CHAPTER VII

Subject-matter Jurisdiction and Temporal Jurisdiction

In this part, two classifications of jurisdictional bases, subject-matter jurisdiction, *ratione materiae*, and temporal jurisdiction, *ratione temporis*, will be discussed. Temporal jurisdiction normally arises when the obligation in question has temporal limitations; therefore, it is often examined together with the question of the subject-matter jurisdiction and the admissibility of the claims.

1 Jurisdiction *ratione materiae*

a The Concept of Subject-matter Jurisdiction

The subject-matter jurisdiction refers to the substance of a case over which the Court has the competence to adjudicate. When a State seises the Court, instituting proceedings, it has to make sure that the subject-matter it wishes the Court to adjudicate falls within the scope of the jurisdiction of the Court. In the jurisprudence of the Court, the concept of the subject-matter jurisdiction is often linked with the following concepts: “the subject of an application,” “the subject(-matter) of a dispute” and “the subject(-matter) of a case.” These concepts are not identical, but inherently interconnected. So it is not surprising that they are often used interchangeably in legal writings. The term “the subject of an application” refers to the legal matter upon which the applicant wishes the Court to adjudicate. It underscores the substance of the whole case, for example, the boundary delimitation, or maritime disputes, etc. In contrast with the term “the subject of the case,” which should be determined by the Court, the subject of an application is defined by the applicant. The two may, or may not, refer to the same matter. For instance, in the case concerning *Obligation to Prosecute or Extradite*, Belgium claimed that the subject of the dispute between Senegal and itself concerned Senegal’s violations of its obligations under the Convention against Torture and customary international law.1 On the basis of the evidence, however, the Court found that the subject of the dispute was about Senegal’s alleged violations of the Convention

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1 Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, *i.c.j. Reports* 2012, p. 422.
against Torture, but not related to international obligations with regard to other international crimes under customary international law.

The term “the subject of a dispute” is a general reference to the matter on which the parties have conflicting legal claims. Because the essence of judicial adjudication is about settlement of a dispute, the subject of a dispute is also referred to as the subject of a case. In that sense there is no difference between the two terms. When the Court refers to “the subject-matter” of a dispute, its emphasis is on the specific substance with which that dispute is concerned, for instance, use of force, territorial disputes, overlapping maritime claims, State succession, diplomatic protection, sovereign immunity, etc. When a case involves complicated matters with various issues in dispute, the Court has to identify whether any, some, or all, of the claims fall within its jurisdiction. In the Georgia v. Russian Federation case, the situation between the parties involved use of force, repatriation of refugees, peace-keeping operations, and internal ethnic conflicts. Because Georgia based the jurisdiction of the Court on the compromissory clause of the International Convention on the Elimination of All Forms of Racial Discrimination (cerd), the Court had to find whether any dispute between the parties related to racial discrimination, the subject-matter of cerd. If so, that subject-matter would be covered by cerd, thus falling within the jurisdiction of the Court. If the dispute was about armed conflict and peace-keeping operations, it would not concern the interpretation or application of cerd, thus falling outside the Court’s jurisdiction.

The terms “the subject of a case,” “the subject of a dispute,” or “the subject-matter of a case” in a specific case, once determined by the Court, often refer to the same substance. It is in the examination of a specific dispute that the Court will be able to consider and determine whether the parties have, by any of the means as provided for in the Statute and the Rules of Court, conferred jurisdiction ratione materiae on the Court.

Article 36, paragraph 1, of the Statute defines the scope of the subject-matter jurisdiction of the Court in a broadest possible term. It covers “all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.” These terms “all cases” and “all matters” literally mean that the Court can deal with all categories of cases that are governed by international law. This scope is more specifically spelt out in the following paragraph of Article 36; such jurisdiction concerns:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;