II.147. THE CONCEPT OF Dispute: Justiciability and Jurisdiction.
The contentious jurisdiction of the Court is concerned with the decision on ‘disputes’. The Statute emphasizes the centrality of ‘dispute’ for the work of the Court in two provisions. Article 38, paragraph 1, states that the function of the Court is ‘to decide in accordance with international law such disputes [les différends] as are submitted to it’. More specifically, in

1 On this phrase, see ch. 27, § III.375 n. 55. To settle disputes is not the only function of the Court under the Statute, which also empowers it to give advisory opinions, the main characteristic of which is that it is not a binding settlement of a dispute or question. Furthermore, not every contentious case has to be a ‘dispute’ in the formal sense, although it will certainly reflect a difference of opinion. The Court can be asked to indicate legal principles to be applied by the parties, as in the North Sea Continental Shelf cases. References to ‘dispute’ appear in Arts. 1, 2, 12, 27, 32, 33, 34, 35, 36, 37, 38 and 52 of the Charter, Arts. 36, 38, 40 and 60 of the Statute, and Arts. 38, 39, 88 and 98 of the Rules of Court. Those references refer equally to the Court’s jurisdiction as regards the merits and to aspects of jurisdiction in incidental proceedings. (The Rules of 1978 frequently replace dispute found in earlier versions of the Rules by case or proceedings.) Although Art. 36 (1) of the Statute refers to cases and matters, most titles of jurisdiction and most compromissory clauses use the expression dispute which, in turn, may be qualified or unqualified. The concept of dispute is thus the nucleus around which the very notion of jurisdiction is constructed. The expression ‘title of jurisdiction’ is the equivalent of the French expression base de juridiction, for instance in the judgments on Prel. Obs. in the Legality of Use of Force cases, the case against Belgium, [2004] 15 December (para. 28) and the equivalent paras. in the other seven judgments. It corresponds to the
Article 40, on the institution of proceedings, the Statute prescribes that in the document instituting the proceedings, ‘the subject of the dispute [l’objet du différend] and the parties shall be indicated’. As the Court has put it: ‘[T]he existence of a dispute is the primary condition for the Court to exercise its judicial function.’ It is therefore necessary, before any discussion of the Court’s jurisdiction, to consider the juridical qualification of the concept of dispute.

The fact that proceedings have been politically inspired as a means of exerting pressure on a State does not affect the Court’s jurisdiction:

[T]he Court is aware that political aspects may be present in any legal dispute brought before it. The Court, as a judicial organ, is however only concerned to establish, first, that the dispute before it is a legal dispute, in the sense of a dispute capable of being settled by the application of principles and rules of international law, and secondly, that the Court has jurisdiction to deal with it, and that that jurisdiction is not fettered by any circumstance rendering the application inadmissible. The purpose of recourse to the Court is the peaceful settlement of such disputes; the Court’s judgment is a legal pronouncement, and it cannot concern itself with the political motivation which may lead a State at a particular time or in particular circumstances, to choose judicial settlement.

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legal grounds upon which the Court’s jurisdiction is said to be based invoked in the instrument instituting the proceedings. These eight judgments are in substantially identical terms, mutatis mutandis. In this volume, citations will normally be made to the judgment in the case against Belgium, the other seven judgments containing similar passages. In all these judgments, the individual opinions are identical. Each respondent argued its objections in its own way, Yugoslavia [Serbia and Montenegro] filed identical written observations in each case (para. 14) and its final submissions referred to all eight cases. In the judgments the Court ‘will consider the arguments put forward in this case and any other legal issue which it deems relevant to consider with a view to arriving at its conclusion... including the issues raised in the other cases...’ ( paras. 27, 53, 95). On the title of jurisdiction, see § II.155 below and ch. 14.

2 This is amplified in Art. 38 (1) of the Rules, which refers separately to the claim and to the subject of the dispute. Further in ch. 19, § III.298.


4 Border and Transborder Armed Actions (Jurisdiction and Admissibility) case, [1988] 69, 91 (para. 52). For the parallel attitude of the Court in advisory proceedings, see ch. 15, § II.245 n. 41.