceptance of compulsory jurisdiction has created a special kind of international adjudication in respect of States assuming the extra obligation, with the rules thereof actually evolved by over eight decades of State practice and by the decisions of the Courts.

The third chapter deals with the special features of declarations of acceptance, including questions like the freedom of States to make a declaration of acceptance, the operation of the autonomy of the will of the parties regarding the content of declarations, problems of collective declarations of acceptance, problems concerning the ratification and the deposit of declarations, and the continuing validity of declarations made during the interwar period. As is emphasized by Vanda Lamm, the two Courts prescribed no formalities for declarations of acceptance, which, however, must clearly show the clear intent to accept jurisdiction. Under the judicial practice, declarations must be deposited with the Secretary-General of the United Nations and are to enter into force on the day of deposit. The author stresses that insertion as suggested of an intervening period between the making and the entry into force of declarations of acceptance would not but encourage some States to try to evade the jurisdiction of the International Court of Justice by taking advantage of it for denouncing or modifying their own declaration. In addition, it would be difficult to answer the question of how long the reasonable time as suggested by the some authors would exactly be until entry into force. It may be added to

the author's latter statement that the International Court of Justice might, in its decisions, name the factors of reckoning the reasonable time and might specify, following the example of the European Court of Human Rights, the length of the period that obviously extends beyond that time. As has been graphically demonstrated by Vanda Lamm, in order for a declaration made in respect of the Permanent Court of International Justice to remain valid without any special act in respect of the United Nations International Court of Justice the latter's practice requires that at the time of accession to the Statute of the new Court the declaration should be valid and that the State concerned should have been continuously a party to the Statutes of both Courts.

The fact that States attach reservations to their declarations of acceptance, while at the same time excluding certain issues from the scope thereof, may appear surprising at first sight. In actuality, however, there is no cause for surprise, stresses the author, since States make use of that tool even in the case of declarations accepting the jurisdiction of arbitral tribunals. From the fourth chapter on the admissibility of reservations to declarations of acceptance it becomes clear that making reservations between the two World Wars was just as permissible as it has been after World War Two. Nevertheless, the post-1945 period has hardly seen any declaration of acceptance that contains no reservation. According to Vanda Lamm, the reasons can be summed up as follows. Practically every State is confronted with some international problem which it would not like to bring before the International Court of Justice. The advance of science and technology may give rise to new international disputes in respect of which States wish to preserve their right of disposal. Finally, it is the earlier decisions of the Court that lead to such a reservation, notably States wish to avoid similar situations by the use of that device. Considering that, on the basis of the principle of reciprocity, reservations may also be invoked by the opponent State and that other States may likewise deem it well advised to withdraw a particular issue from the scope of the Court's jurisdiction, few objections are raised to reservations, stresses the author.

As regards the classification of reservations, the study accepts the traditional division (ratione personae, ratione materiae, ratione temporis), while renewing it by introducing the classes of generally accepted and destructive reservations. The first class includes reservations that can be considered as accepted on the whole by the community of States, whereas reservations undermining the regime of the optional clause and rendering acceptance of the Court's compulsory jurisdiction illusory are consigned to the second class. As will, be treated in detail in the seventh and eighth chapters of this volume, the first class comprises reservations like those concerning, e.g., other means of peaceful settlement,

hostilities and armed conflicts, or objective domestic jurisdiction, and the other consists of reservations relating to subjective domestic jurisdiction (Conally) and multilateral treaties (Vandenberg). (I shall return to the question of classification at a later stage, after the review of the said chapters.)

The fifth chapter of the monograph examines the legal nature of the regime of the optional clause. In it, the author draws upon State practice and the Court's relevant decisions in proving that the system of declarations is not contractual in nature. Hence nor are such the relations between States party to the regime. The sixth chapter analyzes the operation of the principle of reciprocity with regard to declarations. For reciprocity to prevail, namely for suability to be ensured, States are required to make a declaration in respect to one and the same obligation, yet this does not entail the need to make identical declarations in all aspects, but a different wording will do just as well. In the Interhandel Case the International Court of Justice pointed up to the limits of reciprocity by stating that reciprocity does not entitle a State, namely the United States in the case at hand, to invoke a limitation which the other party, Switzerland, did not include in its own declaration of acceptance. On the other hand, the principle of reciprocity does not preclude, as the Court held in another cases, the possibility of the claiming State filing an application just a few days after the deposit of its declaration. Nevertheless, reciprocity does not apply to formal questions such as the duration and the entry into force of declarations. The author observes that reciprocity entails important consequences. The parties are in no position to know in the abstract the exact scope of The Court's jurisdiction on the basis of declarations of acceptance, because it depends on the line-up of claiming and defending States. Since reciprocity prevails in respect of reservations and limitations as well, this principle puts States that make such declarations on an equal footing with those that refrain from making reservations to or placing limitations on their declarations. A reservation may thus be pleaded even by the opponent party, so it may prove counterproductive as it is applied against the declarant State with a view to avoiding the action brought by that State.

The seventh chapter on the generally accepted reservations explores the entire range thereof along with the aforementioned reservations made with regard to other means of peaceful settlement of disputes, hostilities and armed conflicts, and objective domestic jurisdiction, discussing reservations relating to territorial sovereignty and environmental protection, referring to the existence or lack of close relations between States, and excluding the retroactive effect of declarations, and surprise applications. Among the less frequent reservations it deals with those affecting constitutional matters, linking the entry into force of a declaration to declarations by other States, relating to disputes about a specific

treaty or specific treaties, and excluding disputes with regard to foreign debts and liabilities.

The author notes that reservations relating to the means of peaceful settlement of disputes should not be confused with cases where the parties may not have recourse to the Court except after having conducted negotiations or having employed the conciliation procedure according to the provisions of the particular treaty. In the first case a dispute cannot be submitted to the Court on the ground of the inapplicability of the optional clause. As concerns reservations with regard to hostilities and armed conflicts, the author stresses that the more recent reservations of this type exclude disputes about acts of individual and collective self-defence and/ against aggression as well as about peace-keeping operations of international organizations. Drawing upon the literature on the subject, Vanda Lamm underscores the need for a thorough examination of whether or not a particular State was involved in the hostilities at the time of the events giving rise to the dispute and whether there is a direct or indirect causal relationship between the events and the dispute under consideration. The more recent reservations relating to territorial sovereignty tend to exclude from the scope of the Court's jurisdiction issues of marine areas and air-space along with border disputes. In connection with these two classes of cases it is worth observing that the related reservations are a clear indication that a large number of States are loath to have their major conflicts settled by decisions of a law-enforcing nature handed down by an objective, impartial forum.

The essence of reservations relating to objective domestic jurisdiction is that a State excludes from the scope of the Court's jurisdiction such matters which according to international law are belonging to national jurisdiction. The author asserts that if such a reservation is relied upon by a State in connection with a concrete mater, the Court has the right and the duty to decide up on that matter. Reservations intended to prevent surprise applications may be aimed at, inter alia, ruling out the possibility of filing an application against the particular State immediately upon the entry into forte of its declaration accepting the jurisdiction of the Court. In such instance the entry into forte of the declaration is suspended for a period of six or twelve months in general, the suspension opening up a possibility to denounce or to amend the declaration, too. The other type of related reservations is intended to prevent the Court considering a legal dispute in cases where a State has expressly made a declaration of acceptance for the purpose of submitting a particular matter to the Court. As is stated by Vanda Lamm, the question arises whether such a reservation is aimed at preventing the given matter from ever being brought before the Court or such aim is subject to proof.

As noted earlier, destructive reservations are discussed in the seventh chapter. The core and substance of a reservation relating to subjective domestic jurisdiction, which is associated with the name of the American senator Conally, is that the matters coming within domestic jurisdiction and excluded from the Court's jurisdiction are unilaterally determined by the declarant State itself. Operative for forty years, the original American formula has been adopted by a number of States, with minor changes in its wording in this particular case. The author points out that the literature on international law is unanimous in emphasizing the importance of good faith in the practice of making reservations. Since bad faith cannot be presumed, the principle of good faith can but provide a weak guarantee in respect of resorting to such reservations.

Similarly associated with the name of an American senator, Vandenberg,[2] is the type of reservation relating to multilateral treaties. The crucial point in the first version of this reservation is the requirement for the States concerned to agree in bringing a particular dispute before the Court. The United States reservation is vague as it fails to clearly enunciate whether all States involved in a dispute or all the contracting parties should be in agreement on having the dispute considered by the Court, asserts the author. At any rate, in the Case concerning Military and Para-Military Activities in and against Nicaragua, the United States opted for a narrower interpretation, while in its judgment the Court accepted it, holding that it had jurisdiction to identify the States involved in the dispute. The States following the American example have come to use another version of the formula which requires all States party to a given multilateral treaty to participate as parties in the proceedings. Furthermore, in dealing with this type of reservations, Vanda Lamm emphasizes that it is not clear what position will be taken by the rest of the States party to the multilateral treaty in question, especially since the position of the intervening State in the proceedings before the Court is almost equally unclarified. According to the second version of the Vandenberg reservation, in cases where the United States is a party to a multilateral treaty the US must expressly consent to the Court's jurisdiction, which enables it to block the proceedings unilaterally. By excluding the interpretation of multilateral treaties from the scope of the Court's jurisdiction the Vandenberg reservation has a particularly destructive effect on international adjudication, because, as is stressed by the author, similar disputes tend to arise in a considerable number of cases brought before the Court, let

[2] Vandenberg is known to have made the proposal on which the American Senate authorized the United States to participate in a military alliance, the North Atlantic Treaty Organization, in time of peace.

alone the fart, we may add, that nearly all important fields of international law are governed by multilateral treaties to which a large number of States are party.

Perhaps the most interesting, exposition of the subject is to be found in the part of the monograph dealing with the relationship between destructive reservations and the Statute of the Court. An invalid reservation is to carry implications for the declaration itself, which also becomes invalid, or else it would compel the given State to assume an extra obligation by reason of the fact that the State should accept the Court's jurisdiction without making a reservation. And those who criticized the International Court of Justice for having failed to take a position on the question of contestable reservations are but seemingly right, because acceptance of the validity of those reservations would have encouraged other States to make similar reservations and would have undermined the Court's own authority, as a pronouncement thereon would have been tantamount to the Court clearly acknowledging that its right to decide on the question of its jurisdiction had greatly narrowed in range. On the other hand, however, declaring the invalidity of such reservations would have operated to invalidate the declarations themselves, thereby the Court itself narrowing the scope of its jurisdiction, for in practice a particular State may happen not to invoke its destructive reservation in a given case.

Returning now to the question of classification of reservations, what is certain is that a reservation not belonging to the class of destructive ones does not mean its being constructive as it also implies a limit to the acceptance of jurisdiction. It is nevertheless undeniable that the reservations consigned by the author to the generally accepted category are less destructive with respect to the possibility to establish the Court's jurisdiction, the reason being that they were formulated with relative precision, so in this sense they have a limited effect, whereas the reservations relating to objective domestic jurisdiction preserve the Court's discretionary right. Thus, on the whole, they are less arbitrary and less questionable. At the same time, however, the reservations relating to hostilities and armed conflicts and territorial disputes are the most destructive possible if viewed in the context of the significance and actual role of international adjudication as a means of peaceful settlement of international disputes.

The ninth chapter of the monograph is concerned with the termination and modification of declarations accepting compulsory jurisdiction. The author emphasizes that once the proceedings before the Court have been instituted, termination or modification has no effect on the matter under consideration. Even declarations failing to provide for denunciation, i.e. made for an un-definited period, may be denounced, practically at any time. By contrast,

declarations made for a definite period and fixing no date for denunciation cannot be terminated except upon expiry of the period of notice.

The tenth chapter sums up the author's conclusions, while also discussing the prospects for acceptance of jurisdiction and the approach thereto of the permanent members of the Security Council.

The monograph is completed with useful annexes on the cases submitted to the two World Courts under the optional clause and on the declarations of acceptance.

It can be stated in summary that this monograph is an excellent work discussing fundamental, issues and covering a wealth of related material. Hopefully it will be available soon in English for a wider professional audience.

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