CHAPTER 2

Between the Quest for Universality and its Limited Jurisdiction: The Role of the International Court of Justice in Enhancing the International Rule of Law

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Introduction

In the “Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels” adopted on 24 September 2012,1 member States of the United Nations recognize[d] the positive contribution of the International Court of Justice, the principal judicial organ of the United Nations, including in adjudicating disputes among States, and the value of its work for the promotion of the rule of law.

At the same time the General Assembly once again “call[ed] upon States that have not yet done so to consider accepting the jurisdiction of the International Court of Justice in accordance with its Statute”.2 It is against this background that this essay intends to address not so much the Court’s role in fostering and developing substantive international law,3 but rather the challenges and

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2 UN Doc. A/RES/67/1, para. 31.
3 But see on this already the seminal work by Hersch Lauterpacht, The Development of International Law by the International Court (London et al.: Stevens, 1958), as well as, most recently, the various contributions in Christian J. Tams and James Sloan, The Development of International Law by the International Court of Justice (Oxford: Oxford University Press, 2013).
inherent limitations which are related to the seizing of the Court mainly when it comes to contentious proceedings, and taking into account the role of the Court as the principal judicial organ of the United Nations and its universal character.

**Universality of the Court**

When the Peace Palace was opened in 1913, only approximately two-thirds of all States that then existed had acceded to either the 1899 or the 1907 Convention for the Pacific Settlement of International Disputes. 100 years later, all member States of the United Nations are *ipso facto* contracting parties to the Court's Statute and may thus appear as parties before the Court. With the quasi-universality of the membership of the United Nations, access to the Court has thus become almost universal in nature. As a consequence, outside somewhat curious settings, Article 35, paragraph 2, of the Court's Statute has

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