31 Vanda Lamm: Compulsory Jurisdiction in International Law

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Vanda Lamm: *Compulsory Jurisdiction in International Law*. Edward Elgar, Cheltenham, UK – Northampton, MA, 2014, p. 318

The problems of international adjudication are favored field of research of Professor Vanda Lamm, a member of the *Institut de Droit International* and the Hungarian Academy of Sciences. After having published three books on those issues in Hungarian, and numerous articles in foreign languages, she has recently made available her views on the regime of compulsory jurisdiction of PCIJ and ICJ in book form in English. Her views are always based on careful analyzes of the case law of the two courts, and on the sophisticated reconsideration of the whole spectrum of the literature.

As we know from Kelsen the law as a social technique is hardly separable from the existence and work of the judiciary. In international law the situation is delicate. In contrast to domestic courts, the jurisdiction of international judicial for is based on the expressed consent of the states involved in the case. Under the optional clause of the statutes of the courts there has been a possibility to recognize the jurisdiction of the two fora in respect to other states having made such a declaration. The monograph highlights the special features of the optional clause as well as the historical, the theoretical and practical issues and the procedural problems related to the declarations.

The book addresses all of the relevant questions including the history of international arbitration. It discusses the history of the elaboration of the optional clause and its concepts. The idea of international rule of law inspired the concept of compulsory jurisdiction, but the fear of states from the surrender of control to the independent, objective, impartial dispute settlement, where large and small states may equally advance their international legal arguments, led to the birth of the optional clause. The monograph gives considerable attention to the special legal nature of the declarations, such as the freedom of states to make declarations or the problems concerning the ratification and the deposit of those declarations. The author clearly points out that a period between the making and the entry into force of such declarations would encourage certain states to try to evade of the jurisdiction of the World-Court. Moreover, it would be rather difficult to identify the lengths

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of the reasonable time as suggested by certain authors until the declaration entries into force. The author later on adds that the ICJ might name the factors of reckoning the reasonable time and might specify in its decision, following the example of the ECHR, the lengths of the period that *obviously* extends beyond that time.

The fact that states attach reservations to their declarations of acceptance, while at the same time they exclude certain issues from the scope thereof, may appear surprising at the first glance. However there is reason for surprise. According to Vanda Lamm practically every state is confronted with some international problems which it would not like to bring before the ICJ.

As regards the classification of reservation, the study accepts the traditional division, *ratione persone, ratione materiae, ratione temporis)* while renewing it by introducing the classes of generally accepted and destructive reservations. The first category 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. The first class comprises reservations like those concerning e.g. other means of peaceful settlement, hostilities and armed conflict, or objective domestic jurisdiction, and the other consists of reservations related to subjective domestic jurisdiction (Conally) and related to disputes about a specific treaty or treaties (Vandenberg)

The author notes that reservations related 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 provision of the particular treaty. In the first case a dispute can not be submitted to the Court on the ground of inapplicability of the optional clause. As concerns reservations with regard to hostilities and armed conflicts, the author underscores the need of a through examination of whether or not a particular state was involved in the hostilities at the time of events giving rise to the dispute and whether there is a direct or indirect causal relationship between the events and the legal dispute under consideration.

Concerning destructive reservations the author points out that the literature is unanimous in emphasizing the importance of good faith in the making reservations. Since bad faith can not be presumed, the principle of good faith can but provide only a weak guarantee in respect of resorting to such reservations. In case of Vandenberg type of reservations, Vanda Lamm emphasizes that it is not clear what position is taken by the rest of the state parties to the multilateral treaty in question, especially since the position of the intervening state in the proceedings before the ICJ is almost equally not clarified. Perhaps the most interesting, exposition of the subject is to be founding that part of the book which deals with the relationship between the destructive reservations and the Statute of the Court. Declaring the invalidity of the destructive 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.

At the end of the book the author looks for a solution for the problem, arguing in favor of having an advisory opinion on the problems connected with reservations to declarations. The book is completed with a useful annex on reservations attached to declarations.

In this short review I have selected only a very small fraction of the great reservoir of thoughts which can be found in this book. In summary this book is an excellent work discussing a fundamental issue of international adjudication and covering a wealth of related material. It is a must for those who deal with the question.