The Administration of Justice by the
International Court of Justice and the Parties

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I. Introduction

One of the distinctive features of the present situation of the International Court of Justice (the ICJ or Court) is the remarkable increase of the cases before the Court. It reflects the trust in the dispute settlement function of the ICJ in a sense and, therefore, the ICJ is expected to function more effectively to settle the disputes filed before it. However, it is also true that there is a possibility that the Court procedure is used rather easily. In the increase of the cases, especially of the ones unilaterally filed by one of the Parties, the other Party to the dispute is forced to be involved in the process before the Court. Under such circumstances the function of the ICJ as the principal judicial organ of the United Nations is much highlighted now: the effective settlement of each dispute and the administration of justice as the principal judicial organ.

To examine the function of the Court, the role of the Parties should not be neglected. The judicial system of the International Court of Justice is based upon the consent of the Parties and allows various opportunities for the Parties to express their intention and each Party to a dispute takes best advantage of the Court system to obtain the final judgment and the final settlement of the dispute with successful results. Such efforts of a Party may lead to the abusive or arbitral use of the judicial procedure and it is the task of the Court to regulate

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such an inappropriate use and render a balanced decision which can contribute to the final settlement of the dispute. For these purposes, the Court should pay due regard to the Parties’ will, the cornerstone of the Court procedure, on the one hand, and maintain the appropriate function of the judicial system, on the other. In other words, the Court should strike a proper balance between the Parties’ interests and the administration of justice. In some of the recent cases, it seems that the Court was required to do so in a very delicate way. This paper will refer to those cases and examine how the Court deals with its two functions. Special attention will be paid to the opinions of the Judges in which the discussion of the Court on this point and the personal perception of each Judge about the function of the Court can be seen.

II. Subject-matter of a Dispute before the Court

II.A. Subject-matter Formulated by the Applicant State

Article 40, Paragraph 1, of the Statute requires that the subject of the dispute shall be indicated. In the case of unilateral submission, it is the Applicant State that formulates the subject-matter of the dispute in the Application and such a formulation is often in accordance with the intention of the Applicant State in order to justify the jurisdictional basis or the contents of the claims.

In response to the subject-matter formulated by the Applicant with a particular intention and interests, the Respondent State firstly expresses its intention as the preliminary objections, if it so desires. At this stage, the preliminary objections reflect the intention regarding the subject-matter of a dispute in relation to the object of the process and to the jurisdiction of the Court.

It is the long tradition since the Permanent Court of International Justice (PCIJ) that the Court has the power *proprio motu* to determine the subject-matter of the dispute in the case where the views of the Parties are different and that the function of the Court with regard to the subject-matter of a dispute is not to create or reformulate it but to interpret it in accordance with the facts and law alleged by the Parties. Such a function is considered to be inherent in the Court’s power and sometimes the Court exercises this power *proprio motu*. For the Court it is necessary neither to substitute itself for the Parties nor to