Chapter XXV  International Rule of Law: 
The Need and Quest for International 
Compulsory Jurisdiction

I. International Rule of Law Beyond Peaceful Settlement of Disputes

Most of the classic works on international adjudication date from a time when one counted only on, besides the Permanent Court of Arbitration and international arbitral tribunals, the Hague Court – the Permanent Court of International Justice [PCIJ] followed by its successor, the International Court of Justice [ICJ]. In recent years international adjudication has experienced a considerable expansion, with the emergence of new international tribunals. This phenomenon appears to acknowledge that judicial settlement of international disputes comes to be seen as retaining a superiority, at least at conceptual level, in relation to political means of settlement, to the extent that the solution reached is based on the rule of law, and no State is to regard itself as standing above the law.

International jurisdiction seems nowadays to go beyond the framework of methods of peaceful settlement of international disputes. Its expansion in contemporary International Law responds and corresponds to a need of the international community of our times. The international rule of law finds expression no longer only at national, but also at international, level. At this latter, the idea of a préeminence of International Law has gained ground in recent years, as acknowledged, e.g., by the Advisory Opinion of the ICJ on the Obligation to Arbitrate by Virtue of Section 21 of the 1947 U.N. Headquarters Agreement (1988); this idée-force has fostered the search for the realization of justice under the rule of law at international level, and has stressed the universal dimension of a new jus gentium in our days.¹

The growth of international adjudicative organs transcends peaceful settlement of disputes, pointing to the gradual formation of a judicial branch of the international legal system.² There is great need for a sustained law-abiding system

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of international relations\(^3\) (a true international rule of law); nowadays “any progress in International Law passes through progress in international adjudication”.\(^4\) Judicial settlement bears testimony of the superiority of law over will or pressure or force. The applicable legal norms preexist the dispute itself. Some advances have been achieved in recent years in the domain of international compulsory jurisdiction, although there appears to remain still a long way to go. A current reassessment of international adjudication can thus be appropriately undertaken, in my view, in historical perspective and in the context of the growth of international jurisdiction, bearing in mind the recurring need and quest for compulsory jurisdiction, in pursuance of the realization of international justice.

II. International Rule of Law: The Saga of the Optional Clause of Compulsory Jurisdiction

1. **From the Professed Ideal to a Distorted Practice**

In this respect, one may initially recall the legislative history of the provision of the optional clause of compulsory jurisdiction, as found in Article 36(2) of the Statute of the ICJ, which is essentially the same as the corresponding provision of the Statute of its predecessor, the old PCIJ. The aforementioned Article 36(2) establishes that

> “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”.

Article 36(3) adds that “the declaration 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”\(^5\)

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5 And Article 36(6) determines that “in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court”.\(^5\)