CHAPTER TWO

PRESENTATION FROM THE STANDPOINT OF SPANISH LAW, ON THE LEGAL PROCESS AVAILABLE TO PARTIES IN THE CONTENTIOUS PROCEDURE OF THE INTERNATIONAL COURT OF JUSTICE*

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II. Proceedings before the Court, and procedure.
III. Institution of proceedings in contentious cases.
IV. Non-appearance.
V. Ordinary, special and incidental proceedings.
VI. Direction of proceedings by the Court and ad hoc procedures.

I. INTRODUCTION: ABSENCE OF APPEALS IN CONTENTIOUS PROCEDURE

Article 92 of the UN Charter defines the ICJ as ‘the principal judicial organ’ of the UNO. It is, then, a principal organ of a judicial nature composed of judges; it is independent and it is organised internally as a court of justice. As a general rule, disputes are dealt with by the full Court (Article 25 of the Statute of the ICJ), but cases may be brought, with the approval of the parties, before chambers of the Court.¹ These chambers are not separate jurisdictional organs from the Court. The Statute, which is an integral part of the UN Charter, establishes a single court and not a system of courts with a supreme or high court at the head as in the internal systems of States.

The Court’s chambers are the Court for purposes of the cases brought before them, and their judgments are considered as rendered by the Court (Article 27 of the Statute). These considerations apply to the three types of chamber admitted by the Statute, namely the Chamber of Summary Procedure (Article

¹ Advisory matters are always dealt with by the full Court.

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the chambers formed by the Court to deal with particular categories of cases (Article 26, paragraph 1) and special or ad hoc chambers formed by the Court to deal with a particular case (Article 26, paragraph 2).2

When a case has been referred to a chamber, that chamber deals with the entire jurisdictional function in the matter concerned, including incidents and processes deriving therefrom (Article 100 of the Rules of Court). In other words, the judicial actions or decisions of a chamber relating to a case brought before it cannot be challenged before the full Court. The Court’s Statute ignores the principle of double instance, and the existence of chambers is not to be understood as derogating the principle of a sole instance. The contentious procedure of the ICJ does not therefore contemplate appeal.

In point of fact the Court’s contentious procedure makes no allowance either for appeal or for legal remedies in general. When an author uses the term ‘appeal’ in connection with a legal process admitted in the Court, this must be put down to poor use of judicial language or to a slip of the pen or simple error. The absence of appeals in the procedure of the International Court of Justice is one of the most striking distinguishing features of that procedure when compared to the civil procedure in countries’ internal systems.

In civil procedural law, the commonest means of opposing jurisdictional decisions or acts (judgments, orders or other actions) is by appeal. By means of appeals such decisions or acts can be challenged, contradicted or refuted in order to oblige judges or courts to consider any defects, errors or taints that may attach to the decision or act concerned and if appropriate amend the judicial solution arrived at in the challenged decision or act. The action to lodge an appeal is instituted by the party who feels that the challenged decision or act is prejudicial to him (regardless of whether he be the plaintiff or the defendant in the case), and the decision or act against which the appeal is lodged must not be final ab initio or have become final. Final decisions passed as res judicata cannot be challenged by appeal. They must be complied with.

As a rule, in countries’ internal systems the lodging of an appeal, whether well-grounded or not, has precisely the effect of preventing the opposed decision or act from becoming final. A direct consequence of that effect is that the very act of lodging the appeal keeps open the procedural relationship between the parties that was established by the institution of the proceedings in the first instance. Such situations cannot arise in the Court, as there are no appeals. The Court’s Statute establishes no ordinary or extraordinary appeal from the Court’s judgments, orders or other decisions or actions.

In the case of judgments, this is strictly logical, given that according to Article 60 of the Court’s Statute the judgment is final and without appeal, a condition applying ab initio—that is, as from the moment when it is read at a pub-

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2 M. S. Torrecuadrada García-Lozano, Las salas ad hoc de la Corte Internacional de Justicia (Madrid, Ediciones de la Universidad Autónoma de Madrid/Marcial Pons, 1997).