

2. LETTER FROM THE MINISTER OF FOREIGN AFFAIRS OF GUATEMALA TO THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

September 9th, 1952.

Mr. President,

I have the honour to bring to the knowledge of Your Excellency certain declarations of the Government of Guatemala relating to the International Court of Justice.

1. As is known to this High Tribunal, the Government of Guatemala deposited with the Secretariat-General of the United Nations a document which states :

"The Government of Guatemala declares that, in accordance with Article 36 (2) and (3) of the Statute of the International Court of Justice, it recognizes as compulsory *ipso facto*, and without special agreement, in relation to any other State accepting the same obligation, and for a period of five years, the jurisdiction of the Court in all legal disputes. This declaration does not cover the dispute between England and Guatemala concerning the restoration of the territory of Belize, which the Government of Guatemala would, as it has proposed, agree to submit to the judgment of the Court, if the case were decided *ex aequo et bono*, in accordance with Article 38 (2) of the said Statute.

Guatemala, January 27th, 1947.

E. SILVA PENA."

2. As is equally known to the International Court of Justice, the declaration set out in paragraph 1 above was definitely confirmed in the Notes exchanged between the Ministry for Foreign Affairs of Guatemala (No. 340 C (73-32) No. 13317 of August 6th, 1947) and the Secretariat-General of the United Nations (Reference 903-2-9-IR of September 29th, 1947) to the effect that the declaration referred to entered into force on January 27th, 1947.

3. My Government sent for deposit with the Secretariat of the United Nations the following declaration dated August 27th, 1952 :

"I.—That the Government of Guatemala, by a formal declaration dated January 27th, 1947, deposited with this Secretariat in accordance with the requirements of the Statute of the International Court of Justice, stipulated 'that, in conformity with Article 36 (2) and (3) of the Statute of the International Court of Justice, it recognizes, *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, and for a period of five years, the jurisdiction of the Court in all legal controversies. This declaration does not

cover the case between England and Guatemala concerning the restoration of the territory of Belize etc.'

2.—That the United Nations and the International Court of Justice know that the declaration mentioned in the preceding paragraph, which was definitely confirmed by an exchange of notes between the Ministry of Foreign Affairs of Guatemala (classification 340 C (72—32) No. 13317 of August 6th, 1947) and the Secretariat of the United Nations (Reference: 903—2—9—IR of September 29th, 1947) with the meaning that 'this date (January 27th, 1947) will be considered as the date of entry into force of the said declaration' therefore expired definitely on January 26th, 1952.

3.—That in view of the fact that the time-limit of five years to which the declarations cited in paragraphs 1 and 2 above refer expired on January 26th, 1952, it [the Government] wishes to state the following :

That it was the definite intention of the Government of Guatemala that on the expiry of the period of five years during which it submitted to the compulsory jurisdiction of the Court, this submission should end automatically and therefore no later decision of the International Court of Justice can affect Guatemala, until the new declaration of submission to the compulsory jurisdiction of the International Court of Justice which is now being prepared by the competent organs of the State has been deposited."

4. With this introduction, I wish formally to bring to the knowledge of Your Excellency the declaration contained in paragraph 3 above and through you to the knowledge of the Honourable International Court of Justice, because its contents are pertinent to the ideas which are expressed later in this note, in connection with the Memorial presented by the Government of Liechtenstein on May 14th, 1952, against the Republic of Guatemala with reference to certain legitimate measures taken by the latter Government against the person and alleged property of Señor Federico Nottebohm, who, it is argued, is a national of the claimant State.

5. Guatemala, like all civilized countries, recognizes the necessity that all international controversies should be settled by pacific and judicial procedures by means of the instruments which have been created for this purpose in the science of International Law, such as direct negotiation, arbitration and judicial settlement. And not only has Guatemala recognized this but it has also practised it, submitting voluntarily its disputes to arbitral or judicial settlement when the method of direct negotiation has failed.

6. In the case of the International Court of Justice, Guatemala concurred with many other countries in accepting as an adequate and desirable evolution of International Law the establishment of compulsory jurisdiction for the settlement of legal controversies.

7. Article 36 of the Statute of the International Court of Justice, which defines and governs the terms on which States may at any time declare that they recognize as obligatory *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 relating to certain matters, deserves, in the opinion of Guatemala, the most unrestricted approval, because undoubtedly in course of time it will bring about its universal acceptance and the submission of all countries, large and small, to universal legal order, thus realizing the situation of equality before law.

8. Nevertheless, the jurists who drew up the Statute had to take very much into account that obligatory submission to the jurisdiction of the Court implies a renunciation of sovereignty which could not be demanded from States in an absolute form in the actual evolutionary state of international society. Therefore, this privilege, in its form and in its origin, as well as its renunciation, was left to the sovereign will of the States themselves, permitting them to make a declaration of recognition unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time. Paragraph 3 of Article 36 of the Statute states this right in precise and categorical terms.

9. By analogy, it should be noted that, confirming and explaining the expression "for a certain time" in paragraph 3, paragraph 5 of the same Article 36 of the Statute of the Court employs for similar cases the expressions "which are still in force", "for the period which they still have to run" and "in accordance with the terms of their declarations".

10. When Guatemala accepted the compulsory jurisdiction of the Court in its declaration of January 27th, 1947, it took advantage expressly of the conditions of reciprocity and time, stating categorically in the latter respect that its recognition of the jurisdiction of the Court was limited to the period of five years. Later, in Note No. 13317 addressed to the Secretary-General of the United Nations, mentioned in paragraph 2 of this note, in reply to a question put by this high official, it affirmed "that the intention of my Government was that the said unilateral declaration should enter into force on the date of despatch" and that this ought to be considered as January 27th, 1947.

11. From the statements expressed above it follows :

- (a) That the Republic of Guatemala recognized the compulsory jurisdiction of the Court, but not in an absolute and general form, since this would have implied an indefinite submission to the detriment of its sovereignty and not in accordance with its interest, if by reason of unforeseen circumstances the international situation changed ;
- (b) That it accepted this recognition for a period sufficiently long to enable it, during this period, to elucidate and settle legal disputes which had arisen or which might arise, and sufficiently short to avoid the indefinite prolongation of a judg-

ment or the submission of future questions, the genesis and circumstances of which could not be foreseen and would affect future Governments and perhaps future generations of Guatemalans ;

- (c) That during the period of five years which began on January 27th, 1947, and expired on January 26th, 1952, as up to the present date there has not existed and does not exist any legal dispute, since Guatemala has not entered into any lawsuit contesting any claim ;
- (d) That the effect of its declaration of January 27th, 1947, expired with the last hour of January 26th, 1952, and that from this moment the International Court of Justice has no jurisdiction to treat, elucidate or decide cases which would affect Guatemala, except if Guatemala prolongs the duration of its declaration, submits itself by depositing a new declaration with the Secretary-General of the United Nations, or signs a special protocol of submission with any other interested State ;
- (e) That, in the absence of these last conditions, the Government of Guatemala is, much to its regret, unable for the moment to appear before the International Court of Justice in any given case.

12. The foregoing statements are indisputable in the opinion of the Government of Guatemala and refer fundamentally to the situation of that country before the International Court of Justice and therefore are of a general character and without reference to a special case, since they relate to all cases.

13. As to the reference to the definite period for which the Guatemalan declaration of January 27th, 1947, was in force, it should be noted that this limitation is usual in international tribunals and that it is also stipulated even in such cases as are submitted for decision by means of a special protocol, precisely with the object of avoiding a prolonged delay in the decision of contentious cases. If the jurisdiction of a particular tribunal ends at the expiry of the term fixed in the protocol, whether the dispute has been settled or not, there is all the more reason to accept it as ended in those cases in which the submission is of a general character, without relation to any particular State.

14. If any dispute with Guatemala should have been brought before the International Court of Justice in sufficient time within the currency of its declaration, this country, in contesting the claim, would have stated its objections on the ground of time, since in no circumstance could it have accepted the validity of any jurisdiction after the date on which the declaration expired.

15. I must add also that, in the matter of jurisdiction, my Government must respect the internal laws of the country regarding

the definition and limits of that jurisdiction, with the sole exception of what is said to the contrary in treaties in force or international instruments which have been duly ratified, and to which Guatemala is a party. In this respect, the law of Guatemala defines jurisdiction as "the power of administering justice" (Article 130 of the Constitutional Law of the Judicial Organism) and my Government must respect its definition in affirming that the jurisdiction of the International Court of Justice or its "power to administer justice" expired with reference to Guatemala on January 26th, 1952, in all those cases in which the intervention of this Tribunal rests precisely on the Guatemalan declaration of January 27th, 1947.

16. My Government is quite certain that the reasons briefly set out in the preceding paragraphs are of such weight and validity that they could not be denied by the Highest International Tribunal. It was for this reason that, in the case which the Government of the Principality of Liechtenstein presented precisely at the expiry of the term, it [my Government] had the original intention of having recourse to the Court in order that the Court itself should declare its lack of jurisdiction after judicial proceedings.

17. However, after a profound study of the case and an examination of paragraph 6 of Article 36 of the Statute of the Court, which is the article which determines its competence to decide if it has jurisdiction or not, we arrived at the conclusion that this procedure is not viable, nor in conformity with the Statute of the Court or the laws of Guatemala.

18. In effect, paragraph 6 of Article 36 of the Statute must, necessarily, relate to the rest of its paragraphs which determine *the cases in which the Court has jurisdiction*. These cases, according to paragraph 2, are as follows :

- (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.

19. The claim which is presented against a State which has accepted the jurisdiction of the Court to settle such questions should refer to one or more of these points. If this is not so, the Court has no jurisdiction and, in case of disagreement in this respect, it can declare this in conformity with the above-mentioned paragraph 6 of Article 36.

20. Nevertheless, in the case of the claim of the Principality of Liechtenstein, it is not a question of trying to determine if the matter is comprised in those cases which are defined by paragraph 2 of Article 36 of the Statute. This is a question which would have

been argued during the judicial proceedings if the Guatemalan declaration were in force, proceedings requiring the appearance of Guatemala and its submission to the authority of the Court to make decisions. But this is precisely what is excluded by our opposition to such jurisdiction. Moreover, if my Government should appear before the Court and the Court should reject our argument on the ground that it is not within the specific cases provided for in paragraph 2 of Article 36 of the Statute, it could not be denied that such a decision would be in accordance with the practice of international law.

21. Neither would it be in accordance with the laws of the Republic of Guatemala for my Government to be present at this moment in order to discuss a case of compulsory jurisdiction, since that jurisdiction has expired. Article 24 of the Constitution of Guatemala lays down categorically that "no organ of the State or any public functionary has more powers or authority than those expressly conferred by the Law". No law authorizes my Government to submit questions to an international tribunal if this has not jurisdiction expressly conferred by a law of the Republic or a sovereign act approved by Congress. In the case which the Government of the Principality of Liechtenstein presents, it has already been determined that no jurisdiction exists, because that which previously existed has already expired, and that taking the word "jurisdiction" in the absolute sense that our law attributes to it, the International Court does not have for the moment power to administer justice in cases affecting Guatemala and that, therefore, no public official or organ of this nation has the right to appear before it under the present circumstances.

22. The reasons thus expressed force me to communicate officially the following to this High Tribunal :

- I. That the Government of the Republic of Guatemala has taken note of the claim presented by the Government of the Principality of Liechtenstein on supposed official acts to the alleged detriment of Mr. Federico Nottebohm.
- II. That this Ministry is quite willing to begin negotiations with the Government of the said Principality, with a view to arriving at an amicable solution, either in the sense of a direct settlement, an arbitration, or judicial settlement, with a preference for the last-mentioned by means of the High Tribunal presided over by Your Excellency.
- III. That in the present circumstances, since the jurisdiction of the Court in relation to Guatemala has terminated and because it would be contrary to the domestic laws of that country, my Government is unable to appear and to contest the claim which has been made.

- IV. That, as a consequence, it cannot, for the time being, appoint an Agent in the case in question.
- V. That the attitude of Guatemala is not one of contumely or of voluntary absence, but, on the contrary, one of great respect, which is also based on compliance with the domestic laws in force in our country and with the terms of the Statute of the Court and of the Guatemalan declaration of January 27th, 1947, formulated in accordance with the said Statute.
- VI. That in no case should all or any part of this note be considered as a reply, affirmative or negative, or a default or voluntary absence, but as a statement of the reasons for the impossibility of appearance before this High Tribunal.
- VII. That the competent organs of my Government are at present studying the desirability and the terms of a new declaration of submission in conformity with the said Article 36, paragraphs (2) and (3), of the Statute of the International Court of Justice.
- VIII. That in its case and as soon as this new declaration of submission is definitely approved by the appropriate organs of State with a view to accepting the compulsory jurisdiction of the Court, it will immediately deposit this declaration with the Secretary-General of the United Nations in order that it shall serve as a norm for jurisdiction in relation to Guatemala and other States, on a basis of reciprocity, so far as new disputes, as well as those, if any, which were waiting to be dealt with or decided on January 27th, 1952, are concerned.
- IX. And, finally, that, notwithstanding the foregoing and while formulating the declaration referred to in the foregoing sub-paragraphs VII and VIII, this Ministry is perfectly willing to consider, in agreement with any other interested State, the terms of a special protocol submitting to the Court any matter in controversy which may fall within the cases set out in Article 36, paragraphs (2) and (3), of the Statute of the International Court of Justice.¹

23. In order to present personally my high esteem of the International Court of Justice and to present to Your Excellency this note, of which an extract has already been sent by cable and of which another copy is being forwarded by post, as well as to clarify the various points of view in so far as necessary and to furnish additional explanations which might be requested, while not appearing in any proceedings, this Ministry has appointed Dr. José Luis Aguilar de León, recently nominated Minister Plenipotentiary of Guatemala in France, as *ex officio* representative of the Government

of Guatemala and of this Ministry, so far as the notes sent to the Registry of this High Court on June 16th, 1952, and to-day are concerned.

I take this opportunity, Mr. President, to repeat to the Highest International Court and to Your Excellency, the expression of my most distinguished consideration.

(Signed) MANUEL GALIC.
