Department of Justice

FOR IMMEDIATE RELEASE:
WEDNESDAY, JANUARY 27, 1960

TESTIMONY OF

ATTORNEY GENERAL WILLIAM P. ROGERS

BEFORE THE

SENATE COMMITTEE ON FOREIGN RELATIONS

RE

S. RES. 94

10:00 A. M., WEDNESDAY, JANUARY 27, 1960

I appreciate the opportunity to appear today to testify in support of S. Res. 94. That resolution would revise our 1946 acceptance of the jurisdiction of the International Court of Justice to eliminate the self-judging aspect only of our reservation of domestic matters from the court's jurisdiction.

On June 8, 1959, the Department reported on this resolution and recommended its adoption. In his State-of-the-Union message of January 7, 1960, the President stated his support of the resolution and urged its prompt passage. This morning, I understand, the Department of State has reviewed comprehensively the background of the resolution, its relation to the fundamental objectives of our foreign policy, and the necessity for its early passage to effectuate that policy. The Department of Justice is in full accord with the Department of State and I shall not retrace this ground.

In 1946, the United States accepted the jurisdiction of the Court, as defined and limited in the Court's statute, but upon several conditions. One of those conditions specifically reserved from the Court's jurisdiction "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America."

The pending resolution would accord the advice and consent of the Senate to the elimination of the self-judging aspect of that reservation, embodied in the phrase, "as determined by the United States of America."

It would not -- and I underline this, as I believe there has been some misunderstanding concerning it -- in any way alter our specific reservation from the Court's jurisdiction of disputes with regard to domestic matters. It would only clearly and plainly make the Court the judge of its own jurisdiction. This is fully in accord with the provision of Article 36(6) of the Court's statute to which we are a party. That section provides, "in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the court."

You will recall that in 1946 this Committee unanimously recommended against the inclusion of the self-judging reservation.[1/] This was done advisedly and deliberately.

The Committee rested its recommendation principally on the grounds that (1) the ultimate purpose of the resolution was to lead to general world-wide acceptance of the jurisdiction of the Court in legal cases and that "a reservation of the right of decision as to what are matters essentially within domestic jurisdiction would tend to defeat the purposes which it is hoped to achieve by means of the proposed declaration;" (2) that the jurisdiction of the Court by definition was strictly limited to international matters and necessarily excluded domestic matters; (3) that if the question whether a matter was international or domestic "were left to the decision of each individual

---

1/ S. Rept. No. 1835, 79th Cong. 2nd Sess. (1946).

state, it would be possible to withhold any case from adjudication on the plea that it is a matter of domestic jurisdiction;" and (4) that "it is plainly the intention of the statute that such questions should be decided by the Court."

Although the unanimous Committee recommendation was rejected, the soundness of its view has been confirmed by experience.

First, the self-judging aspect of our reservation has tended to create doubt in the international community of the good faith of our declared intention to accept the jurisdiction of the Court. So long as we insist on its retention it will be difficult to dissipate that doubt.

Second, the action of the United States in adopting a self-judging reservation set an unfortunate example which was followed by several other nations. Three of these, however, have recently dropped this type of reservation.

Third, it is, nevertheless, worth noting that more than thirty free nations have accepted the Court's statutory jurisdiction without similar reservation.

Fourth, on the basis of reciprocity, a nation, even one without a similar reservation, may be able to invoke our reservation so as to defeat the Court's jurisdiction. In the Norwegian Loans[2/] case, on a complaint brought against Norway by France, Norway successfully invoked France's

---

2/ /1957/ I.C.J. Rep. 9

self-judging reservation to defeat the Court's jurisdiction, at the threshold. In the ever-broadening context of our world-wide interests, such a result is patently inimical to those interests.

Fifth, the reservation is at war with several of our basic concepts for which we seek universal acceptance. Those concepts are that no nation shall act as judge in its own case and that a court, and not a litigant, should have the right to determine at the threshold of a case whether or not the court has jurisdiction to decide the case.

The adverse effects which were foreseen by the Committee have materialized since the adoption of the reservation. The basic argument advanced both when the reservation was initially under consideration and now, is that the reservation is necessary in order to preclude the Court from exercising a domestic jurisdiction over matters such as immigration, tariffs, and the Panama Canal, not granted to it. It was urged, too, that this danger was enhanced because of the uncertain quality of the judges and the absence of a well-defined body of international law to be applied by the Court.

When the Court was new, no evidence was available to test the validity of these assumptions. Now, after fourteen years of experience with the Court, these grounds do not withstand objective examination.

Although the operation of the Court has been under close international and national scrutiny,[3/] it has not been suggested that the Court has sought to extend its jurisdiction in any case beyond the limits of its statutory grant in order to deal with matters of domestic jurisdiction.

No evidence has been adduced that any of the judges do not meet the high qualifications prescribed for the office by the Court's statute, nor has there been any evidence that the relevant principles of international law have been ascertained or applied by the Court in any different way than our own courts perform the same functions.

In short, there has been no supported challenge to either the fairness of the procedures of the Court or the integrity of its decisions. It seems fair to say that courts, like other human institutions, should be judged by their performance. On the basis of performance, fears of usurpation of domestic jurisdiction seem unfounded.

The self-judging aspect of our reservation has proved inconsistent with and harmful to our fundamental purpose: to encourage the rule of law through the judicial settlement of legal disputes between nations. Our reservation in this respect is unwarranted by our fourteen years of experience with the Court in operation. The Department of Justice therefore renews the recommendation that this part of the reservation be eliminated at the earliest possible date.

3/ See "Report on the Self-Judging Aspect of the United States' Domestic Jurisdiction Reservation with Respect to the International Court of Justice," American Bar Association, Section of International and Comparative Law (Aug. 1959) and bibliography therein.