

The International Court of Justice and its jurisdiction in contentious cases

Abstract

This doctoral thesis deals with jurisdiction of the International Court of Justice (hereinafter the „ ICJ““) in contentious cases (or, in other words, its contentious jurisdiction).

The ICJ works in the environment of international community in which the principle *par in parem non habet imperium* applies. Consequently, the ICJ's contentious jurisdiction is based on the consent of States parties to a dispute (principle of consent). The key questions dealt with in this thesis are the following ones. How does the law, practice of States and, in particular, jurisprudence of the ICJ cope with the specific features of the horizontal system of international law? Who can appear before the ICJ, and under what circumstances? More specifically, how does the ICJ adjudicate on its competence? What are the origins of the delimitation of the ICJ's jurisdiction and how has it evolved since hundred years ago?

The contentious jurisdiction of the ICJ, the most important international court, is a legal concept of crucial importance. It originates and operates within certain frameworks such as historical, systemic and procedural. Its historical background and development are of particular relevance here. The mechanism was designed in 1921 and consistency and continuity have been its characteristic features ever since.

Article 36 (6) of the ICJ's Statute provides for the *compétence de la compétence* principle. This provision enables the functioning of the entire system of contentious jurisdiction and, at the same time, its implications constitute a limitation to the principle of consent.

Jurisdiction *ratione personae* is defined by the monopoly of States regarding the access to contentious proceedings. A simple basic rule and yet the ICJ's case-law related to this rule does suffer from some inconsistencies.

Jurisdiction *ratione materiae* is always based on the consent of parties to the dispute. There is no exception to the principle of consent. There are several ways of accepting the ICJ's jurisdiction. The so-called optional clause system foreseen in Article

36 (2) of the ICJ's Statute is the most interesting one from the general or theoretic point of view. In practice, however, it is impossible to determine a hierarchy of the importance of the ways of accepting the ICJ's jurisdiction.

In accordance with the ICJ's settled jurisprudence, the exercise of powers by the UN Security Council does not prevent the ICJ from exercising its jurisdiction in the same dispute.

The mechanism of the ICJ's jurisdiction in contentious cases can only work at the cost of certain compromises. The crucial element here is the interplay of the principle of consent and the principle of *compétence de la compétence* that is the crucial point of the mechanism.

Key words: international justice, the International Court of Justice, jurisdiction in contentious cases