Less than two months after the ICJ decision on jurisdiction and admissibility, the United States announced that it had decided not to participate in further proceedings in the case:

Statement by the U.S. Department of State, Jan. 18, 1985

The United States has consistently taken the position that the proceedings initiated by Nicaragua in the International Court of Justice (ICJ) are a misuse of the Court for political purposes and that the Court lacks jurisdiction and competence over such a case. The Court's decision of November 26, 1984, finding that it has jurisdiction, is contrary to law and fact. With great reluctance, the United States has decided not to participate in further proceedings in this case.

The Court continued its proceedings without U.S. participation. Then, less than a year after the 1984 decision in the case, the United States gave formal notice that it was terminating its 1946 declaration of acceptance of the Court's compulsory jurisdiction, with the effect to take place in six months.

Letter from U.S. Secretary of State Shultz to the U.N. Secretary General, Oct. 7, 1985

Dear Mr. Secretary-General:

I have the honor on behalf of the Government of the United States of America to refer to the declaration of my Government of 26 August 1946, as modified by my note of 6 April 1984, concerning the acceptance by the United States of America of the compulsory jurisdiction of the International Court of Justice, and to state that the aforesaid declaration is hereby terminated, with effect six months from the date hereof.

Sincerely yours,

George P. Shultz

Statement by the Legal Adviser, Abraham D. Sofaer, to the Senate Foreign Relations Committee

(Dec. 4, 1985)

Reasons for U.S. Review

The Court's decision [on jurisdiction] also caused us to undertake a thorough evaluation of our 1946 declaration and its place in the system

of compulsory jurisdiction established by Article 36(2) of the Court's Statute. . . .

We recognized, first of all, that the hopes originally placed in compulsory jurisdiction by the architects of the Court's Statute have never been realized and will not be realized in the foreseeable future. We had hoped that widespread acceptance of compulsory jurisdiction and its successful employment in actual cases would increase confidence in judicial settlement of international disputes and, thus, eventually lead to its universal acceptance.

Experience has dashed these hopes. Only 47 of the 162 states entitled to accept the Court's compulsory jurisdiction now do so. This number represents a proportion of states that is substantially lower than in the late 1940s. The United Kingdom is the only other permanent member of the UN Security Council that accepts compulsory jurisdiction in any form. Neither the Soviet Union nor any other Soviet-bloc state has ever accepted compulsory jurisdiction. Many of our closest friends and allies — such as France, Italy, and the Federal Republic of Germany — do not accept compulsory jurisdiction. Moreover, a substantial number of the states accepting compulsory jurisdiction have attached reservations to their acceptances that deprive them of much of their meaning. The United Kingdom, for example, retains the power to decline to accept the Court's jurisdiction in any dispute at any time before a case is actually filed.

Compulsory jurisdiction cases have not been the principal part of the Court's overall jurisprudence. Of some 50 contentious cases between 1946 and the end of 1983, 22 were based on the Court's compulsory jurisdiction, of which only five resulted in final judgment on the merits. The last case decided under the Court's compulsory jurisdiction, the *Temple of Preah Vihear,* was completed in 1962. In the remaining 17 cases, objections to the Court's jurisdiction were sustained in 13; four were dismissed on other grounds.

Another consideration we weighed is the fact that, although we have tried seven times, we have never been able successfully to bring a state before the Court. We have been barred from achieving this result not only by the fact that few other states accept compulsory jurisdiction but also by the principle of reciprocity as applied to our 1946 declaration. That principle allows a respondent state to invoke any reservation in the applicant state's declaration to seek to defeat the Court's jurisdiction. Thus, respondent states may invoke reservations in our 1946 declaration against us. . . .

The terms of our acceptance of compulsory jurisdiction contain an additional weakness. Nothing in it prevents another state from depositing an acceptance of compulsory jurisdiction solely for the purpose of bringing suit against the United States and, thereafter, withdrawing its acceptance to avoid being sued by anyone in any other matter. Students of the

Court long have recognized that this "sitting duck" or "hit-and-run" problem is one of the principal disadvantages to the system of compulsory jurisdiction under Article 36(2). It places the minority of states that have accepted compulsory jurisdiction at the mercy of the majority that have not.

The Court's composition also is a source of institutional weakness. At present, 9 of 15 judges come from states that do not accept compulsory jurisdiction; most of these states have never used the Court at all. Judges are elected by the General Assembly and Security Council, frequently after intense electioneering. . . .

Several aspects of the Court's decisions in the Nicaragua case were disturbing. First, the Court departed from its traditionally cautious approach to finding jurisdiction. It disregarded fundamental defects in Nicaragua's claim to have accepted compulsory jurisdiction. This question involves more than a legal technicality. It goes to the heart of the Court's jurisdiction, which is the consent of states. . . .

Furthermore, the Court engaged in unprecedented procedural actions — such as rejecting without even a hearing El Salvador's application to intervene as of right — that betrayed a predisposition to find that it had jurisdiction and that Nicaragua's claims were justiciable, regardless of the overwhelming legal case to the contrary. The Court sought to cover itself by holding out the possibility of accepting the Salvadoran intervention at the merits stage — at which point Salvadoran objections to the Court's jurisdiction and the justiciability of Nicaragua's claims would have been too late.

Even more disturbing, for the first time in its history, the Court has sought to assert jurisdiction over a controversy concerning claims related to an ongoing use of armed force. This action concerns every state. It is inconsistent with the structure of the UN system. The only prior case involving use-of-force issues — the *Corfu Channel* case — went to the Court after the disputed actions had ceased and the Security Council had determined that the matter was suitable for judicial consideration. . . .

We carefully considered modifying our 1946 declaration as an alternative to its termination, but we concluded that modification would not meet our concerns. No limiting language that we could draft would prevent the Court from asserting jurisdiction if it wanted to take a particular case. . . .

Conclusion

Looked at from the standpoint of the reality of compulsory jurisdiction today, the decision to terminate our 1946 acceptance was a regrettable but necessary measure taken in order to safeguard U.S. interests. It does not signify a lessening of our traditionally strong support for the Court.