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ARTICLES

Compulsory in Name Only: Canada's Effective Withdrawal from ICJ Optional Clause Jurisdiction

Obligatoire seulement de nom: le retrait effectif du Canada de la compétence de la CIJ en vertu de la clause facultative

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Abstract

On 28 August 2023, Canada amended and substantially narrowed its unilateral declaration accepting the compulsory jurisdiction of the International Court of Justice (ICJ). The combined effects of its various reservations — notably, Canada's new requirement that states must have provided at least six-month advance written notice before instituting ICJ proceedings against it, coupled with its ongoing rights to amend or terminate its declaration with immediate effect — have now rendered Canadian acceptance of Optional Clause jurisdiction compulsory in name only. Canada now appears to control whether any future ICJ cases can ever be brought against it in this way.

Keywords: International Court of Justice; Optional Clause; declaration; jurisdiction; reservations

Résumé

Le 28 août 2023, le Canada a modifié et considérablement restreint sa déclaration unilatérale acceptant la compétence obligatoire de la Cour internationale de Justice (CIJ). Les effets combinés de ses diverses réserves — notamment la nouvelle exigence du Canada selon laquelle les États doivent fournir un préavis écrit d'au moins six mois avant de déposer une requête introductive d'instance contre lui devant la CIJ, associée à son droit permanent de modifier ou de résilier sa déclaration avec effet immédiat — ont désormais rendu l'acceptation par le Canada de la compétence de la clause facultative obligatoire uniquement de nom. Le Canada semble désormais contrôler la possibilité de toute action future intentée contre lui devant la Cour.

Mots-clés: Cour internationale de Justice; clause facultative; déclaration; compétence; réserves

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1. Introduction

On 28 August 2023, in a largely unheralded development, Canada amended and substantially narrowed its unilateral declaration[1] accepting compulsory jurisdiction under Article 36(2) of the *Statute of the International Court of Justice* (the so-called Optional Clause).[2] Since joining the United Nations (UN) in 1945, Canada had previously always granted the International Court of Justice (ICJ) compulsory jurisdiction in relation to certain matters, albeit never in absolute terms and with further restrictions in 1970, 1985, and 1994. The current Canadian declaration differs in important ways from earlier iterations, though. The combined effects of its various limitations — notably, Canada's new requirement that states must have provided at least six-months advance written notice before initiating ICJ claims against it, coupled with its ongoing rights to amend or terminate its declaration with immediate effect[3] — have now rendered Canadian acceptance of Optional Clause jurisdiction compulsory in name only. Canada now appears to control whether any future ICJ cases can ever be brought against it in this way.

This article addresses the context and consequences of this development, which came only two months after the Islamic Republic of Iran's surprise initiation of *Alleged Violations of State Immunities* against Canada, relying on its broader previous declaration.[4] The amended 2023 Canadian declaration, however, was not unprecedented, coming instead after previous similar declarations made by the United Kingdom in 2017 and the Republic of Latvia in 2019.[5] Although this article addresses resulting issues from a Canadian perspective, its overarching concerns are also largely applicable to, and, at times, exacerbated by, these two earlier declarations.[6]

Following this introduction, the second section provides a general overview of ICJ Optional Clause jurisdiction, while the third section reviews the lengthy history of its qualified acceptance by Canada. The fourth section addresses the 2023 Canadian declaration itself, along with its legal, practical, and symbolic implications, noting that any potential benefits for Canada also come with significant drawbacks. The fifth section concludes that, if Canada is unwilling to make a meaningful commitment accepting Optional Clause jurisdiction, a more effective approach would be to revoke this declaration altogether.

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[1]For the full text of all current Optional Clause declarations, including Canada's, see "Declarations recognizing the Jurisdiction of the Court as Compulsory," online: *ICJ* <icj-cij.org/declarations> ["Declarations"]. These are also available through the United Nations Treaty Collection. "Declarations Recognizing as Compulsory the Jurisdiction of the International Court of Justice under Article 36, paragraph 2, of the Statute of the Court," online: *United Nations Treaty Collection* <treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=I-4&chapter=1&clang=_en>.

[2]*Statute of the International Court of Justice*, 26 June 1945, Can TS 1945 No 7 (entered into force 24 October 1945) [*ICJ Statute*].

[3]"Declarations," *supra* note 1 (Canada: 28 August 2023, at paras 1, 2(e), 3).

[4]*Alleged Violations of State Immunities (Islamic Republic of Iran v Canada)*, [2023] ICJ General List No 189 [*Alleged Violations of State Immunities*].

[5]These UK and Latvian declarations are discussed in greater detail in section 4. See also "Declarations," *supra* note 1 (United Kingdom of Great Britain and Northern Ireland: 22 February 2017) and (Republic of Latvia: 24 September 2019).

[6]Note that during the publication process, Germany amended its Optional Clause declaration by adding a six-month notification requirement, while maintaining its various prior restrictions, including rights to withdraw or amend its declaration with immediate effect. "Declarations," *supra* note 1 (Germany: 29 October 2025). The concerns raised in this article also apply to this revised German declaration.

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2. Overview of the Optional Clause

The *Charter of the United Nations* establishes the ICJ as the organization's "principal judicial organ,"[7] requiring all UN member states to comply with its decisions in contentious cases involving them as parties.[8] While the Court is formally open to these and certain other states,[9] its jurisdiction over them is not automatic.[10] States must instead always consent to the exercise of ICJ jurisdiction in contentious cases involving them,[11] and this can be done in any one of four ways.[12] Three are necessarily limited: case-specific consent by disputing states through special agreement;[13] case-specific consent after the Court has received an application to initiate

[7]*Charter of the United Nations*, 26 June 1945, Can TS 1945 No 7 (entered into force 24 October 1945), art 92 [*UN Charter*].

[8]*Ibid*, art 94(1). The annexed *ICJ Statute*, *supra* note 2, provides further details concerning the Court's organization, competence, and procedure. All UN member states are, by virtue of that fact, parties to the *ICJ Statute*. *UN Charter*, *supra* note 7, art 93(1).

[9]*ICJ Statute*, *supra* note 2, art 35. Non-UN member states may also become *ICJ Statute* parties "on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council." *UN Charter*, *supra* note 7, art 93(2). For example, Japan, Liechtenstein, San Marino, Switzerland, and Nauru were all parties to the *ICJ Statute* prior to their admission as UN member states. "United Nations Treaty Collection: Depositary: Status of Treaties: Chapter I.3," online: *United Nations Treaty Collection* <treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=I-3&chapter=1&clang=_en>. The ICJ may, in specific cases, also be open to states not party to the *ICJ Statute*. *ICJ Statute*, *supra* note 2, art 35(2). For example, although it was not then a United Nations (UN) member state or party, Albania was found to have consented to Court jurisdiction in *Corfu Channel* (*United Kingdom of Great Britain and Northern Ireland v Albania)*, Judgment (Preliminary Objection), [1948] ICJ Rep 15 [*Corfu Channel* (Preliminary Objection)].

[10]*ICJ Statute*, *supra* note 2, art 36. Court adjudication is only one of many ways for states to fulfill their legal obligation to settle their international disputes peacefully (a requirement outlined, for example, in *UN Charter*, *supra* note 7, art 2(3)). The *UN Charter* specifically mentions "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." *Ibid*, art 33(1). It also establishes dispute settlement roles for other principal UN organs in addition to the ICJ — notably, the UN General Assembly and the UN Security Council (see e.g. *ibid*, chs IV, V, VI). Even states seeking judicial settlement need not involve the ICJ if they prefer to call upon different tribunals instead. *Ibid*, art 95.

[11]See e.g. *Case of the Monetary Gold Removed from Rome in 1943 (Italy v France, United Kingdom of Great Britain and Northern Ireland and United States of America)*, Judgment (Preliminary Question), [1954] ICJ Rep 19 at 32 (noting the "well-established principle of international law embodied in the Court's Statute, namely, that the Court can only exercise jurisdiction over a State with its consent"). Individual state consent is not a prerequisite for ICJ advisory opinion requests made by other UN organs or agencies, which are governed instead by institution-specific decision-making requirements. For example, a UN General Assembly request requires a majority vote rather than consensus. *UN Charter*, *supra* note 7, art 18.

[12]*ICJ Statute*, *supra* note 2, art 36. See also Swiss Federal Department of Foreign Affairs (FDFA), ed, *Handbook on Accepting the Jurisdiction of the International Court of Justice: Model Clauses and Templates* (Bern: FDFA, 2014) at 6, online: <www.fdfa.admin.ch/eda/en/fdfa/fdfa/publikationen.html/content/publikationen/en/eda/voelkerrecht/handbook-jurisdiction-international-court> [*Jurisdiction Handbook*]; Zachary Vermeer & Dapo Akande, "Prior Consent by States to the Jurisdiction of International Courts and Tribunals in Inter-State Disputes" (20 November 2019) at 2–3, online: *University of Oxford* <www.elac.ox.ac.uk/elac-reports/>.

[13]*ICJ Statute*, *supra* note 2, art 36(1). For example, Canada and the United States accepted ad hoc jurisdiction in *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v United States of America)*, [1984] ICJ Rep 246 [*Gulf of Maine*].

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proceedings from another state (*forum prorogatum*);[14] and treaty-based consent, applicable either to treaty-specific disputes or to a broader range of legal disputes arising between particular states.[15]

The fourth method allows states to accept Court jurisdiction in advance in more general terms. Article 36(2) of the *ICJ Statute* provides that

> [t]he 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.

This provision draws on Article 36 of the *Statute of the Permanent Court of International Justice*.[16] In doing so, it continues to reflect a negotiated compromise between proponents and opponents of compulsory jurisdiction, allowing but not requiring states to accept it (a key reason for its ongoing characterization as the Optional Clause).[17]

Formalizing this consent-based regime, states expressly accepting compulsory ICJ jurisdiction must deposit related declarations with the UN secretary-general.[18] Where applicable and still in force, previous state declarations accepting the

[14]The *ICJ Statute* does not expressly provide for *forum prorogatum* jurisdiction; however, as the ICJ noted in its first contentious case, "[w]hile the consent of the parties confers jurisdiction on the Court, neither the Statute nor the Rules require that this consent should be expressed in any particular form." *Corfu Channel* (Preliminary Objection), *supra* note 9 at 27.

[15]*ICJ Statute*, *supra* note 2, art 36(1). Jurisdiction over treaty-related disputes can be established through a compromissory clause, typically found in the treaty itself or in a separate related protocol. Broader jurisdiction might be established in a general treaty governing peaceful settlement of disputes between its parties. See e.g. *Jurisdiction Handbook*, *supra* note 12 at 13ff; Vermeer & Akande, *supra* note 12 at 59.

[16]*Statute of the Permanent Court of International Justice*, 16 December 1920, 6 LNTS 389 (entered into force 1 September 1921) [*PCIJ Statute*]. For a historical review of this earlier provision, and its subsequent reflection in the *ICJ Statute*, see e.g. Vanda Lamm, *Compulsory Jurisdiction in International Law* (Cheltenham, UK: Edward Elgar, 2014) at 12–29.

[17]See e.g. Lamm, *supra* note 16. See also R St J MacDonald, "The New Canadian Declaration of Acceptance of the Compulsory Jurisdiction of the International Court of Justice" (1970) 8 Can YB Intl L 3 at 5. Despite its colloquial name, Article 36(2) itself is not optional; it applies to all *ICJ Statute* parties (though they are not required to act upon it). Although this differs from the PCIJ regime, where states had to accept a separate obligation before making related declarations, it is still commonly referred to as the Optional Clause (often by the ICJ itself). See e.g. Lamm, *supra* note 16 at 29–30; MacDonald, *ibid.* See also *Case Concerning Right of Passage over Indian Territory (Portugal v India)*, Judgment (Preliminary Objections), [1957] ICJ Rep 125 [*Right of Passage* (Preliminary Objections)].

[18]*ICJ Statute*, *supra* note 2, art 36(4). These declarations are then circulated to other *ICJ Statute* parties and the Court Registrar. *Ibid.* Declarations are nonetheless effective upon receipt by the UN secretary-general (without this being contingent on subsequent circulation, which is not always immediate). See e.g. *Right of Passage* (Preliminary Objections), *supra* note 17 at 146. See also Lamm, *supra* note 16 at 44–51.

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compulsory jurisdiction of the Permanent Court of International Justice (PCIJ) are also deemed to apply to the ICJ.[19] Seventy-four states now accept compulsory ICJ jurisdiction through such declarations (or, at least, they purport to do so).[20] Though significant, it is important to note that this still comprises less than 40 percent of the 193 current UN member states.[21] The United Kingdom is the only permanent Security Council member to maintain such a declaration,[22] though, for reasons discussed below, it likely has no meaningful compulsory effect either.[23] Optional Clause declarations apply reciprocally to other states also accepting compulsory ICJ jurisdiction in this way. Although the *ICJ Statute* provides that they "may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time," it does not expressly delineate further acceptable limitations on potential state declarations.[24]

Nevertheless, while some declarations are truly general — accepting compulsory ICJ jurisdiction in relation to any dispute with any other reciprocating state — most others are much more limited. Indeed, fifty-eight of the current seventy-four declarations contain at least one substantive reservation, often extending well beyond the limitations expressly provided for in the *ICJ Statute* to also include other restrictions (whether of a material, temporal, or personal nature).[25] Qualifying Optional Clause

[19]*ICJ Statute*, *supra* note 2, art 36(5). Five PCIJ declarations remain in effect on this basis. "Declarations," *supra* note 1. See Lamm, *supra* note 16 at 51–60 (for a summary of ICJ decisions addressing related issues).

[20]"Declarations," *supra* note 1. Legal concerns relating to the Canadian, Latvian, and UK declarations are discussed in section 4 of this article. In addition, Djibouti's declaration may have lapsed in 2010. See e.g. Vermeer & Akande, *supra* note 12 at 33.

[21]Geographical distribution is not uniform; while a majority of Western European and other group states have made declarations, this is not true of any other UN regional grouping. See e.g. Vermeer & Akande, *supra* note 12 at 19–27. See also John G Merrills, "Recent Practice with Regard to the Optional Clause: An Assessment" in Giuliana Ziccardi Capaldo, ed, *The Global Community Yearbook of International Law and Jurisprudence 2015* (New York: Oxford University Press, 2016) 903 at 904–05.

[22]France withdrew its Optional Clause declaration in 1974 following an unfavourable provisional ICJ order in the *Nuclear Tests* cases initiated by Australia and New Zealand. *Nuclear Tests (Australia v France)*, Order of 22 June 1973, [1973] ICJ Rep 99. The United States did so in 1985 following ICJ acceptance of jurisdiction in *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Judgment (Jurisdiction and Admissibility), [1984] ICJ Rep 392 [*Nicaragua* (Jurisdiction)]. In 1972, the People's Republic of China refused to recognize the 1946 declaration made by the prior Chinese government. The Russian Federation has never accepted Optional Clause jurisdiction. See e.g. Lamm, *supra* note 16 at 230–31; Geir Ulfstein, "Farewell to Compulsory Jurisdiction" (2023) British YB Intl L 1 at 1–2; Mauro Barelli, "A Heartfelt Commitment to the International Rule of Law?: The United Kingdom and the International Court of Justice" (2023) 70 Neth Intl L Rev 143 at 149.

[23]These issues are addressed in greater detail in section 4. See e.g. Ulfstein, *supra* note 22 at 5 (who concludes that "no permanent member of the Security Council now appears to in practice accept the compulsory jurisdiction of the Court under the optional clause"). Even before the recent UK declaration, Lamm observed that the absence of these states is "one of the weakest points of the system." Lamm, *supra* note 16 at 261.

[24]*ICJ Statute*, *supra* note 2, art 36(3).

[25]"Declarations," *supra* note 1; Vermeer & Akande, *supra* note 12 at 54–56. See also Merrills, *supra* note 21 at 906ff; Lamm, *supra* note 16 at 75–77; Robert Kolb, *Reservations to Optional Declarations Granting Jurisdiction to the International Court of Justice* (Cheltenham, UK: Edward Elgar, 2024) (discussing the range of current reservations and their implications). Some of the most common reservations to Optional Clause declarations concern:

- Other agreed dispute settlement procedures;

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declarations with substantive reservations is an accepted practice with a lengthy history. The League of Nations supported it as a mechanism to encourage greater state acceptance of compulsory PCIJ jurisdiction.[26] This practice has continued in relation to the ICJ, reflecting the consent-based nature of Optional Clause jurisdiction.[27] The Court itself has opined that declarations "are facultative, unilateral engagements, that States are absolutely free to make or not to make. In making the declaration a State is equally free either to do so unconditionally and without limit of time for its duration, or to qualify it with conditions or reservations."[28]

The *ICJ Statute* empowers the Court to determine the extent of its own jurisdiction if it is challenged (for example, by a state seeking to rely upon a reservation to constrain it).[29] Using this authority, the Court has sustained substantive reservations to Optional Clause declarations in various contentious cases, thereby precluding its own jurisdiction to assess the legal merits of the underlying disputes.[30] For example, a 1994 Canadian reservation prevented the Court from exercising jurisdiction in the *Fisheries Jurisdiction* case, as discussed in greater detail in the following section.[31] For the ICJ, the key issue is whether — at the time that a specific contentious case is initiated — the states involved have accepted its related jurisdiction.[32] The legal merits of the case itself are not material to this jurisdictional assessment; instead, the Court recognized in *Fisheries Jurisdiction* that

> a reservation to a declaration of acceptance of the compulsory jurisdiction of the Court is to be interpreted in a natural and reasonable way, with appropriate

- Specific treaties, factual situations or legal subjects;
- Matters exclusively within the domestic jurisdiction of the declarant state;
- Situations arising before a certain date; and
- Very recent or dispute-specific acceptance of Optional Clause jurisdiction by the state initiating a claim (sometimes referred to as "anti-ambush" provisions).

Vermeer & Akande, *supra* note 12. See also *Jurisdiction Handbook*, *supra* note 12 at 10ff.

[26]See, for example, the related discussion in *Case Concerning the Aerial Incident of 10 August 1999 (Pakistan v India)*, Judgment (Jurisdiction), [2000] ICJ Rep 12 at para 37 [*Aerial Incident of 1999*]. See also Lamm, *supra* note 16 at 64–65; Vermeer & Akande, *supra* note 12 at 40; MacDonald, *supra* note 17 at 5–6; Barelli, *supra* note 22 at 150; Kolb, *supra* note 25 at 2–3. Indeed, by 1921 a precedent had already been established in the declaration of the Netherlands for reservations extending beyond those expressly permitted by the *PCIJ Statute*, *supra* note 16. Vermeer & Akande, *supra* note 12; Merrills, *supra* note 21 at 908.

[27]"Declarations," *supra* note 1; *Aerial Incident of 1999*, *supra* note 26 at paras 36-38 (recognizing that Article 36(3) "has never been regarded as laying down in an exhaustive manner the conditions under which declarations might be made"). See also Lamm, *supra* note 16 at 61–78; Vermeer & Akande, *supra* note 12; Barelli, *supra* note 22; *Jurisdiction Handbook*, *supra* note 12 at 10; Kolb, *supra* note 25 at 2–3.

[28]*Nicaragua* (Jurisdiction), *supra* note 22 at para 59.

[29]*ICJ Statute*, *supra* note 2, art 36(6) ("[i]n the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court").

[30]See e.g. *Anglo-Iranian Oil Company (United Kingdom v Iran)*, Judgment (Jurisdiction), [1952] ICJ Rep 93 [*Anglo-Iranian Oil Company*]; *Certain Norwegian Loans (France v Norway)*, Judgment, [1957] ICJ Rep 9 [*Certain Norwegian Loans* (Judgment)]; *Fisheries Jurisdiction (Spain v Canada)*, Judgment (Jurisdiction), [1998] ICJ Rep 432 [*Fisheries Jurisdiction* (Judgment)]; *Aerial Incident of 1999*, *supra* note 26, among others.

[31]*Fisheries Jurisdiction* (Judgment), *supra* note 30. For further discussion of this case, and the reservation in question, see, in particular, notes 65–73 below and related text.

[32]See e.g. *Right of Passage* (Preliminary Objections), *supra* note 17 at 143. See also *Fisheries Jurisdiction* (Judgment), *supra* note 30.

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> regard for the intentions of the reserving State and the purpose of the reservation. In point of fact, reservations from the Court's jurisdiction may be made by States for a variety of reasons; sometimes precisely because they feel vulnerable about the legality of their position or policy.[33]

Subsequent ICJ decisions addressing reservations to Optional Clause declarations have continued to examine subjective intent alongside textual considerations. For example, in *Aerial Incident of 1999*, the Court emphasized the importance of "the intention of a declarant State, as expressed in the actual text of its declaration" before concluding that "India has repeatedly made clear that it wishes to limit in this manner the scope *ratione personae* of its acceptance of the Court's jurisdiction. Whatever may have been the reasons for this limitation, the Court is bound to apply it."[34] Substantive reservations do not just "benefit" the reserving states though. They also apply reciprocally, limiting the ability of these states to bring related ICJ cases against other states, even those with broader declarations that would otherwise allow such cases to proceed.[35] However, this reciprocity does not extend to the formal conditions established by individual states for the potential amendment or withdrawal of their declarations.[36] Some states reserve the right to do so unilaterally with immediate effect, while others restrict their own future changes in various ways (for example, by establishing waiting periods before they are given effect).[37] So long as contesting states have consented to Court jurisdiction in a specific case, variations in their legal rights to subsequently alter their declarations will not affect this determination. In any event, changes taking effect after the Court has already established jurisdiction in a case will not affect its continued exercise in that case.[38]

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[33]*Fisheries Jurisdiction* (Judgment), *supra* note 30 at para 54 (see also paras 43, 49). Although supporting the ICJ's jurisdictional refusal in this case as "undoubtedly in conformity with international law as it presently stands," Judge Pieter Kooijmans nonetheless noted serious concerns about its resulting implications. *Fisheries Jurisdiction (Spain v Canada)*, Separate Opinion of Judge Kooijmans, [1998] ICJ Rep 489 [*Fisheries Jurisdiction* (Separate Opinion of Judge Kooijmans)]. Related concerns are addressed in greater detail in section 4 of this article. See also Barelli, *supra* note 22 at 156–57. In dissent, Judge ad hoc Santiago Torres Bernárdez argued for a stricter textual interpretation of reservations, in part to ensure greater certainty for other states. *Fisheries Jurisdiction (Spain v Canada)*, Dissenting Opinion of Judge Torres Bernárdez, [1998] ICJ Rep 582 at para 226 [*Fisheries Jurisdiction* (Dissenting Opinion of Judge Torres Bernárdez)].

[34]*Aerial Incident of 1999*, *supra* note 26 at para 44. See also Kolb, *supra* note 25 at 26–29.

[35]See e.g. *Anglo-Iranian Oil Company*, *supra* note 30 at 103 ("jurisdiction is conferred upon the Court only to the extent to which the two Declarations coincide in conferring it"). See also Lamm, *supra* note 16 at 96–117; Vermeer & Akande, *supra* note 12; Kolb, *supra* note 25 at 16–20.

[36]See e.g. *Nicaragua* (Jurisdiction), *supra* note 22 at para 62. See also Lamm, *supra* note 16 at 113–15; Vermeer & Akande, *supra* note 12 at 35; Kolb, *supra* note 25 at 101.

[37]See e.g. Vermeer & Akande, *supra* note 12 at 34; *Jurisdiction Handbook*, *supra* note 12 at 11. See also "Declarations," *supra* note 1. Spain addressed resulting disparities by qualifying its own six-month waiting period as follows: "However, in respect of States which have established a period of less than six months between notification of the withdrawal of their Declaration and its becoming effective, the withdrawal of the Spanish Declaration shall become effective after such shorter period has elapsed" (Spain: 29 October 1990). See also Lamm, *supra* note 16 at 114–15.

[38]See e.g. *Nottebohm Case (Liechtenstein v Guatemala)*, Judgment (Preliminary Objection), [1953] ICJ Rep 111 at 123 [*Nottebohm* (Preliminary Objection)] (noting that "the subsequent lapse of the Declaration, by reason of the expiry of the [fixed] period [of acceptance] or by denunciation, cannot deprive the Court of the jurisdiction already established"). See also Lamm, *supra* note 16 at 240–42; MacDonald, *supra* note 17 at 36; Merrills, *supra* note 21 at 905–06.

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Of the seven ICJ cases brought by or against Canada to date, three have involved Optional Clause jurisdiction — cases initiated by Spain in 1995,[39] the Federal Republic of Yugoslavia (FRY) in 1999,[40] and Iran in 2023,[41] respectively.[42] As mentioned, the Court rejected jurisdiction over the Spanish claim due to a Canadian reservation. It also dismissed the FRY's claim but for jurisdictional reasons unrelated to Canada. The latter case is ongoing. All three cases will be discussed in greater detail in the following section. Canada has never relied upon Optional Clause jurisdiction to initiate an ICJ case against another state.

3. Pre-2023 Canadian Optional Clause Declarations

Canada has been a UN member state — and, therefore, a party to the *ICJ Statute*[43] — since its ratification of the *UN Charter* on 9 November 1945. Since that time, Canada has also always subjected itself to compulsory ICJ jurisdiction through related declarations, albeit never without significant restrictions. Initially, this acceptance rested on the deemed extension of its 1930 PCIJ declaration, which was already limited in various ways.[44] It only applied "until such time as notice may be given to terminate the acceptance" (following an initial ten-year commitment that expired in 1940) and only to "disputes arising after ratification … with regard to situations or facts subsequent to said ratification."[45] Apart from one restriction specific to the League of Nations,[46] the other substantive reservations established in this initial PCIJ declaration also continued with respect to the ICJ, precluding compulsory jurisdiction over disputes involving:

[39] *Fisheries Jurisdiction* (Judgment), *supra* note 30.

[40] *Case Concerning Legality of Use of Force (Serbia and Montenegro v Canada)*, Judgment (Preliminary Objections), [2004] ICJ Rep 429 [*Legality of Use of Force*].

[41] *Alleged Violations of State Immunities*, *supra* note 4.

[42] The majority of ICJ cases brought by or against Canada have cited other bases of ICJ jurisdiction. One (*Gulf of Maine*, *supra* note 13) was initiated by special agreement. Four others relied upon treaty compromissory clauses (*Legality of Use of Force*, *supra* note 40 (which also invoked Canada's Optional Clause declaration); *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v Syrian Arab Republic)*, [2023] ICJ General List No 188; *Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v Islamic Republic of Iran)*, [2023] ICJ General List No 190; and *Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Islamic Republic of Iran v Canada, Sweden, Ukraine and United Kingdom)*, [2025] ICJ General List No 198).

[43] *UN Charter*, *supra* note 7, art 93(1) ("[a]ll Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice").

[44] For the full text of Canada's PCIJ declaration, see Permanent Court of International Justice, *Collection of Texts Governing the Jurisdiction of the Court*, 4th ed (Series D – No 6) (Leyden: AW Sijthoff, 1932) at 50 [PCIJ Declaration]. This declaration was made on 20 September 1929 and ratified on 28 July 1930. As noted previously, the *ICJ Statute* (*supra* note 2, art 36(5)) expressly provides for such deemed extensions.

[45] PCIJ Declaration, *supra* note 44.

[46] This League-specific Canadian limitation reserved "the right to require that proceedings in the Court shall be suspended in respect of any dispute which has been submitted to and is under consideration by the Council of the League of Nations, provided that notice to suspend is given after the dispute has been submitted to the Council and is given within ten days of the notification of the initiation of the proceedings in the Court, and provided also that such suspension shall be limited to a period of twelve months or such longer period as may be agreed by the Parties to the dispute or determined by a decision of all the Members of the Council other than the Parties to the dispute." *Ibid.*

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- other agreed methods of dispute settlement;[47]
- other Commonwealth members;[48] and
- situations solely within Canada's domestic jurisdiction.[49]

This declaration, however, was never relied upon to establish PCIJ or ICJ jurisdiction in a contentious case, whether by or against Canada.

It remained in force until 7 April 1970 when Canada amended and further narrowed its acceptance of compulsory jurisdiction with a new — and, this time, ICJ-specific — declaration.[50] This same date was established by Canada as the revised stale date for disputes and related facts and situations, bringing it forward four decades from the date of the PCIJ declaration.[51] This 1970 declaration maintained Canada's right to withdraw its acceptance of compulsory ICJ jurisdiction, but, unlike its PCIJ declaration, it did not include an initial irrevocable fixed time commitment.[52] This time, Canada also expressly reserved the right "to add to, amend or withdraw" any reservations established by or subsequent to the new declaration, with immediate effect, upon notification of the UN secretary-general.[53] Arguably, however, this latter right was already implicit in the earlier overarching right of withdrawal, as demonstrated by Canada's very use of this new and more restrictive declaration to withdraw its initial PCIJ acceptance with immediate effect.[54]

With minor language modifications, the 1970 declaration maintained the three prior substantive Canadian reservations relating to other agreed dispute settlement

[47]*Ibid* ("other than disputes in regard to which the Parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement").

[48]*Ibid* ("disputes with the government of any other Member of the League which is a member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the Parties have agreed or shall agree"). These were not understood to be disputes with truly foreign states and, in addition, it was anticipated that a Commonwealth-specific dispute settlement mechanism might be established in future. See e.g. MacDonald, *supra* note 17 at 31; Barelli, *supra* note 22 at 155; Lamm, *supra* note 16 at 135–37.

[49]PCIJ Declaration, *supra* note 44 ("disputes with regard to questions which by international law fall exclusively within the jurisdiction of the Dominion of Canada"). This reservation was largely superfluous as the UN has no jurisdiction over such matters, pursuant to the *UN Charter*, *supra* note 7, art 2(7). See e.g. MacDonald, *supra* note 17 at 33. See also *Jurisdiction Handbook*, *supra* note 12 at 11. But see Kolb, *supra* note 25 at 64–66 (noting some remaining potential benefit).

[50]Canada, "Declaration Recognizing as Compulsory the Jurisdiction of the International Court of Justice, in Conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice," 7 April 1970, 724 UNTS 63 [1970 Declaration].

[51]*Ibid* at 64 (thereby revoking its prior acceptance of Court jurisdiction over cases between 28 July 1930 and this date). For a critique of this amendment, see MacDonald, supra note 17 at 26.

[52]1970 Declaration, *supra* note 50 at 64, para 2. No subsequent Canadian declaration has included a fixed commitment either.

[53]*Ibid* at 66, para 3.

[54]See e.g. *Right of Passage (Preliminary Objections)*, *supra* note 17 at 143–44 (concluding that there is "no essential difference" between these two situations). See also Vermeer & Akande, *supra* note 12 at 32–33; Ulfstein, *supra* note 22 at 3 (discussing a similar UK provision); *Jurisdiction Handbook*, *supra* note 12 at 12 (including a model example of such a reservation). But see MacDonald (*supra* note 17 at 4) arguing that these rights to withdraw or amend reservations each constituted a "right of partial denunciation," making the declaration "noticeably less favourable to the Court than Canada's original acceptance," and that they should therefore be removed. Barelli also highlights ongoing academic concerns over the validity of such reservations, while acknowledging the "orthodox view" that they reflect limited state consent and must be fully respected. Barelli, *supra* note 22 at 153–55.

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methods,[55] Commonwealth states,[56] and exclusive domestic jurisdiction.[57] It also added another one, rejecting compulsory ICJ jurisdiction over "disputes arising out of or concerning jurisdiction or rights claimed or exercised by Canada in respect of the conservation, management or exploitation of the living resources of the sea, or in respect of the prevention or control of pollution or contamination of the marine environment in marine areas adjacent to the coast of Canada."[58] With this new restriction, Canada sought mainly to insulate itself from legal claims arising from legislative measures managing its coastal fishing zones and controlling Arctic pollution.[59] In a related statement to the Canadian House of Commons, then Prime Minister Pierre Trudeau expressly noted that the new reservation to Canada's Optional Clause declaration

> is intended to guard against any possible litigation of certain features of these two bills. Canada strongly supports the rule of law in international affairs. … Canada is not prepared however to engage in litigation with other states concerning vital issues where the law is either inadequate or non-existent and thus does not provide a firm basis for judicial decision.[60]

He nonetheless expressed hope that new international rules would soon be agreed and that the reservation would therefore only be temporary.[61]

Canada did in fact remove this reservation when it submitted its next amended declaration on 10 September 1985 (while maintaining the other three substantive reservations relating to other agreed dispute settlement methods, Commonwealth states, and exclusive domestic jurisdiction, respectively).[62] Removing this reservation may not have fully reflected the spirit of Trudeau's commitment though. In its only other major revision from the 1970 version, the amended declaration once again brought forward the applicable stale date, also to 10 September 1985.[63] This precluded

[55] 1970 Declaration, *supra* note 50 at 66, para 2(a) ("disputes in regard to which parties have agreed or shall agree to have recourse to some other method of peaceful settlement").

[56] *Ibid* at para 2(b) ("disputes with the Government of any other country which is a member of the Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree").

[57] *Ibid* at para 2(c) ("disputes with regard to questions which by international law fall exclusively within the jurisdiction of Canada").

[58] *Ibid* at para 2(d).

[59] See e.g. MacDonald, *supra* note 17 at 4, 26.

[60] *House of Commons Debates*, 28-2, vol 6 (8 April 1970) at 5623–24, also cited in MacDonald, *supra* note 17 at 3.

[61] *Ibid* at 5624.

[62] Canada, "Declaration Recognizing as Compulsory the Jurisdiction of the International Court of Justice, in Conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice," 10 September 1985, 1403 UNTS 133 [1985 Declaration]. For the three continued reservations, one included a slight wording change (dropping reference to the Commonwealth "of Nations"), while the other two were repeated verbatim. Although additional related international legal rules had been agreed with the 1982 adoption of the *United Nations Convention on the Law of the Sea*, 10 December 1982, 1833 UNTS 397 (entered into force 16 November 1994), they did not enter into force until 1994 and, for Canada, not until 2003. "United Nations Treaty Collection: Depositary: Status of Treaties: Chapter XXI.6," online: *United Nations Treaty Collection* <treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en>.

[63] 1985 Declaration, *supra* note 62 at para (2) (accepting jurisdiction "over all disputes arising after the present declaration with regard to situations or facts subsequent to this declaration" (subject to various other specific reservations)).

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compulsory ICJ jurisdiction over earlier disputes and those concerning earlier facts or situations — including, at least arguably, the Canadian extension of coastal fishing zone protections and adoption of pollution control measures[64] — without Canada having to maintain specific related substantive reservations. In any event, this was never judicially tested. No ICJ cases were brought by or against Canada pursuant to its 1970 or 1985 Optional Clause declarations.

Canada submitted another revised declaration less than nine years later on 10 May 1994.[65] The stale date was again advanced to this same date.[66] In its only other substantive change from the 1985 declaration, Canada also added a new reservation rejecting compulsory ICJ jurisdiction over "disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the NAFO [Northwest Atlantic Fisheries Organization] Regulatory Area, as defined in the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, 1978, and the enforcement of such measures."[67] Prior substantive reservations relating to other agreed dispute settlement methods, Commonwealth states, and exclusive domestic jurisdiction were retained, along with the rights of immediate withdrawal and amendment.[68]

The new reservation anticipated the coming into force of controversial amendments to Canada's *Coastal Fisheries Protection Act*, which occurred just two days later.[69] Among other things, this Canadian legislation and its subsequent implementing regulations established prohibitions and authorized related enforcement, applicable to certain (over-)fishing activities taking place beyond the 200-nautical mile limit of Canada's claimed fisheries zones.[70] In March 1995, Canadian officials exercising this domestic authority boarded a Spanish-flagged fishing trawler on the high seas and forced it into a Canadian port. The ICJ subsequently relied upon Canada's invocation of its NAFO fisheries reservation to reject Optional Clause jurisdiction in the related *Fisheries Jurisdiction* case brought by Spain.[71] This prevented

[64]Arguments to restrict Court jurisdiction on this basis would still have been controversial, though, particularly if the specific dispute in question arose after this date (though a detailed examination of this issue is beyond the scope of this article). See e.g. Lamm, *supra* note 16 at 118–26; Kolb, *supra* note 25 at 90–94 (for a review of PCIJ and ICJ decisions addressing similar temporal restrictions).

[65]Canada, "Declaration of Acceptance by Canada of the Compulsory Jurisdiction of the International Court of Justice New York," 10 May 1994, Can TS 1994/41 [1994 Declaration].

[66]*Ibid* at para (2).

[67]*Ibid* at para (2)(d).

[68]*Ibid.* These various restrictions largely mirrored the wording of the 1985 declaration.

[69]Bill C-29, *An Act to Amend the Coastal Fisheries Protection Act*, 1st Sess, 35th Parl (1994). This bill was introduced on 10 May 1994, the same day that Canada amended its ICJ declaration.

[70]For an overview of this legislative regime — and the broader facts underpinning related ICJ proceedings — see *Fisheries Jurisdiction* (Judgment), *supra* note 30 at paras 13–22. See also Allen L Springer, "The Canadian Turbot War with Spain: Unilateral State Action in Defense of Environmental Interests" (1997) 6:1 J Environment & Development 26. Canada publicly stated in a May 1994 news release that the related reservation was "a temporary step in response to an emergency situation" (as cited in *Fisheries Jurisdiction* (Judgment), *ibid* at para 60); nonetheless, the 2023 declaration still maintains it. "Declarations," *supra* note 1 (Canada: 28 August 2023, at para 2(f)).

[71]*Fisheries Jurisdiction* (Judgment), *supra* note 30 at para 87. It is nonetheless worth noting that a negotiated settlement was still reached and that the dispute also helped spur a strengthened international legal regime protecting straddling stocks (including additional North Atlantic Fisheries Organization [NAFO] measures and the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of*

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a final and binding Court assessment of the international legal merits of Canada's enforcement actions, which remain controversial.[72] To date, this is the only time that the Court has rejected Optional Clause jurisdiction due to a Canadian reservation. The 1994 Canadian declaration has nonetheless been implicated twice more in ICJ proceedings. In the next case, *Legality of Use of Force*, brought by the FRY in 1999, the ICJ also refused jurisdiction but not because of Canadian reservations. Instead, the Court determined that the FRY itself was not a UN member state or party to the *ICJ Statute* at the material time.[73]

Jurisdiction has not yet been assessed in the final case, *Alleged Violations of State Immunities*, brought by Iran on 27 June 2023.[74] If the case continues, though, its establishment seems likely as both states appear to have accepted it at the time the case was initiated. Just one day before doing so, Iran had deposited its first Optional Clause declaration in over seventy years, albeit "only in relation to the following disputes: (i) the jurisdictional immunities of the State and State property; [and] (ii) immunity from measures of constraint against State or State property."[75] As two commentators noted, the timing and very limited scope of this acceptance certainly "gives the impression that it was tailor-made for the present proceedings."[76] However, even if this is true, the Court's own past practice strongly suggests that this will not bar it from exercising related jurisdiction.[77] In particular, the Court recognized in *Right of Passage* that

> a State accepting the jurisdiction of the Court must expect that an Application may be filed against it before the Court by a new declarant State on the same day on which that State deposits with the Secretary-General its Declaration of

Straddling Fish Stocks and Highly Migratory Fish Stocks, 4 August 1995, 2167 UNTS 3 (entered into force 11 December 2001). See e.g. *Fisheries Jurisdiction* (Judgment), *supra* note 30 at paras 21–22; Springer, *supra* note 70 at 36–37, 42.

[72]For additional discussion of this case, and the "manipulative" — but still effective — Canadian reservation, see Barelli, *supra* note 22 at 157. See also Springer, *supra* note 70. Merrills, *supra* note 21 at 906, also notes that the concurrent introduction of related domestic legislation illustrates the "advantages of flexibility" afforded by Canada's right to amend its declaration with immediate effect.

[73]*Legality of Use of Force*, *supra* note 40.

[74]*Alleged Violations of State Immunities*, *supra* note 4.

[75]"Declarations," *supra* note 1 (Islamic Republic of Iran: 26 June 2023, at para 1). This was Iran's first acceptance of Optional Clause jurisdiction since withdrawing its PCIJ declaration in 1951 (following the initiation of *Anglo-Iranian Oil Company*, *supra* note 30, by the United Kingdom).

[76]Valentin von Stosch & Felix Herbert, "Jurisdictional Immunities, All over Again?" *EJIL Talk!* (7 July 2023), online: <www.ejiltalk.org/jurisdictional-immunities-all-over-again/>.

[77]See e.g. *Right of Passage* (Preliminary Objections), *supra* note 17 at 146; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria)*, Judgment (Preliminary Objections), [1998] ICJ Rep 297 at para 39 [*Land and Maritime Boundary between Cameroon and Nigeria* (Preliminary Objections)]. See also von Stosch & Herbert, *supra* note 76; Vermeer & Akande, *supra* note 12 at 36–37. Despite recognizing the narrowness of the Iranian declaration, and its non-traditional structure, Kolb concludes that "such declarations are not legally faulty and do also not constitute an abuse of right." Kolb, *supra* note 25 at 32. Nonetheless, although writing prior to Iran's declaration, Vermeer and Akande highlight some lingering academic concern over similarly structured declarations — for example, that of Equatorial Guinea in 2017 — noting that "[i]t has been questioned whether declarations in this form comply with the requirements of art. 36(2) of the Statute, given that they do not even *prima facie* recognize the Court's jurisdiction over 'all legal disputes' under international law." Vermeer & Akande, *supra* note 12 at 40.

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> Acceptance. It is on that very day that the consensual bond, which is the basis of the Optional Clause, comes into being between the States concerned.[78]

4. 2023 Canadian declaration

Canada submitted its most recent Optional Clause declaration just two months later on 28 August 2023. This version maintained all restrictions included in the 1994 Canadian declaration — namely, its four listed substantive reservations (relating to other agreed dispute settlement methods, Commonwealth states, exclusive domestic jurisdiction, and NAFO-regulated fisheries, respectively), rights of withdrawal and amendment with immediate effect, and, in a break with past practice, even the stale date of 10 May 1994.[79] However, as outlined below, Canada also added two new reservations that, in conjunction with these earlier limitations, now render its continued acceptance of compulsory ICJ jurisdiction illusory.

The first new Canadian reservation is an 'anti-ambush' protection precluding ICJ jurisdiction in two specific situations:

> [D]isputes in respect of which any other party to the dispute has accepted the compulsory jurisdiction of the International Court of Justice only in relation to or for the purpose of the dispute; or where the acceptance of the Court's compulsory jurisdiction on behalf of any other party to the dispute was deposited or ratified less than twelve months prior to the filing of the application bringing the dispute before the Court[.][80]

Although restrictive, there is a lengthy history of states making such reservations, and the Court has recognized their ability to do so.[81]

Canada's second new reservation is both more consequential and less well established. It excludes from compulsory ICJ jurisdiction "disputes or claims in respect of which the dispute or claim in question has not been notified to Canada by the State or States concerned in writing, including of an intention to submit the dispute or claim to the Court failing an amicable settlement, at least six months in advance of the submission of the dispute or claim to the Court[.]"[82] This required notification period could provide Canada with opportunities for negotiated dispute settlement prior to facing disruptive and costly litigation;[83] however, when combined with its rights to withdraw or amend its declaration with immediate effect, this

[78] *Right of Passage* (Preliminary Objections), *supra* note 17.

[79] "Declarations," *supra* note 1 (Canada: 28 August 2023, at paras 2 and 3). These various restrictions largely mirrored the wording of the 1994 Declaration.

[80] *Ibid* at para 2(d).

[81] See e.g. Lamm, *supra* note 16 at 129–34 (noting the prevalence of such reservations after the ICJ decided *Right of Passage* (Preliminary Objections), *supra* note 17 (which, among other things, recognized the legal effect of declarations upon receipt by the UN secretary-general rather than their subsequent circulation); Vermeer & Akande, *supra* note 12 at 24, 37, 43ff. The ICJ expressly recognized this possibility in *Land and Maritime Boundary between Cameroon and Nigeria* (Preliminary Objections), *supra* note 77 at para 45 (noting that Nigeria could have included such a clause in its declaration but did not do so). See also *Jurisdiction Handbook*, *supra* note 12 at 11; Merrills, *supra* note 22 at 910; Kolb, *supra* note 25 at 44–47, 94–95. There is, in fact, also a lengthy history of states depositing their initial Optional Clause declarations and filing cases shortly thereafter. See e.g. Vermeer & Akande, *supra* note 12 at 23–25.

[82] "Declarations," *supra* note 1 (Canada: 28 August 2023, at para 2(e)).

[83] These and other potential benefits are addressed in greater detail below.

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reservation also appears to establish a minimum six-month window for Canada to forestall any potential ICJ claim against it, should it wish to do so (regardless of whether the underlying dispute is settled by other means).[84]

At any time during this notification period, Canada could submit a revised declaration specifically tailored to prevent Court jurisdiction in any related dispute — for example, with a new reservation aimed either at the state or the subject matter in question[85] — or it could withdraw its declaration altogether. Put another way, despite maintaining an Optional Clause declaration, Canada now appears able to reject related Court jurisdiction on a dispute-specific basis, even after being formally notified of impending litigation against it. Exercised or not, this apparent unilateral Canadian control over whether Optional Clause cases can proceed seems antithetical to any meaningful advance acceptance of compulsory dispute settlement. These issues, and their potential implications, are discussed in more detail below.

A 2017 amendment to the UK declaration contains the earliest precedent for this reservation.[86] It was copied almost verbatim by Canada in 2023,[87] having been previously copied by Latvia in a 2019 revision of its own declaration.[88] In a 2017 statement to the UK House of Commons, Sir Alan Duncan, then minister of state for foreign and commonwealth affairs, offered the following explanation for this UK notification requirement:

> This would provide an opportunity for diplomatic engagement with the State concerned. The prior notification of a claim is an established part of domestic dispute resolution in the United Kingdom, as well as being a feature of the dispute settlement provisions in many international treaties. The judgment of the ICJ in the nuclear disarmament case[89] accepted that a State must be made aware that litigants have opposing views, otherwise a respondent State does not have the opportunity to react to those opposing views before the institution of proceedings against it. The revised Declaration incorporates the UK position that was advanced in the proceedings that prior notification of the kind described is an appropriate step before an application instituting proceedings, seising the Court, can be submitted.[90]

[84]See e.g. Ulfstein, *supra* note 22 at 4–5 (discussing the combined effects of almost identical UK reservations). See also Vermeer & Akande, *supra* note 12 at 38; Barelli, *supra* note 22 at 160–61.

[85]ICJ precedent supports potential state-specific reservations. See *Aerial Incident of 1999*, *supra* note 26 at para 40. See also related discussion in Vermeer & Akande, *supra* note 12 at 44–45; Lamm, *supra* note 16 at 137. Subject-specific reservations are also clearly acceptable, as previously discussed. See e.g. Lamm, *supra* note 16 at 76; *Fisheries Jurisdiction* (Judgment), *supra* note 30 (giving effect to a subject-specific Canadian reservation).

[86]"Declarations," *supra* note 1 (United Kingdom: 22 February 2017, at para 1(v)).

[87]*Ibid* (Canada: 28 August 2023, at para 2(e)). Canada also copied the 2017 UK anti-ambush provision; paragraph 2(d) of its declaration reflects UK declaration, paragraph 1(iii). *Ibid.* Like Canada, the United Kingdom also maintains reservations concerning other agreed dispute settlement methods and Commonwealth states, and rights of immediate withdrawal and amendment. *Ibid* at paras 1, 2.

[88]"Declarations," *supra* note 1 (Republic of Latvia: 24 September 2019). This ICJ-specific declaration replaced Latvia's original acceptance of PCIJ jurisdiction.

[89]*Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v United Kingdom)*, Judgment (Preliminary Objections), [2016] ICJ Rep 833 [*Nuclear Disarmament*].

[90]UK, Parliament, "Amendments to the UK's Optional Clause Declaration to the International Court of Justice," Statement UIN HCWS489 (23 February 2017), online: *UK Parliament* <questions-statements.

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This offers a principled justification for the UK reservation when viewed in isolation. Indeed, it appears consistent with the ICJ's own more limited position in *Nuclear Disarmament*, and in an earlier case, that, while an underlying legal dispute must exist before it can exercise related jurisdiction, prior notification of a specific intent to initiate Court proceedings is not required unless an applicable Optional Clause declaration establishes otherwise.[91]

However, the UK statement did not address the implications of this change when combined with its other restrictions on compulsory ICJ jurisdiction. Like Canada, the United Kingdom also expressly retains rights to withdraw or amend its declaration with immediate effect.[92] As a result, and for the same reasons noted above, its notification requirement has attracted some scholarly criticism. For example, Geir Ulfstein argues that "the UK's declaration no longer meaningfully can be seen as compulsory in a legal sense."[93] Mauro Barelli echoes this conclusion, noting that "the UK declaration includes a number of particularly controversial conditions and limitations that hardly match its pro-rule of law rhetoric and amount to a *de-facto* 'exit' from the system of compulsory jurisdiction."[94]

Canada did not widely publicize the recent amendments to its own Optional Clause declaration, let alone the rationale underpinning them. Indeed, no contemporaneous Canadian statement concerning the 2023 declaration appears to have been made at all, beyond the formal notice provided to, and then subsequently circulated by, the UN secretary-general.[95] However, in February 2024, the new notification reservation was discussed before the Standing Senate Committee on Foreign Affairs and International Trade after a committee member questioned its potential effects on international dispute settlement.[96] In response, a senior Canadian official asserted that it "encourages states to sit down and have a period of time to discuss the object of the dispute before going to the court immediately," noting that this could also help to conserve limited ICJ resources.[97] He added that "countries like Canada are, obviously, mindful of protecting the integrity of the jurisdiction of the court to make sure that it is able to play its role when it's time for it to play its role," suggesting that this

parliament.uk/written-statements/detail/2017-02-23/HCWS489> [UK Parliamentary Statement]. This statement was repeated in the House of Lords. *Ibid.*

[91] *Nuclear Disarmament*, *supra* note 89 at paras 38, 45 (noting that "the Court has rejected the view that notice or prior negotiations are required where it has been seised on the basis of declarations made pursuant to Article 36, paragraph 2, of the Statute, unless one of those declarations so provides"). This reflected its earlier related conclusion in *Land and Maritime Boundary between Cameroon and Nigeria* (Preliminary Objections), *supra* note 77 at para 39.

[92] "Declarations," *supra* note 1 (United Kingdom: 22 February 2017, at paras 1, 2).

[93] Ulfstein, *supra* note 22 at 4.

[94] Barelli, *supra* note 22 at 152. Kolb, in contrast, shares serious concerns about the combined effects of these rights but is therefore unwilling to assume, at least in advance, that the United Kingdom intended to rely upon them in this way. Kolb, *supra* note 25 at 96.

[95] For example, no related statement is maintained on the official Global Affairs Canada website, online: <international.canada.ca/en/global-affairs>, despite numerous other recent references to the Court. For the role of the secretary-general, see e.g. *ICJ Statute*, *supra* note 2, art 36(4).

[96] *Standing Senate Committee on Foreign Affairs and International Trade, Evidence*, 44-1 (15 February 2024) at 68: 24–25 [*Senate Committee*].

[97] *Ibid* at 68: 24 (Louis-Martin Aumais, then acting assistant deputy minister, legal affairs at Global Affairs Canada).

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would follow unsuccessful negotiations.[98] However, this Canadian explanation (like that of the United Kingdom) did not address the effects of this new reservation when combined with its other restrictions on the acceptance of compulsory Court jurisdiction. Despite a general assurance that this reservation "is in no way meant to make it more difficult to find peaceful settlement of disputes," no ICJ-specific commitment was made to refrain from amending or withdrawing Canada's Optional Clause declaration during the notification period.[99]

The recent amendments to the Canadian declaration were clearly influenced by the earlier UK precedent;[100] however, the context certainly suggests that Canada also made them, at least in part, in reaction to Iran's initiation of *Alleged Violations of State Immunities* just one day after its narrow acceptance of Optional Clause jurisdiction. That said, they will not retroactively preclude Court jurisdiction in these proceedings. Since these Canadian changes only apply to cases initiated after the 2023 declaration, their potential rationale must be viewed in this light — that is, as a way to avoid surprise and otherwise manage future ICJ cases brought against Canada. *Alleged Violations of State Immunities* nonetheless serves as a useful illustration of their possible implications. For example, had it applied, the Canadian anti-ambush protection alone would have required Iran to wait at least twelve months following its declaration before initiating its case, and, even then, its apparent dispute-specific nature might well have been a jurisdictional barrier. Iran would also have had to provide Canada with at least six months written notice of both the dispute and its intention to submit an ICJ claim failing an amicable settlement. This would have provided Canada with an opportunity to formally respond to specific Iranian claims, and would have given both states a negotiating window to address them, prior to any potential ICJ engagement. However, it would also have permitted Canada to unilaterally revoke related Court jurisdiction by amending or withdrawing its Optional Clause declaration during this notification period.[101] This is particularly noteworthy as it is not obvious that Canada will prevail if this case is ultimately decided on its legal merits.[102]

It is unclear whether future litigation risks prompted the 2023 Canadian amendments. Some were certainly foreseeable, though. Notably, earlier that same year, the UN General Assembly had requested an ICJ advisory opinion on the climate-related

[98] *Ibid* at 68: 24–25.

[99] *Ibid.*

[100] *Ibid* (expressly recognizing this "like-minded" influence on Canada's notification reservation). This answer also specifically mentioned Australia and New Zealand as influences (likely an implicit reference to their respective anti-ambush provisions since their declarations do not establish formal notification requirements). *Ibid.* See also "Declarations," *supra* note 1 (Australia: 22 March 2002) and (New Zealand: 22 September 1977).

[101] For example, a new Canadian reservation could have precluded compulsory ICJ jurisdiction over any dispute with Iran or relating to Canada's *State Immunity Act*, RSC 1985, c S-18 (or, more narrowly, section 6.1 (1), its state-sponsored terrorism exception).

[102] Although beyond the scope of this article, Canadian restrictions on state immunity in domestic proceedings relating to state-sponsored terrorism raise serious international legal concerns. See e.g. von Stosch & Herbert, *supra* note 76. Notably, the ICJ has upheld state immunity even where domestic proceedings concerned serious admitted violations of international humanitarian law (and even when these might be considered *jus cogens*). *Jurisdictional Immunities of the State (Germany v Italy: Greece intervening)*, Judgment, [2012] ICJ Rep 99. But see William S Dodge, "Why Canada's Terrorism Exception Does Not Violate International Law," in this issue.

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international legal obligations of states and the potential legal consequences of related harmful acts and omissions.[103] Considerable uncertainty therefore surrounded these legal issues when Canada revised its declaration less than five months later. Although the resulting 2025 advisory opinion is not directly binding on states, it did recognize that potential state legal responsibility for such harm can arise not only from treaty obligations but also from various customary international law principles.[104] The risks of adverse legal findings in future related contentious cases could therefore be significant, particularly as some estimates of climate-related harm already exceed one hundred billion dollars annually.[105] Whether intentional or not, Canada's current restrictions now seem to allow it to control whether any such Optional Clause cases can ever be brought against it.[106]

A. (Other) legal implications

The 2023 Canadian declaration nevertheless does still have some residual legal effect. Other reciprocating states can continue to rely on it to establish ICJ jurisdiction in contentious cases, should Canada choose not to amend or withdraw its declaration within the mandatory notification period. Indeed, the declaration still provides a basis for these states to initiate claims and to request legally binding provisional measures, if not necessarily to receive them, even if current or future Canadian reservations are invoked by Canada and ultimately preclude Court jurisdiction to assess their merits.[107]

Canada can also still bring cases against such states; however, its ability to do so will be limited by the reciprocal application of its own substantive reservations, in addition to those found in the opposing state's declaration. Among other things, this will likely now require Canada to provide at least a six-month written notice before initiating any such claim or risk a related challenge to ICJ jurisdiction by the opposing state (since this appears to involve a substantive jurisdictional restriction, subject to reciprocity, rather than a formal condition of the Canadian declaration, such as the right of immediate withdrawal). The United Kingdom appears to accept this in relation to its own notification requirement: immediately following discussion of this specific reservation, its 2017 parliamentary statement noted that "[t]he United Kingdom would be held to the terms of the new Declaration in respect of any

[103]UNGA, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change*, 77th Sess, UN Doc A/Res/77/276 (29 March 2023).

[104]*Obligations of States in Respect of Climate Change*, Advisory Opinion, 23 July 2025, ICJ General List No 187 at para 457.

[105]See e.g. Rebecca Newman & Ilan Noy, "The Global Costs of Extreme Weather That Are Attributable to Climate Change" (2023) 14: 6103 Nature Communications 1, online: <www.nature.com/articles/s41467-023-41888-1>. The ICJ's advisory opinion on these issues could inform subsequent contentious cases as an authoritative albeit non-binding statement of international law.

[106]Optional Clause jurisdiction may be especially important to such cases as key climate-related treaties do not automatically establish compulsory ICJ dispute settlement authority. See e.g. *United Nations Framework Convention on Climate Change*, 9 May 1992, 1771 UNTS 107, art 14 (entered into force 21 March 1994); *Paris Agreement*, 12 December 2015, 3156 UNTS 79, art 24 (entered into force 4 November 2016).

[107]See e.g. Vermeer & Akande, *supra* note 12 at 30. One of the reasons that France revoked its declaration instead of replacing it with greater restrictions was to avoid this ongoing risk. The legally binding effect of such measures was subsequently clarified by the ICJ in *LaGrand (Germany v United States)*, Judgment, [2001] ICJ Rep 466 at para 109.

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proceedings that it may wish to institute. The Government is content to be held to this standard."[108]

However, reciprocal application of the notification requirement would not necessarily mean that other states could pre-empt compulsory ICJ jurisdiction. This only results in conjunction with a right to amend or withdraw declarations with immediate effect (or otherwise during the notification period). Unlike Canada and the United Kingdom, not all states expressly maintain the latter rights.[109] In fact, many states have formally established six-month waiting periods before changes to their Optional Clause declarations take effect.[110] The ICJ has previously characterized such unilateral restrictions as "inescapable" binding obligations.[111] Since reciprocity does not extend to these procedural rights either, it appears that at least some states would have difficulty preventing contentious cases going forward, even with advance notice.[112]

The legal validity of the 2023 Canadian declaration has not been tested. No contentious cases have been initiated on its basis, nor has the ICJ been called upon to assess related UK or Latvian reservations. Challenging it may nonetheless prove difficult. The ICJ has previously observed that reservations "operate to define the parameters of the State's acceptance of the compulsory jurisdiction of the Court. There is thus no reason to interpret them restrictively."[113] Instead, they "should be interpreted in a manner compatible with the effect sought by the reserving State."[114] As it stands, the Canadian declaration does still constitute *prima facie* acceptance of compulsory Court jurisdiction following the notification period (albeit with considerable other restrictions). Applying this notification requirement would not appear to

[108]UK Parliamentary Statement, *supra* note 90. But see Vermeer & Akande, *supra* note 12 at 38 (discussing this UK reservation in a section otherwise addressing restrictions not subject to reciprocity, though likely due to related consideration of the right of immediate withdrawal).

[109]"Declarations," *supra* note 1 (see e.g. Poland: 10 July 2024). See also Vermeer & Akande, *supra* note 12 at 33–34.

[110]See e.g. Vermeer & Akande, *supra* note 12 (noting sixteen declarations with express waiting periods, most six months long). As previously noted in note 37 above, Spain addressed resulting disparities by qualifying its own six-month waiting period in relation to states with shorter or non-existent notice requirements.

[111]*Nicaragua* (Jurisdiction), *supra* note 22 at para 61.

[112]For example, in the case of a six-month waiting period, doing so would appear to require almost immediate declaration withdrawal or amendment following notification receipt. Various other current declarations are silent concerning either rights of withdrawal or when such rights should be given effect. See e.g. Vermeer & Akande, *supra* note 12 at 33–34 (noting eleven such declarations). See also "Declarations," *supra* note 1. In addressing this latter issue, the Court in *Nicaragua* (Jurisdiction), *supra* note 22 at para 63, concluded that "the right of immediate termination of declarations with indefinite duration is far from established." Instead, it observed that "[i]t appears from the requirements of good faith that they should be treated, by analogy, according to the law of treaties, which requires a reasonable time for withdrawal from or termination of treaties that contain no provision regarding the duration of their validity." *Ibid.* However, the Court did not further define the legal parameters of this notice period beyond recognizing that, in this specific case, three days "would not amount to a 'reasonable time'." *Ibid.* See also Vermeer & Akande, *supra* note 12 at 38. It is unclear how, or even if, the concept of reasonableness would be affected in the context of a case involving the new Canadian declaration (for example, if another state sought to withdraw its own declaration during the six-month notice period, without having expressly reserved the right to do so).

[113]*Fisheries Jurisdiction* (Judgment), *supra* note 30 at para 44.

[114]*Ibid* at para 52. See also notes 33–34 above and related text (for discussion of continued ICJ reliance on both subjective and objective considerations when interpreting reservations to Optional Clause declarations).

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raise serious interpretive concerns on its own. It is unambiguous: Canada does not accept compulsory Court jurisdiction in cases initiated against it without at least six months prior written notice. The straightforward application of this reservation therefore seems likely to prevent such cases from proceeding, at least without its consent.[115] Similarly, it will clearly not bar Court jurisdiction in cases initiated after this notice period has elapsed.

Doing so would instead require an additional formal step — that is, amendment or withdrawal of the 2023 Canadian declaration prior to the end of the six-month notification period. Here too, Canada has unambiguously claimed the right to do so, with immediate effect. While Barelli notes that a "courageous Court" might still seek to impose a notice requirement on a state expressly reserving a right to amend or withdraw its declaration with immediate effect, this is difficult to reconcile with the voluntary nature of the Optional Clause system and the Court's own related jurisprudence.[116] A good faith requirement of reasonable notice before withdrawal becomes effective only seems to apply when a declaration does not otherwise establish applicable timelines.[117] The Court has previously observed, in *Military and Paramilitary Activities in and against Nicaragua*, that states "may specify how long the declaration itself shall remain in force, or what notice (if any) will be required to terminate it."[118] More recently, in 2016, the Court expressly recognized in *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea* that "[i]n its declaration under Article 36, paragraph 2, a State is free to provide that that declaration may be withdrawn with immediate effect."[119]

[115]Indeed, as noted in note 91 above, the ICJ has explicitly recognized the potential for such reservations in both *Land and Maritime Boundary between Cameroon and Nigeria* (Preliminary Objections) and *Nuclear Disarmament*. Canada could still consent to such a case simply by not invoking this reservation to dispute ICJ jurisdiction.

[116]Barelli, *supra* note 22 at 161. Indeed, as previously noted, Barelli himself recognizes that "orthodox" legal views do not support this position (at 153). See e.g. *Nicaragua* (Jurisdiction), *supra* note 22 at para 59. See also *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea*, Judgment (Preliminary Objections), [2016] ICJ Rep 24 at para 45 [*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean* (Preliminary Objections)]. But see Kolb, *supra* note 25 at 104.

[117]See e.g. *Nicaragua* (Jurisdiction), *supra* note 22 at paras 59–63 (and related discussion in note 112 above and note 118 below). See also Vermeer & Akande, *supra* note 12 at 38; Barelli, *supra* note 22. But see Kolb, *supra* note 25 (arguing that the Court should nonetheless interpret "immediate" to still require a period of reasonable notice). Lamm also highlights remaining ambiguity but notes that state practice since *Nicaragua* clearly favours withdrawal with immediate effect (given the large subsequent increase in declarations expressly claiming this right). Lamm, *supra* note 16 at 238–39.

[118]*Nicaragua* (Jurisdiction), *supra* note 22 at para 59. However, the Court did not directly address whether a reasonable notice requirement also applies to rights of "immediate" withdrawal, leaving some remaining ambiguity. Judge Jennings (one of three Court members to make this point) nonetheless argued that "States now … have the right, before seisin of the Court, to withdraw or alter their declarations of acceptance, with immediate effect, and, moreover, even in anticipation of a particular case or class of cases." *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Separate Opinion of Judge Sir Robert Jennings, [1984] ICJ Rep 533 at 553. See also related discussion in Lamm, *supra* note 16 at 235–37.

[119]*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean* (Preliminary Objections), *supra* note 116 at para 45. Although not the principal issue under consideration, the Court raised this point specifically to distinguish this situation from more restrictive principles governing the effective date of treaty denunciation.

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If Canada exercises this right during the required notification period, and it either does not replace its declaration or does so with a new dispute-specific reservation, it would appear to bar the ICJ from proceeding with any future related case.[120] Although Barelli has raised "good faith" concerns over related UK reservations, he still notes that "the practice of modifying a declaration with the sole purpose of preventing unwanted litigation may well stand the Court's test of acceptability."[121] This situation is not dissimilar to the operation of an anti-ambush reservation in conjunction with a right of amendment or withdrawal with immediate effect.[122] Requiring other states to delay initiating legal claims for a period of time after making their declarations also allows reserving states to pre-emptively revoke related Court jurisdiction, should they wish.[123] The general notice provided to them is simply less detailed, concerning potential future litigants rather than specific legal disputes. In practice, this may be a distinction without much difference, particularly in the context of ongoing bilateral disagreements.

Indeed, absent any applicable substantive reservations, a right of immediate withdrawal alone can still offer states considerable control over some legal disputes. Any efforts by other states to settle such disputes without resorting to litigation could still raise the risk of possible future ICJ claims and provide a window to prevent them (albeit one of indeterminate length). This potential for pre-emptive withdrawal has led to significant academic criticism of this right, both for restricting Optional Clause jurisdiction and for potentially discouraging diplomatic and other non-judicial dispute settlement efforts prior to litigation.[124] The Court has nonetheless expressly recognized that states may retain this right.[125] In fact, rights of withdrawal and amendment have already been relied upon by various states to obviate Court jurisdiction in specific anticipated cases against them.[126]

The past practice of the ICJ indicates that it will seek to give effect to the declarant state's intentions, even if this nullifies its own resulting jurisdiction.[127] Indeed, the Court has expressly recognized that reservations can remain valid even if they are

[120]As previously noted in note 85 above, subject- and state-specific reservations are both accepted practices in Optional Clause declarations.

[121]Barelli, *supra* note 22 at 154, 157. He further concludes (at 161) that "[t]he very fact that the UK could have this choice is of course troubling; but what is even more troubling is the fact that its attempt to escape judicial scrutiny would be, in all likelihood, successful." Vermeer and Akande also observe that this "guarantees to the UK the opportunity, if it so chooses, to change its declaration to exclude the Court's jurisdiction over the dispute." Vermeer & Akande, *supra* note 12 at 38. See also Ulfstein, *supra* note 22 at 4–5. But see Kolb, *supra* note 25 at 95–96 (raising validity concerns discussed in more detail in notes 129–34 below and related text).

[122]All of which are now common provisions in Optional Clause declarations. See e.g. *Jurisdictional Handbook*, *supra* note 12; Vermeer & Akande, *supra* note 12 at 34, 56.

[123]See e.g. Lamm, *supra* note 16 at 131 (recognizing that "the 'success' of such acts also depends on the provisions relating to the amendment or termination of the given state's declaration of acceptance"); Barelli, *supra* note 22 at 158.

[124]See e.g. Vermeer & Akande, *supra* note 12 at 36; MacDonald, *supra* note 17 at 17–18; Kolb, *supra* note 25 at 1101–06; Merrills, *supra* note 21 at 905–06; Barelli, *supra* note 22 at 161.

[125]*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean* (Preliminary Objections), *supra* note 116 at para 45 (as outlined in more detail in note 119 above and related text).

[126]Lamm, *supra* note 16 at 2226–28; Vermeer & Akande, *supra* note 12 at 35; MacDonald, *supra* note 17 at 18. For example, Australia appears to have done so twice (in 1952 and 2002). Vermeer & Akande, *supra* note 12.

[127]See e.g. *Fisheries Jurisdiction* (Judgment), *supra* note 30 (and related discussion in note 33 above).

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specifically designed to shield legally questionable actions from its review.[128] An affected state might nonetheless still challenge any Canadian right to withdraw or amend its Optional Clause declaration during the mandatory notification period, with immediate effect, as contrary to the *ICJ Statute*. Robert Kolb, for example, implies that reserving such a right would be "toxic" to the law underpinning ICJ jurisdiction.[129] It is unclear how the Court would respond to such arguments since it has not previously addressed this issue or its implications.[130] However, various scholars maintain that reservations conflicting with the *ICJ Statute* should be considered invalid, and this has also been argued, at times, by individual members of the Court.[131]

That said, it does not necessarily follow that any aspects of the current Canadian declaration, or any subsequent changes relying upon it, would be considered legally incompatible with the *ICJ Statute*. A restriction directly impinging on the competence of the ICJ to determine its own jurisdiction would appear to raise greater concerns; for example, a "self-judging" reservation — such as one rejecting Court jurisdiction over matters that a state "considers to be" within its domestic jurisdiction — purports to allow the state itself to make such a determination, rather than the Court, potentially even after the latter has been validly seized with a dispute.[132]

[128]See e.g. *Fisheries Jurisdiction* (Judgment), *supra* note 30. See also *Fisheries Jurisdiction (Spain v Canada)*, Separate Opinion of President Schwebel), [1998] ICJ Rep 470 at para 4 [*Fisheries Jurisdiction* (Separate Opinion of President Schwebel)] ("[i]f States by their reservations could withhold jurisdiction only where their measures and actions are incontestably legal, and not withhold jurisdiction where their measures or actions are illegal or arguably illegal, much of the reason for making reservations would disappear").

[129]Kolb, *supra* note 25 at 95–96. As previously noted in note 94 above, he is therefore unwilling to accuse the United Kingdom of having done so in advance.

[130]The ICJ has nonetheless given effect to reservations raising potential validity concerns on more than one occasion but without directly addressing the issue. For example, in *Certain Norwegian Loans*, it did so by noting that the parties themselves had not contested this issue (Norway had instead relied upon the reciprocal application of a French reservation). *Certain Norwegian Loans* (Judgment), *supra* note 30 at 27 ("the Court has before it a provision which both Parties to the dispute regard as constituting an expression of their common will relating to the competence of the Court. … The Court, without prejudging the question [of validity], gives effect to the reservation as it stands and as the Parties recognize it"). See also Lamm, *supra* note 16 at 189–200.

[131]Notably, in a separate opinion in *Certain Norwegian Loans*, Judge Hersch Lauterpacht argued that the Court should have addressed the issue of validity *ex officio*, characterizing the offending (subjective) aspect of the reservation as well as the French declaration itself as invalid (due both to conflicting with the *ICJ Statute* and being incapable of establishing a legal obligation). *Certain Norwegian Loans (France v Norway)*, Separate Opinion of Judge Sir Hersch Lauterpacht, [1957] ICJ Rep 34 at 66 [*Certain Norwegian Loans* (Separate Opinion of Judge Lauterpacht)]. He reached a similar conclusion in *Interhandel (Switzerland v United States of America)*, Dissenting Opinion of Judge Sir Hersch Lauterpacht, [1959] ICJ Rep 95 [*Interhandel* (Dissenting Opinion of Judge Lauterpacht)] (another case where the Court itself found it unnecessary to address issues of validity). Scholars have also raised this argument. For example, Kolb submits that "reservations which seek to manipulate the optional system, to assume a mere nugatory or illusory compulsory jurisdiction, and to evade it at will at any later stage, can indeed not be countenanced. The legal point is that such reservations are contrary to the law of the Statute." Kolb, *supra* note 25 at 13–14; see also 67–71 (for a discussion of earlier related scholarship).

[132]The invalidity issues raised by Lauterpacht J in *Certain Norwegian Loans* concerned — but were not limited to — a similar French reservation (which he characterized as "automatic" "since the function of the Court is confined to registering the decision made by the defendant Government and not subject to review by the Court"). *Certain Norwegian Loans* (Separate Opinion of Judge Lauterpacht), *supra* note 131 at 34. Similar issues arose in *Interhandel* (Dissenting Opinion of Judge Lauterpacht), *supra* note 131 (in relation to an

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In contrast, the Canadian restrictions are capable of objective assessment upon the initiation of a case, albeit in a way that would then seemingly preclude related Court jurisdiction. Other (hypothetical) reservations raising serious incompatibility concerns might include those seeking to limit "the functioning and the organization of the Court."[133] The Canadian restrictions do not have this effect either. Nonetheless, some scholars also argue that the absence of meaningful compulsory effect should be considered a potential ground for invalidity in its own right (since the express purpose of Optional Clause declarations is to recognize compulsory ICJ jurisdiction).[134]

Even if the Court were to characterize these Canadian restrictions as invalid, though, the absence of related legal precedent still leaves the likely effects of such a determination uncertain. In particular, would the Canadian declaration itself be void of legal effect or simply the offending reservations (for example, the right to withdraw or amend it during the required notification period with immediate effect), leaving the overall acceptance of compulsory jurisdiction intact? Academic debate remains on this general point;[135] however, the latter option seems difficult to reconcile with

"automatic" American reservation). The Philippines is one of five states that still maintain such a reservation: it does not accept compulsory jurisdiction over disputes "which the Republic of the Philippines considers to be essentially within its domestic jurisdiction." "Declarations," *supra* note 1 (Philippines: 18 January 1972). (In contrast, the related Canadian reservation concerns "questions which *by international law* fall exclusively within the jurisdiction of Canada" (Canada: 28 August 2023 at para 2(c) [emphasis added]). For further discussion of such reservations, and related concerns, see e.g. Kolb, *supra* note 25 at 67–71; Lamm, *supra* note 16 at 184–200 (in particular, at 197–200)); Vermeer & Akande, *supra* note 12 at 46. As previously noted, the *ICJ Statute* (*supra* note 2, art 36(6)) expressly establishes the Court's jurisdictional competence (a competence characterized by Lauterpacht J as "the principal safeguard of the system of the compulsory jurisdiction of the Court" (*Certain Norwegian Loans* (Separate Opinion of Judge Lauterpacht), *supra* note 131 at 47)). Nonetheless, not all scholars agree that such reservations conflict with this ICJ authority. See e.g. Lamm, *supra* note 16 at 199–200. Although it did not directly address validity concerns, the ICJ in *Fisheries Jurisdiction* nonetheless rejected Spain's characterization of the Canadian NAFO fisheries reservation as "automatic" (noting that "[t]he Court has had full freedom to interpret the text of the reservation"). *Fisheries Jurisdiction* (Judgment), *supra* note 30 at para 86. See also *Fisheries Jurisdiction* (Separate Opinion of President Schwebel), *supra* note 128 at paras 5–10.

[133]See e.g. *Certain Norwegian Loans* (Separate Opinion of Judge Lauterpacht), *supra* note 131 at 45. Possible examples of such reservations might include those requiring secret Court proceedings, rejecting or requiring judges of a particular nationality, rejecting the equality of parties before the Court, limiting the formal sources of law open to Court consideration, imposing unanimity requirements on resulting judgements or rejecting their final and binding character. See e.g. *ibid*; *Fisheries Jurisdiction* (Dissenting Opinion of Judge Torres Bernárdez), *supra* note 33 at 634.

[134]See e.g. Kolb, *supra* note 25 at 13–14, 69–70. Article 36(2) specifically refers to the recognition of ICJ jurisdiction as "compulsory *ipso facto* and without special agreement." *ICJ Statute*, *supra* note 2. That said, while highlighting potential invalidity concerns relating to "automatic" reservations, or those otherwise restricting "the functioning and the organization of the Court," Judge Lauterpacht nonetheless recognized that "[i]n accepting the jurisdiction of the Court Governments are free to limit its jurisdiction in a drastic manner. As a result there may be little left in the Acceptance which is subject to the jurisdiction of the Court." *Certain Norwegian Loans* (Separate Opinion of Judge Lauterpacht), *supra* note 131 at 46. Here, it is worth noting that the 2023 Canadian declaration itself does still have *prima facie* compulsory effects; these can simply be withdrawn unilaterally with immediate effect.

[135]See e.g. Kolb, *supra* note 25 at 71 (though noting likely majority support for voiding the declaration itself (at least in the context of self-judging reservations)). See also Lamm, *supra* note 16 at 216–20. Nonetheless, as Barelli observes, "the very existence of these legal doubts and complications reveal the inherent problem with the position of the UK." Barelli, *supra* note 22 at 154.

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the Court's overarching views, at least to date, concerning the underlying importance of state consent to Optional Clause jurisdiction and the effect of related restrictions.[136] The absence of a valid declaration would also then remove any basis for the exercise of Optional Clause jurisdiction by the Court.[137]

Given these various considerations, if Canada does amend or withdraw its declaration during the notification period — specifically intending to bar the Court from proceeding with a case that has not yet been initiated (or for which the required notice was not provided) — it would likely take a "courageous Court" indeed to still exercise jurisdiction over it. While this possibility cannot be wholly discounted, it does seem remote.

The lack of Optional Clause jurisdiction should nonetheless not be equated with legal impunity. Limited or not, such declarations are not the only way to establish ICJ jurisdiction in contentious cases (and, depending upon the subject matter and states concerned, other dispute settlement bodies may also have jurisdiction). Only about one in three ICJ cases have been initiated on this basis. The majority have instead relied upon ad hoc jurisdictional acceptance or, more frequently, the unilateral invocation of applicable treaty provisions.[138] In practice, the latter is the most important basis of compulsory Court jurisdiction.[139] In principle, state international legal obligations also remain the same, whether the ICJ can assess them or not, including underlying secondary obligations to comply and to provide remedies to

[136]See e.g. Lamm, *supra* note 16 at 218; Vermeer & Akande, *supra* note 12 at 38; Barelli, *supra* note 22 at 153–55 (in relation to the current UK declaration). This argument is particularly strong when the restriction in question appears integral to state Optional Clause consent (an inference that might be difficult to dispute concerning the mandatory notification period (which Canada submitted a new declaration to add) or any subsequent declaration withdrawal or amendment for a dispute-specific purpose). See e.g. *Fisheries Jurisdiction* (Separate Opinion of President Schwebel), *supra* note 128 at paras 5–10 (concluding that the Canadian reservation was not invalid but, if it were, the declaration itself would be without effect due to the "essential" link between the 1994 declaration and the NAFO fisheries reservation); *Certain Norwegian Loans* (Separate Opinion of Judge Lauterpacht), *supra* note 131 at 58 ("[t]he Court certainly cannot assume jurisdiction if there is a clearly expressed intention to deny it in specified circumstances"). Kolb also concludes that even if offending reservations might otherwise be severable from an Optional Clause declaration, if states deliberately formulated their reservations to maintain an "ability to abusively and arbitrarily manipulate their promise as they saw fit … it would indeed be necessary to deny the separability of the clause and the declaration." Kolb, *supra* note 25 at 105.

[137]Although this result would 'benefit' the reserving state (in this case Canada), by precluding ICJ jurisdiction in proceedings brought against it, Lauterpacht J cautioned that "[t]his is not a case of a State benefiting from its own wrong. … there is no element of illegality involved in a Declaration of Acceptance which is inconsistent with the Statute of the Court. No rule of international law forbids governments to perform acts and make declarations which are incapable of producing legal effects." *Interhandel* (Dissenting Opinion of Judge Lauterpacht), *supra* note 131 at 118. In addition, this invalidity would also then prevent the reserving state from relying upon its declaration to bring claims against other states. *Ibid* at 118–19. That said, having to decide this issue at all would not necessarily be in the best interests of the Court. See e.g. Lamm, *supra* note 16 at 216–20, 259 (noting, among other things that upholding validity could likely lead to considerable criticism and further similar limitations; rejecting the validity of the declaration itself would also affect the declarations of other states; but that severing an invalid reservation and otherwise maintaining the declaration in force would also affect other declarations and contradict its previous approach to state consent, potentially leading numerous states to withdraw their declarations).

[138]*Jurisdiction Handbook*, *supra* note 12 at 10. See also Ulfstein, *supra* note 22 at 8; Vermeer & Akande, *supra* note 12 at 7–8.

[139]Ulfstein, *supra* note 22. See also Vermeer & Akande, *supra* note 12 at 58–59.

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injured states in the event of breach.[140] Disagreements concerning the interpretation and application of these obligations do seem more likely without potential third party review, though, whether in good faith or otherwise.

B. Practical implications

Canada now appears to control whether specific Optional Clause cases can be brought against it, even after other states have formally notified it of their intention to do so. However, although this unilateral control could lead to beneficial practical effects for Canada, these cannot necessarily be presumed. For example, as previously noted, the reciprocal application of Canada's notification requirement could substantially restrict its own ability to initiate future ICJ cases against other states, particularly those with express rights to amend or withdraw their own declarations with immediate effect.

Canada has implied that this new requirement could facilitate international dispute settlement by providing an opportunity to begin negotiations prior to Court involvement (as has the United Kingdom). Formal notice from another state of a specific legal dispute, and a desire to settle it, could certainly have this effect. However, given Canada's (or, in the case of Canadian claims, the other state's) ability to prevent subsequent ICJ involvement, any resulting bilateral negotiations would not be conducted knowing that failure to agree could lead instead to compulsory dispute settlement. This may remove a significant impetus for compromise — for example, by allowing the disputing states to continue to rely on their own legal interpretations, regardless of their objective merits, without concern for how they might later appear to the ICJ.[141]

During the notification period, the only practical barrier to Canada revoking compulsory ICJ jurisdiction is the requirement to amend or withdraw its declaration for this purpose. It appears to retain the legal right to do so with immediate effect. Indeed, the narrow six-month window in which this right applies may even incentivize invoking it before difficult negotiations can be concluded. From a domestic perspective, however, this limited time frame would likely not curtail Canada's ability to alter its declaration; this would fall within federal executive authority as an exercise of the Crown's prerogative over foreign affairs rather than requiring additional legislative involvement.[142] Doing so will likely still have significant international political costs, though, which would be payable every time this case-specific right is

[140]For example, this was expressly noted by the Court in *Fisheries Jurisdiction* (Judgment), *supra* note 30 at para 56, along with the corresponding obligation of peaceful dispute settlement, even while rejecting its own related jurisdiction. Other decisions refusing jurisdiction also frequently emphasize these obligations (see e.g. *Aerial Incident of 1999*, *supra* note 26 at 51).

[141]For example, this concern was raised in *Fisheries Jurisdiction* (Separate Opinion of Judge Kooijmans), *supra* note 33 at paras 17–19. See also related discussion in Vermeer & Akande, *supra* note 12 at 119–20. Potential ICJ adjudication will not necessarily compel compromise (and, at times, it could even lead states to avoid it, instead looking ahead to potential litigation); however, it still provides a binding mechanism to overcome differing legal interpretations and resolve the dispute in its absence.

[142]See e.g. *Canada (Prime Minister) v Khadr*, 2010 SCC 3, [2010] 1 SCR 44 at para 35 (recognizing that "[the prerogative power over foreign affairs … continues to be exercised by the federal government"). Modifying the Canadian Optional Clause declaration does not require corresponding changes to domestic legislation.

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exercised.[143] Here, it is worth noting that, while another state threatening to initiate an ICJ claim may be perceived as hostile, this is not the only way to view it. It also signals a state's readiness to submit to peaceful and legally binding dispute settlement.[144] The closure resulting from accepting such a settlement process might well strengthen broader bilateral relationships.[145] Actively preventing it, with a dispute-specific restriction of ICJ jurisdiction, seems less likely to do so (though Canada has signalled its ongoing commitment to peaceful dispute settlement despite its new reservations).

Regardless, Canada can now protect itself against Optional Clause cases where the anticipated financial, political, or other costs of losing are perceived as too high.[146] Not exercising this right may therefore prove difficult, particularly when its underlying legal case is weak or uncertain, which might well be anticipated when other states initiate ICJ cases against it. For example, it is not hard to imagine that Canada would have prevented *Alleged Violations of State Immunities* from proceeding had it been able to do so. This control could allow Canada to insulate policies that clearly violate international law from binding ICJ review, though they would nonetheless remain prohibited and might still have other significant domestic and international consequences. Perhaps as importantly, in practice, this also allows Canada to continue to rely on its own legal interpretations and assessments in areas where underlying international obligations remain ambiguous. Indeed, Canada's 1970 fisheries reservation was essentially justified on this basis. Put simply, avoiding situations where the Court can expressly characterize its preferred policy options as illegal, in final and binding judgments, will afford Canada greater policy flexibility.[147]

[143]See e.g. Barelli, *supra* note 22 at 161; Vermeer & Akande, *supra* note 12 at 38–39.

[144]See e.g. *Jurisdictional Handbook*, *supra* note 12 at 8.

[145]When contentious cases lead to final ICJ judgements, substantial compliance can often be expected from the states concerned, whether they initiated the cases or not (though scholarship on this issue is nonetheless limited). See e.g. Aloysius P Llamzon, "Jurisdiction and Compliance in Recent Cases of the International Court of Justice" (2008) 18:5 Eur J Intl L 815. See also Vermeer & Akande, *supra* note 12 at 29–30; *Jurisdiction Handbook*, *supra* note 12 at 7; Lamm, *supra* note 16 at 261–62. Closure clearly does not require compulsory dispute settlement. For example, it can also result from a negotiated agreement. In fact, this allows disputing states to tailor their own solutions, which will often be preferrable; however, any required concessions may be politically difficult and would necessarily remain attributable to the states themselves. Todd Allee & Paul K Huth, "Legitimizing Dispute Settlement: International Legal Rulings as Domestic Political Cover" (2006) 100:2 American Political Science Rev 219 at 223. See also *Jurisdiction Handbook*, *supra* note 12 at 8; Vermeer & Akande, *supra* note 12 at 53. Ad hoc referral to the ICJ or another dispute settlement body can also lead to closure; however, any such consensual case-specific submission also then makes it harder to blame the Court for unpopular outcomes. See e.g. Llamzon, *ibid* at 849.

[146]Though doing so would also foreclose the benefits of closure (absent successful dispute settlement by other methods). Counter-intuitively, significant potential benefits can even result from losing an ICJ case. For example, this can provide an off-ramp from legally non-compliant behaviour that might otherwise remain a serious bilateral or broader international irritant. While states are already legally required to cease such behaviour, a binding Court judgment to this effect can provide a concrete basis for related policy changes that might otherwise be difficult for domestic political reasons. See e.g. Allee & Huth, *supra* note 145. Compulsory jurisdiction may help to further insulate the losing state's government from resulting domestic political consequences. See e.g. Llamzon, *supra* note 145 at 849. See also Vermeer & Akande, *supra* note 12 at 53–54.

[147]See e.g. Vermeer & Akande, *supra* note 12 at 57–58 (discussing this issue in general and in the specific context of 1970 and 1994 Canadian reservations). See also Kolb, *supra* note 25 at 84–85 (discussing this issue in relation to Canada's 1994 NAFO fisheries reservation).

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Realistically, though, it is still important to recognize that the current Canadian declaration is unlikely to forestall many actual ICJ proceedings. As noted, Optional Clause jurisdiction is not frequently invoked, though it is impossible to know how many Court claims are never pursued at all in the face of clearly applicable reservations. Nonetheless, between 1930 and 2023, only three states initiated cases against Canada relying upon its more permissive, albeit still limited, prior declarations. Canada has never done so against another state.

C. Symbolism

The significance of the 2023 Canadian declaration may therefore be as much symbolic as practical. Responding to Iran's initiation of *Alleged Violations of State Immunities*, Canada issued a statement noting, among other things, that "[w]e strongly believe in the role of the International Court of Justice as a crucial platform for the peaceful settlement of disputes in accordance with international law."[148] Since amending its declaration, Canada has continued to highlight its "unwavering support for international law and the ICJ."[149] However, despite these assertions, its recent declaration could nonetheless still undermine Canada's (self-)image as a strong proponent of the Court.[150] A limited declaration is not a direct attack on the international rule of law itself, though, and should not be seen as such. States are not legally required to make such declarations, and most have not. For the minority that have, doing so with extensive substantive and procedural limitations is a common and accepted practice.

The symbolic implications for Canada itself should therefore not be overstated. Indeed, its acceptance of compulsory ICJ jurisdiction has always been somewhat illusory. For example, since 1930, Canada has continuously maintained a Commonwealth reservation; this alone now precludes fifty-five UN member states — over 25 percent of the organization's membership — from initiating Optional Clause cases against it.[151] Canada has already used other reservations — in 1970 and again in 1994

[148]Global Affairs Canada, "Statement Following Iran's Application against Canada at the International Court of Justice" (29 June 2023), online: <www.canada.ca/en/global-affairs/news/2023/06/statement-following-irans-application-against-canada-at-the-international-court-of-justice.html>.

[149]See e.g. Global Affairs Canada, "Statement by Minister Joly on South Africa's Case against Israel at the International Court of Justice" (12 January 2024), online: <www.canada.ca/en/global-affairs/news/2024/01/statement-by-minister-joly-on-south-africas-case-against-israel-at-the-international-court-of-justice.html>. The ICJ's "critical role in the peaceful settlement of disputes" was also emphasized before the Standing Senate Committee on Foreign Affairs and International Trade shortly before the notification reservation was discussed. *Senate Committee*, *supra* note 96 at 68: 20 (Louis-Martin Aumais, acting assistant deputy minister, legal affairs, Global Affairs Canada).

[150]For example, Barelli has raised this concern in relation to the United Kingdom. Barelli, *supra* note 22 at 168. See also Vermeer & Akande, *supra* note 12 at 58. As Kooijmans J observed in *Fisheries Jurisdiction*, "[b]y limiting the scope of the Court's jurisdiction in an excessive way, the credibility of the system itself is affected; as a result the declarant State's sincerity in supporting the idea of compulsory jurisdiction is implicitly attenuated as well." *Fisheries Jurisdiction* (Separate Opinion of Judge Kooijmans), *supra* note 33 at para 13.

[151]Along with Canada, eighteen of the seventy-three other states with current Optional Clause declarations are also Commonwealth members (namely, Australia, Barbados, Botswana, Cameroon, Cyprus, Dominica, The Gambia, India, Lesotho, Malawi, Malta, Mauritius, New Zealand, Nigeria, Pakistan, Swaziland (Eswatini), Uganda, and the United Kingdom). "The Commonwealth" (2025), online: <thecommonwealth.org/our-member-countries>; "Declarations," *supra* note 1. See also Barelli, *supra* note 22 at 155. The

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— to deliberately shield controversial state conduct from ICJ review. In some ways, the 2023 declaration is simply an extension of this historical practice, allowing future reservations to be made by Canada on a dispute-specific basis. To date, this revision does not appear to have attracted significant state or civil society criticism of Canada.

The impact of this declaration may instead be borne largely by the ICJ, particularly since the United Kingdom and Latvia also maintain similar restrictions. In effect, three states with Optional Clause declarations now appear able to withdraw or amend them, with immediate effect, even after other states — also with pre-existing declarations[152] — have formally notified them of their intent to initiate Court proceedings in relation to specific legal disputes. As discussed, an anti-ambush provision or even just a right of immediate withdrawal could sometimes lead to a similar result. However, unlike these latter situations, the current Canadian, UK, and Latvian declarations effectively require other states to provide such notice — and then allow it to be used against them at any time over the next six months — thereby both formalizing and enhancing the ability of Canada, the United Kingdom, and Latvia to choose which specific cases can proceed against them, if any. This renders the Optional Clause system little more than a complicated mechanism to establish *forum prorogatum* jurisdiction.[153]

This may in turn lead other states to adopt similar restrictions in their own declarations, just as the United Kingdom clearly inspired both Latvia and Canada. In fact, the advance notification reservation has already been copied again. Poland revised its Optional Clause declaration on 10 July 2024 to include such a reservation, effective on 10 January 2025.[154] In a noteworthy legal difference, though, it did not also reserve rights to amend or withdraw its declaration with immediate effect; instead, related changes will only take effect six months following notification of the UN Secretary-General.[155] This still establishes a window to pursue amicable dispute settlement prior to litigation; however, Poland does not appear to retain any corresponding legal right to reject compulsory Court jurisdiction during this period, unlike Canada, Latvia, and the United Kingdom.

Despite this example, one might reasonably expect other states with current Optional Clause declarations to consider establishing rights to amend or withdraw them with immediate effect, if they have not already done so (regardless of whether they also establish prior notification requirements of their own). States contemplating initial declarations might also be more likely to do so, though this is often already

Commonwealth reservation might require an exception to the general principle of reciprocity — otherwise, it could be relied upon by any state to prevent cases brought by Canada (or any other Commonwealth member with a similar reservation). See e.g. Kolb, *supra* note 25 at 112–13.

[152]Due to applicable anti-ambush reservations, which all three states also now maintain. "Declarations," *supra* note 1 (Canada: 28 August 2023, at para 2(d); Republic of Latvia: 24 September 2019, at para 1(iv); and United Kingdom: 22 February 2017, at para 1(iii)).

[153]A related practical concern is that these declarations may lead to greater use of limited ICJ time and resources on jurisdictional questions. See e.g. Vermeer & Akande, *supra* note 12 at 41 (highlighting earlier related concerns about other heavily qualified declarations raised by then ICJ President Rosalyn Higgins). Having to decide any such jurisdictional dispute could also place the ICJ in a difficult position. See more detailed discussion of this issue in note 137 above.

[154]"Declarations," *supra* note 1 (Poland: 10 July 2024).

[155]*Ibid* ("[t]he Government of the Republic of Poland reserves its right to withdraw or modify the present Declaration at any time by means of a notification addressed to the Secretary-General of the United Nations, taking effect six months after the date of notification").

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the case.[156] Otherwise, Canada, Latvia, and the United Kingdom will each be able to initiate compulsory cases against them without being subject to the same reciprocal risk.[157] When notified of potential litigation by one of these three states, it is also reasonable to expect that other states with rights of immediate withdrawal or amendment might then consider restricting their own declarations to prevent it.

These three declarations have already strengthened an apparent ongoing shift towards limited, dispute-specific acceptance of Optional Clause jurisdiction over the past decade.[158] Indeed, only two states without pre-existing declarations have agreed to it in the past ten years: Iran and Equatorial Guinea, the latter also doing so with an extremely narrow declaration.[159] That said, both of these states have nonetheless still accepted compulsory ICJ jurisdiction in advance in relation to certain disputes. The new Canadian, UK, and Latvian declarations are arguably even more restrictive since they no longer appear to have any meaningful compulsory effect at all, instead allowing for unilateral dispute-specific rejection of Court jurisdiction, regardless of the opposing state or subject matter in question.

5. Conclusion

Canada's acceptance of Optional Clause jurisdiction has always been more limited than it appeared. This is not unlawful. States are not required to do so at all. As written, though, the 2023 Canadian declaration renders this commitment illusory. Reasonable observers might disagree over whether Canada should have limited its acceptance of compulsory ICJ jurisdiction to this extent. Indeed, as a proponent of the Court and its "crucial" role in international dispute settlement, Canada should likely reconsider having done so. A simple fix to the most serious concerns identified in this article would be for Canada to renounce any ongoing right to revoke related ICJ jurisdiction once it has been formally notified by another state of impending litigation relating to a specific dispute. It is nevertheless difficult to foresee this reversal, particularly if *Alleged Violations of State Immunity* is decided against Canada on the merits.

The status quo appears to allow Canada to decide for itself whether any new Optional Clause cases can proceed against it. Canada could therefore wait to further restrict its formal acceptance of ICJ jurisdiction until it perceives a dispute-specific need to do so. Given the limited number of Optional Clause cases involving Canada to date, this might permit it to maintain its current declaration indefinitely. However,

[156]See e.g. Merrills, *supra* note 21 at 906; Lamm, *supra* note 16 at 239.

[157]Anti-ambush provisions alone would not protect against this outcome, given the pre-existing nature of these three declarations.

[158]For example, Ulfstein concluded that future replication of UK reservations "may give reason to question the earlier optimism by some authors concerning the prospects of the optional clause." Ulfstein, *supra* note 22 at 5.

[159]Equatorial Guinea's declaration only applies to "disputes relating to the privileges and immunities of States, senior State officials and State property"). "Declarations," *supra* note 1 (Equatorial Guinea: 11 August 2017). See also Vermeer & Akande, *supra* note 12 at 24 (noting the likely dispute-specific nature of this declaration). Romania submitted its initial ICJ declaration just outside this ten-year window; although broader, it also includes numerous restrictions (excluding disputes relating to armed conflict or the environment, along with an anti-ambush provision and rights of immediate withdrawal and amendment). "Declarations," *supra* note 1 (Romania: 23 June 2015).

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if Canada does intend to retain this level of unilateral control over future ICJ cases, its current declaration is not the most effective way to do it. As it stands, precluding compulsory Court jurisdiction will require additional case-specific decisions made under significant time constraints. Making them will give rise to political costs each time, and any resulting jurisdictional restrictions would also highlight Canada's own concerns about the legality of its related conduct. Although its current declaration also maintains Canada's ability to initiate Optional Clause cases against other declarant states, it has never actually done so, and, in any event, this right will likely be substantially constrained by the reciprocal application of its own notification requirement.

Instead, Canada should now consider withdrawing its Optional Clause declaration altogether. This would afford it the same or greater control over future ICJ cases. However, no further steps would be required to bar Court jurisdiction in areas where it is unwilling to accept it. In particular, it would not remain subject to related initial claims premised on Optional Clause jurisdiction, let alone the ongoing, albeit limited, risk that successful legal challenges to its declaratory restrictions might allow them to proceed. Canada could still agree to ad hoc Court jurisdiction at any time, where the case-specific benefits of doing so are seen to outweigh the costs, as it did in *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area*. It would also remain bound by various treaty compromissory clauses establishing compulsory ICJ jurisdiction over disputes involving subject-specific codified obligations that it has expressly accepted.[160]

Joining the majority of UN member states without an Optional Clause declaration would therefore not signal a wholesale break from the Court. Among other things, this could temper any related public explanation, along with the ongoing cautionary tale of *Alleged Violations of State Immunity*. Regardless, the restrictions established in the 2023 Canadian Optional Clause declaration have already signalled the end of an era: as long as it maintains them, Canada is not making a meaningful advance commitment to accept compulsory ICJ jurisdiction in any related cases. Withdrawing its declaration would simply acknowledge this fact, allowing Canada, other states, and the ICJ to all move forward with greater certainty.

[160]Unlike the Optional Clause, Canada has recently relied upon such provisions to initiate two ICJ cases. See note 42 above for further details.

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