AFRICAN UNION

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Application 003/2014

Matter of Ingabire Victoire Umuhoza v. Republic of Rwanda

Individual opinion of Judge Fatsah Ouguergouz

1. I share the Court's findings regarding its jurisdiction to make a ruling on the issue of Rwanda's withdrawal of its optional declaration on compulsory jurisdiction which it deposited under Article 34 (6) of the Protocol; I also share the Court's findings regarding the validity of the withdrawal, the requirement of twelve months' notice for the entry into force of the said withdrawal and the withdrawal having no implications on the examination of the case pending before it. It is my view, however, that the grounds for the judgment are insufficient in terms of the validity of the withdrawal and the 12 months' notice requirement for the withdrawal to take effect (paragraphs 54-66).

2. I believe, in effect, that the Court should have underscored the special legal nature of the optional declaration, spelt out more clearly the conditions for the legal validity of the withdrawal of the said declaration and better explained the rationale behind the requirement of a notice period of twelve months. In my view, it is because of the special nature of the optional declaration that its withdrawal by Rwanda should take effect only at the expiry of twelve months' notice.

I - The special object of the optional declaration: the international subjectivization of individuals and non-governmental organizations

3. In paragraph 57 of the Ruling, the Court "notes that the declaration provided under Article 34 (6) is of similar nature to those (relating to the recognition of the jurisdiction of the International Court of Justice, the European Court of Human Rights and the Inter-American Court of Human Rights)".

4. In my view, the optional declaration of compulsory jurisdiction provided under Article 34 (6) of the Protocol is unique in itself. It is clearly different from the declarations provided under the Statute of the International Court of Justice (Article 36 (4))[1], the European Convention (Article 46) before its amendment by Protocol No. 11[2], and the American Convention (Article 62).[3]

5. The purpose of depositing the three declarations concerned is in effect to authorize a "State Party" to seize the courts in question and not an "individual" or "a non-governmental organization." In the European system before it was reformed by Protocol No. 11, the individual did not have the right to refer matters to the European Court; this right being exclusive to the defunct European Commission and, optionally, to the States Parties. The same is the case in the current inter-American system where only the Inter-American Commission and, optionally, the State Parties are entitled to bring cases before the Inter-American Court. As regards the International Court of Justice, only States may appear before it (Article 36 of the Statute).

6. In the three afore-mentioned systems, the deposit of the optional declaration by a State Party entails the mandatory recognition by the latter of the jurisdiction of the court concerned with respect to every other State Party which has made the same declaration. In the three systems, the purpose of making the declaration is to confer reciprocal rights and advantages on States Parties. The deposit of the declaration creates rights for the benefit of the State which is the author thereof and for those States which already made such a declaration; the deposit of the declaration also represents a standing offer to all the other States which are yet to make the declaration. This, for example, is what the International Court of Justice stated on several occasions concerning the declaration prescribed by Article 36 (2) of its Statute.

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[1] "The declarations referred to above may be made unconditionally or on condition of reciprocity…"

[2] 1. Each High Contracting Party may, at any time, declare having recognized as obligatory lawfully and without special agreement, the jurisdiction of the Court over all matters concerning the interpretation and application of the present Convention. 2. The declarations mentioned above could be made outright or on conditions of reciprocity by several or some other Contracting Parties for a set period. 3. The said declarations shall be handed to the Secretary General of the Council of Europe who shall transmit copy thereof to the High Contracting Parties.

[3] "1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as compulsory, *ipso facto*, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention. 2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other Member States of the Organization and to the Registrar of the Court. 3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs or by a special agreement".

7. According to the Court at The Hague, the declaration indeed "establishes a consensual, and opens the possibility of a jurisdictional, relationship with other States which have made a declaration in terms of Article 36, paragraph 2, of the Statute, and constitutes "a permanent offer to the other States Parties to the Statute yet to submit declaration of acceptance.[4]"

8. In the functioning of the systems of the International Court of Justice and the two European Regional (prior to the entry into force of Protocol No. 11) and Inter-American Courts, the condition of reciprocity plays, or used to play, a fundamental role. The competence of the three courts is, or was, predicated upon its acceptance by the States Parties and only to the extent defined by the declarations of those States, that is, taking possible reservations into account[5].

9. In the context of the Protocol establishing the African Court on Human and Peoples' Rights, the declaration prescribed by Article 34 (6) for its part, aims at authorizing individuals and non-governmental organizations, not the States Parties, to bring cases before the African Court. The condition of reciprocity is absolutely inoperative here insofar as the States Parties do not seek, by means of that declaration, to confer reciprocal rights on one another. It is only through the participation of the States in the Protocol that the States concerned confer on one another reciprocal rights in terms of referrals to the Court by any one of them against another (see Article 5 (1) of the Protocol). The most eloquent testimony that reciprocity has no meaning under the Protocol is that the beneficiaries of the declaration, namely, individuals and non-governmental organizations, cannot make such a declaration.

10. The optional declaration under Article 34 (6) of the Protocol thus differs from the declarations provided by the International Court of Justice, the European Court (before the entry into force of Protocol No. 11) and the Inter-American Court. On the other hand, the optional declaration is akin to the declaration provided by the Protocol establishing the Arab Court of Human Rights (Articles 19[6] and 20). It is also similar to the declaration provided under Article 25 of the European Convention (before its amendment by Protocol No. 11) in terms of referral of cases to the defunct European

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[4] *Fisheries Jurisdiction cases, (Spain v. Canada), Jurisdiction of the Court, Judgement of 4 December* 1998, *.ICJ. Collection 1998*, p. 453, paragraph 46.

[5] See for example the following pronouncement of the International Court of Justice: …"referrals to the Court through application, in the system of the Statute is not automatically open to every State Party to the Statute; it is open to the extent defined by the applicable declarations", *Nottebohm Case (Preliminary Objection) Judgement of 18 November 1953, ICJ, Collection 1953, page 122*; the jurisdiction of the Court depends on the declarations made by the Parties pursuant to Article 36, paragraph 2 of the Statute on conditions of reciprocity: …by these declarations, competence is conferred on the Court only to the extent defined in the declaration… *Anglo-Iranian Oil Company case (Jurisdiction)*, Judgment of 22 July 1952, *ICJ Collection 1952*, p. 103.

[6] "2. State Parties can accept, when ratifying or acceding to the Statute or at any time later, that one or more NGOs that are accredited and working in the field of human rights in the State whose subject claims to be a victim of a human rights violation has access to the Court".

Commission by individuals[7], and the declaration under Article 56 (4) of the European Convention (after its amendment by Protocol No. 11) as regards the deposit of an optional declaration authorizing the European Court to receive cases from any natural person, non-governmental organization or group of individuals in respect of a territory for which the State Party conducts international relations and is covered by the Convention[8].

11. I would recall at this juncture that Article 34 (4) of the European Convention as amended by Protocol No. 11 and Article 4 of Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.I/7/91 of 6 July 1991 on the Court of Justice of the Economic Community of West African States (ECOWAS) open a right of direct and automatic access for individuals to the European Court of Human Rights and ECOWAS Court of Justice, respectively.

12. By providing for an optional right of referral to the African Court for individuals and non-governmental organizations, the African human rights protection system thus lies mid-way between the Inter-American system where the individual does not have the right to seize the Inter-American Court, and the current European system in which the individual has direct and automatic access to the European Court.

13. By offering individuals and non-governmental organizations the right to bring their cases before the African Court, the deposit of the optional declaration by a State Party to the Protocol has the fundamental effect of conferring international subjectivity on the aforementioned entities. Individuals and non-governmental organizations thus have the intrinsic right of referral to the Court and hence may, internationally, directly lay claim to the rights guaranteed by the African Charter and other legal human rights instruments to which the States concerned are Parties.

14. In the protection system established by the Protocol, there is virtually no longer a State screen between the individual and the international legal order, this screen having been pierced through by the declaration under Article 34 (6). From simple "objects" of international law, individuals and non-governmental organizations have become

[7] "1. The Commission may be seized with a request addressed to the Secretary General of the Council of Europe by any natural person, non-governmental organization or group of individuals claiming to be victim of a violation, by one of the High Contracting Parties, of the rights recognized in this Convention, where the High Contracting Party concerned has declared that it has recognized the competence of the Commission in this matter. The High Contracting Parties having subscribed to such a declaration undertake to not impede the effective exercise of this right. 2. Such declarations may be made for a specific period of time. 3. They shall be transmitted to the Secretary General of the Council of Europe, who shall forward copies thereof to the High Contracting Parties and ensure their publication. 4. The Commission shall exercise the competence conferred on it by this Article only when at least six High Contracting Parties are bound by the Declaration in the preceding paragraphs ".

[8] "4. Any State which has made a declaration in accordance with the first paragraph of that article may at any time declare in respect of one or more of the territories referred to in that declaration that it accepts the jurisdiction of the Court to hear applications from natural persons, non-Governmental organizations or groups of individuals, as provided under Article 34 of the Convention"

veritable "subjects" of international law, first through the African Charter which gave them the automatic right to refer cases to the African Commission, a quasi-judicial body; and through the Protocol which now endows them with the optional right of referral to the African Court, a judicial body.

15. This does not, however, mean that individuals and non-governmental organizations have thereby become subjects of international law on the same footing as States. Indeed, as the International Court of Justice stated, "the subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights"[9].

16. Under the Protocol, individuals and non-governmental organizations have become derivative or secondary subjects of international law, in as much as their international subjectivity has been conferred on them by the will of African States, original or primary subjects of international law. Pure manifestation of the sovereignty of the State, the international subjectivity thus conferred on individuals and non-governmental organizations by the Protocol cannot however be regarded as immutable; what sovereign States, as primary subjects of international law, can do, they certainly can undo under certain conditions.

II - Withdrawal of the optional declaration: the requirement of reasonable notice

17. The instrument of ratification of the Protocol by Rwanda, dated 5 May 2003, was deposited on 6 May 2003. Its optional declaration, for its part, dated 22 January 2013 was notified to the Chairperson of African Union Commission on 6 February 2013. It reads as follows:

> "(The Republic of Rwanda) declares that the African Court on Human and Peoples' Rights may receive petitions involving the Republic of Rwanda, filed by Non-Governmental Organizations (NGOs) with observer status before the African Commission of Human and Peoples' Rights and individuals, subject to the reservation that all local remedies will have been exhausted before the competent organs and jurisdictions of the Republic of Rwanda".

18. This statement does not contain anything specific as to its limitation in time. The possibility of its withdrawal is also not envisaged by the Protocol. To identify the conditions under which the declaration may be withdrawn by Rwanda, its legal nature has to be determined.

19. The declaration prescribed by Article 34 (6) of the Protocol is an optional declaration of acceptance of the compulsory[10] jurisdiction of the African Court and may in my view be analyzed as a unilateral act with respect to a treaty prescription. It in effect represents a unilateral act[11] insofar as it is a commitment by the State, the author

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[9] *Reparation for the injuries suffered in the service of the United Nations, Advisory Opinion of 11 April 1949, ICJ Collections* 1949, page 178

[10] "A discretionary act by which a State subscribes to an undertaking of compulsory jurisdiction, unilaterally attributing jurisdiction to a court for categories of disputes defined in advance", Jean Salmon (Dir.), Dictionary of International Public Law , Bruylant/AUF, Brussels, 2001, p. 303

[11] "A unilateral act may be defined as a "manifestation of will attributable to a single subject of international law and capable of producing legal effects in international law, ibid, p.31

thereof, to unilaterally assume a legal obligation - that of recognizing the Court's jurisdiction with respect to any case brought by an individual or a non-governmental organization. Furthermore, the declaration is a unilateral act with respect to a treaty prescription, because it is prescribed by a treaty, in this case, the Protocol in its Article 34(6), and the category of cases which may be brought before the Court is defined by the said treaty.

20. In that regard, the International Court of Justice had, for example, indicated that:

> "Declarations of acceptance of the compulsory jurisdiction of the Court are facultative, unilateral engagements that States are absolutely free to make or not to make [12] ".

21. The World Court further indicated that the withdrawal of such declarations was possible but subject to conditions. It had in effect held as follows:

> "But the right of immediate termination of declarations with indefinite duration is far from established. It 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"[13].

22. In a judgment dated 24 September 1999, the Inter-American Court of Human Rights had, for its part, indicated that the only way for a State Party to the American Convention to withdraw its optional declaration of recognition of the Court's jurisdiction was to denounce the Convention itself, and this, in accordance with Article 78 thereof, which provides for a time frame of one year[14]. It is only in the alternative that, in order to absolutely exclude the possibility of withdrawal of the declaration with "immediate effect", that the Inter-American Court had referred to the above-mentioned judgment of the International Court of Justice to also hold that the withdrawal of an optional declaration was governed by the relevant rules of the Law of Treaties and that the said rules clearly excluded a withdrawal with immediate effect[15].

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[12] *Case concerning the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America),* jurisdiction and admissibility, judgment of 26 November 1984, *ICJ Collection 1984*, p. 418, paragraph 59; *Fisheries Jurisdiction cases, (Spain v. Canada), Jurisdiction of the Court, Judgement of 4 December* 1998, *.ICJ. Collection 1998,* p. 456, paragraph 54.

[13] *Case concerning the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America),* jurisdiction and admissibility, judgment of 26 November 1984, *ICJ Collection 1984*, p. 420, paragraph 63*; Land and Maritime Boundary between Cameroon and Nigeria, preliminary objections, judgment of 11 June 1998, ICJ Collection 1998, p. 295, paragraph 33*. A few years later, the World Court declared as follows: "The regime relating to the interpretation of declarations made under Article 36 of the Statute which are unilateral acts of State sovereignty, is not identical with that established for the interpretation of treaties by the Vienna Convention on the Law of Treaties (…) The Court notes that the provisions of the Vienna Convention may be applied only by analogy in so far as they are compatible with the nature, *sui generis*, of the unilateral acceptance of the jurisdiction of the Court", *Fisheries Jurisdiction cases, Spain v. Canada, Jurisdiction of the Court, Judgement of 4 December* 1998, *.ICJ. Collection 1998,* p. 453, paragraph 46.

[14] *Matter of Ivcher-Bronstein v. Peru, judgment of* 24 September 1999 (jurisdiction), paragraph 40.
[15] *Matter of Ivcher-Bronstein v. Peru, judgment of* 24 September 1999, paragraph 53.

23. Sharing the position of the European Court of Human Rights in this respect, as expressed in its judgment in the Matter of *Loizidou v. Turkey*[16], the Inter-American Court had firmly ruled out any analogy between the practice of States in relation to the the optional clause provided under Article 36 (2) of the Statute of the International Court of Justice and the practice concerning the system of optional clause provided under the American Convention on Human rights, and this, for reasons of the special nature, goals and purposes of this Convention[17]. The Inter-American Court had in this regard stated the following:

> "In effect, international settlement of human rights cases (entrusted to tribunals like the Inter-American and European Courts of Human Rights) cannot be compared to the peaceful settlement of international disputes involving purely interstate litigation (entrusted to a tribunal like the International Court of Justice); since, as is widely accepted, the contexts are fundamentally different, States cannot expect to have the same amount of discretion in the former as they have traditionally had in the latter"[18]

24. In the instant case, neither the African Charter nor the Protocol establishing the Court, contains a denunciation clause, unlike the American Convention[19] and the European Convention[20].

25. In this connection, an examination of the African Charter preparatory work shows that a number of States (Congo, Niger, Central African Republic) had proposed to insert therein a denunciation clause[21]; however, that proposal was rejected by the OAU Ministers' Conference at its second session in Banjul, The Gambia.

26. Given the silence of the African Charter, reference should therefore be made to the 23 May 1969 Vienna Convention on the Law of Treaties, Article 56 of which predicates the denunciation of a treaty on very strict conditions; as a matter of fact, the Parties

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[16] *Matter of Loizidou v. Turkey (Preliminary objections*), judgement of 23 March 1995, paragraphs 84 et 85.
[17] *Matter of Ivcher-Bronstein v. Peru, judgment of* 24 September 1999, paragraphs 47 and 48
[18] *Ibid*., paragraph 48.
[19] Article 78
[20] Article 58
[21] "The afore-mentioned Delegations have the honor to table before of OAU Ministers Conference proposals which, while recognizing for the States, members of OAU, the right to reservation, to withdraw from the reservation and the right of denunciation, spell out the limits of the right to reservation and the procedure for denunciation. These proposals which do not call to question any of the provisions already adopted, are intended on the contrary, to complement the said provisions and remove any ambiguity. They are: Article 1 (new Article 69) 1. The Secretary General of OAU shall receive and transmit to all States which are or may become Parties to the present Charter the text of the reservations which would possibly be made at the time of accession. 2. No reservation incompatible with the object and purposes of this Charter shall be permitted. 3. The reservations may be withdrawn at any time by means of notification addressed to the Secretary General of OAU. Such notification shall take effect on the date of receipt. Article 2 (Article 70). Any State Party may denounce this Charter by means of a notification addressed to the Secretary General of OAU. The denunciation shall take effect one year after the date on which the Secretary General of OAU will have received the notification", OAU. Doc, Amendment No. 7, 2nd session, Banjul, 7-21 January 1981 (*Registry translation*)

must have had the intention to admit the possibility of denunciation or withdrawal or that this possibility could be deduced from the nature of the treaty. It is far from evident that the States Parties wanted to admit the possibility of a denunciation of the African Charter; by rejecting the amendment for inclusion of a denunciation clause, it could be said that the States also intended to confer some sanctity on their commitment. Nothing in the nature of the African Charter allows for such a possibility to be inferred.

27. In this regard, I would like to point out that the following three Conventions adopted by African States in the field of human rights, contain a denunciation clause: the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969 (Article 13) which was adopted before the African Charter, the African Union Convention on Preventing and Combating Corruption of July 2013 (Article 26) and the Convention for the Protection and Assistance of Internally Displaced Persons in Africa of 23 October 2009 (Article 19), both adopted after the African Charter. In contrast, the African Charter on the Rights and Welfare of the Child of 1 July 1990, the Protocol to the African Charter on the Rights of Women in Africa of 1 July 2003, and the African Charter on Democracy, Elections and Governance of 30 January 2007 are, like the African Charter, silent on the question of denunciation. It may therefore be inferred from this silence the States Parties' intention to not allow denunciation of the Conventions concerned. This solution was also advocated with respect to the International Covenant on Civil and Political Rights of 1966 which also does not contain a denunciation clause[22].

28. Given that the Protocol does not contain a denunciation clause, a State Party cannot therefore be indefinitely bound by its optional declaration with no possibility of withdrawing the same[23]. It is therefore my view that the declaration under Article 34 (6) is "separable" from the Protocol and can be withdrawn by its author (see paragraph 57 of the judgment).

29. I believe also that, to determine the conditions under which a declaration may be withdrawn, reference should be made "by analogy" to the Law of Treaties (see paragraphs 54 and 65 of the judgment), as codified by the 1969 Vienna Convention on

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[22] On this point, see the very firm position of the Committee on Human Rights, *General Comment No. 26 General comment on issues relating to the continuity of obligations to the International Covenant on Civil and Political Rights, United Nations, Doc. CCPR/C/21/Rev.1/Add.8/Rev.1*, 8 December 1997, p.2. See also the aide-memoire of the Secretary General of the United Nations dated 23 September 1997 addressed to the People's Democratic Republic of Korea following notice of denunciation of the Covenant; the Secretary General, in his capacity as the depository, held that in the absence of a denunciation clause in the Covenant, the consent of all the States Parties was necessary for the denunciation to take effect, see United Nations, *Doc. CN/1997/CN.467.1997*.

[23] As regards the declaration provided under Article of the European Convention before it was amended by Protocol No. 11 (individual right of referral to the European Commission), it has been argued that the way to terminate it was to denounce the Convention, see Ronny Abraham, "Article", in Louis-Edmond Pettiti, Emmanuel Decaux & Pierre-Henry Imbert (Dir.), *La Convention EDH-Commentaire article par article (European Commission on Human Rights - article by article comments)* Paris, Economica, 1995, p. 581.

the Law of Treaties[24]. The Republic of Rwanda being a Party to this Convention (the country acceded thereto on 3 January 1980), the Convention's procedural prescriptions are in effect applicable[25] to the country. However, I do not consider as relevant the reference made in paragraph 65 of the judgment to the "practice" of the Inter-American Court as reflected in the Matter of *Ivcher-Bronstein v. Peru*. As I have shown (see paragraph 22 above), the position of the Inter-American Court is in fact more qualified[26].

30. Finally, I would note that in its comments on the *"Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations adopted in 2006*[27], the United Nations International Law Commission stated that "there can be no doubt that unilateral acts may be revoked or amended in certain specific circumstances". The Commission identified the following criteria to be considered in determining whether or not a revocation is a unilateral act:

> "A unilateral declaration that has created legal obligations for the State making the declaration cannot be revoked arbitrarily. In assessing whether a revocation would be arbitrary, consideration should be given to:
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> (i) Any specific terms of the declaration relating to revocation;
>
> (ii) The extent to which those to whom the obligations are owed have relied on such obligations;
>
> (iii) The extent to which there has been a fundamental change in the circumstances".

31. In the instant case, Rwanda's declaration contains no reference to its possible withdrawal and there is clearly no fundamental change of circumstances within the meaning of Article 62 of the Vienna Convention on the Law of Treaties. There remains the issue as to the prejudice which Rwanda's withdrawal of its declaration could possibly cause the beneficiaries of the declaration, namely: individuals and non-governmental organizations.

32. In this regard, Rwanda's withdrawal of its declaration outrightly deprives individuals and non-governmental organizations of the right they hitherto had to bring

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[24] Paragraph 2 of Article 56 of the Convention, titled "*Denunciation or withdrawal in case a treaty does not contain provisions for its extinction, denunciation or withdrawa*l" provides that: "a Party shall give at least twelve months advance notice of its intention to denounce a treaty or to withdrawal therefrom in accordance with the provisions of paragraph 1".

[25] The twelve months timeframe is a procedural condition which is not laid down by customary law.

[26] I would note in particular that paragraph 24 (b) of the judgment in the Matter of *Ivcher-Bronstein v. Peru*, to which the Court makes reference in paragraph 63 of the instant judgment does not reflect the position of the Inter-American Court but rather that of the Inter-American Commission.

[27] Text adopted by the International Law Commission at its Fifty-Eight Session in 2006, and submitted to the General Assembly as part of the Commission's report covering the work of that session (A/61/10). The report, which also contains commentaries on the draft articles is reproduced in the Yearbook of the International Law Commission, 2006, Vol. II (2).

before the African Court a case against that State, and hence of their international subjectivity, as set out in the first part of this opinion. This is a significant consequence for individuals and non-governmental organizations, essential stakeholders, so to say, of the human rights judicial protection system established by the Protocol; reason for which Rwanda's revocation of its declaration would be arbitrary, if it were to take immediate effect: it would in short take by surprise the individuals and non-governmental organizations on the point of instituting a case against Rwanda.

33. In order not to be seen as arbitrary, the revocation of the declaration must therefore be subject to a reasonable period of notice, as, for example, the International Court of Justice indicated in regard to withdrawal of the optional declaration under Article 36 (2) of its Statute[28]. The definition of "reasonable" draws mainly from the concepts of "just", "equitable" or "necessary"[29]. In the instant case, the twelve-month period of notice prescribed by Article 56 (2) of the Vienna Convention and indicated by the Court appears to me to be just, equitable and necessary in view of the significant negative impact that the withdrawal would have on the rights of individuals and non-governmental organizations under the system established by the Protocol.

34. The Protocol, which strengthens the system of collective guarantee for the rights of the individual established by the African Charter, must be seen as a centerpiece of this system because of the judicial nature of the procedures it provides, and the individual right of referral, in particular. The Court must therefore, as much as possible, safeguard the integrity and effectiveness of this individual redress mechanism by maintaining a fair balance between the interests of States Parties, on the one hand, and those of individuals and non-governmental organizations, on the other. To this end, the Court must keep in view the object and purposes of the African Charter and the Protocol, as well as the predominant place which the Pan-African Organization currently accords the protection of the individual as evidenced by the several provisions of Article 4 of the Constitutive Act of the African Union.

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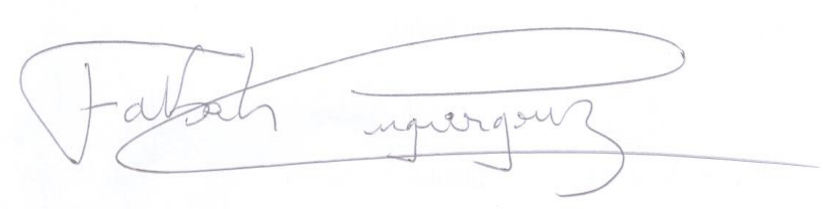
35. In conclusion, it is my hope that the instant judgment will not have the effect of dissuading from doing so, the very many States which have not yet deposited the optional declaration prescribed by Article 34 (6) of the Protocol. States Parties to the Protocol which are still hesitant about depositing the declaration may wish to consider including a temporary reservation in their declaration as allowed, for example, by the European Convention (before it was amended by Protocol 11) with respect to referrals

[28] See *supra*, paragraph 21

[29] On the definition of "reasonable", see Olivier Corten, *L'utilisation du "raisonnable" par le juge international – Discours juridique, raison et contradictions*, (The use of "reasonable" by the international judge : legal discourse, reason and contradictions) *Editions Bruylant – Editions de l'Université de Bruxelles, Bruxelles*, 1997, pp. 495-526 (paragraph 439-463)

to the European Commission by individuals (Article 25)[30] and referrals to the Court by the States (Article 46)[31] or as permitted by the American Convention with respect to referrals to the Inter-American Court by States (Article 62)[32]. Although such temporary reservations are not really desirable, they represent a lesser evil in relation to the current unsatisfactory situation whereby a little less than a quarter of the 30 States Parties to the Protocol have deposited the declaration.



Fatsah Ouguergouz
Judge

[30] See footnote 7

[31] See footnote 2

[32] See footnote 3