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GENERAL PRINCIPLES CONCERNING THE COMPETENCE OF INTERNATIONAL FORA

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I. Introduction to the subject of the research

When comparing dispute settlement proceedings before international courts, discussion usually focuses on differences rooted in the ways access to international dispute resolution functions are designed and procedural specificities are codified in underlying procedural regulations. These rules, however, are just the skeletons of the courts' procedure and – for obvious limitations – they cannot cover all possible issues which may arise. When procedural questions of competence are discussed, it is rarely touched upon how judges interpret these rules, how they construe boundaries of their competences as set out by such procedural rules, and how – with subtle techniques rooted in their judicial authority – they permeate through these seemingly strict boundaries.

Despite the seemingly high level of codification of international adjudicatory proceedings, international courts and tribunals operate on a thin layer of written procedure if we compare the use of these rules to the totality of considerations courts adopt in coming to a particular procedural decision. The statutory texts and rules into which most comparisons of international dispute-settlement are channeled provide only a skeletal framework; they cannot – and were never intended to – anticipate every jurisdictional puzzle, evidentiary difficulty or remedial dilemma that arises once a contentious case is actually litigated. It therefore falls to the judges to "fill the gaps" through interpretation and practical innovation, and, in the process, to shape the effective boundaries of their own authority. Far less attention has been paid to this judicial craftsmanship than to the application of black-letter provisions themselves, yet it is here within the details of competence-related judicial reasoning, inferential consent, and techniques of judicial economy that the real dynamics of international adjudicatory competence emerge.

International adjudication is rooted in two intuitively conflicting premises. On the one hand, all jurisdiction is consensual: no State can be brought before an international court unless it has consented to submit the dispute to that forum. On the other hand, once a court has been validly seised, its judicial character carries an autonomous authority: it must decide whether the conditions of consent are fulfilled, it must provide a complete settlement of the dispute, and it must be able to shape the remedies that give its judgment practical effect. The history of international litigation shows that courts move constantly along this consent-authority spectrum.

This thesis focuses on three general principles of international procedural law that sit at the heart of that dynamic: the *competence-competence* principle, the *iura novit curia* principle,

and the principles of *non ultra* and *ne infra petita*. Despite this seemingly common framework, all principles point to different normative directions when placed on the measuring scale of state consent/party autonomy and judicial authority. *Competence-competence* empowers the court, *ultra* and *infra petita* principles safeguard party autonomy, while *iura novit curia* aims to keep a middle balance with the use of some judicial creativity. How international fora reconcile these vectors, how they balance consensual limits with their own institutional imperatives, is the central inquiry of the dissertation.

Little scholarly analysis has been dedicated to these principles, especially in a comparative context, previous scholarly works either focus on one of the principles in question, are limited from a temporal perspective, or focus on one particular court without a comparative lense. This dissertation aims to fill this gap: it looks at the judicial reasoning applied when resorting to these principles as a basis, extension, or restrictive limit of competence. It traces the application of the three principles across a representative sample of inter-State and mixed disputes, advisory and contentious proceedings, preliminary objections, merits phases, reparations stages and incidental proceedings.

By placing decisions side by side, the study exposes both convergences and divergences in the way judges deploy these principles to police (or to stretch) the boundaries of their competence. Ultimately, the thesis argues that the principled balance struck by international courts is fluid rather than fixed: it evolves through an iterative dialogue between States' expectation of consent-based adjudication and the judiciary's duty to exercise its jurisdiction to the full extent once that consent is found.

II. Methodological approach of the dissertation (Chapter 2)

This dissertation examines the judicial reasoning adopted and the different tools and techniques employed by international courts and tribunals when applying general principles concerning their competence.

1. The subject of this research: *competence-competence*, *iura novit curia* and *non ultra* and *ne infra petita*

The research focuses on one subset of procedural general principles – those that govern how international courts and tribunals mark the boundaries of their own competence. It analyses three such principles which, taken together, capture the central modalities through which international adjudicators regulate their own authority. Their application also illustrates the different facets of judicial self-limitation as due to their general nature their use is inherently intertwined with judicial discretion.

Competence-competence obliges a tribunal to decide, as a preliminary matter, whether it possesses jurisdiction over a dispute and whether the claims before it are admissible. The doctrine is codified in several constitutive instruments (e.g. Article 36(6) of the ICJ Statute) yet is ultimately regarded as inherent in international practice: a court cannot perform a judicial function without first ascertaining its own competence. International courts have consistently applied the principle *proprio motu* and treated it as a rule of general international law, independent of party pleadings or evidentiary burdens. Existing scholarship on the principle is, however, limited: the most extensive monograph remains *Shihata*'s 1965 study which covered only the Permanent Court of International Justice (PCIJ) and the early practice of the International Court of Justice (ICJ; the two fora together referenced as the Court). Thus, in Chapter 3 concerning *competence-competence*, the present dissertation undertakes a broader, comparative examination of the inter-State and advisory cases before the ICJ, the European Court of Human Rights (ECtHR or Strasbourg Court), and the International Tribunal for the Law of the Sea (ITLOS) and assesses instance when these fora determine the existence, scope, or exercise of their competence.

Iura novit curia ("the court knows the law") authorizes and obliges judges to identify and apply legal norms not invoked by the parties. In functional terms, the principle allocates responsibility: the parties supply the facts and their legal characterization is the task of the court, thereby permitting judicial consideration of legal grounds beyond the pleadings and facilitating doctrinal development. Although the practical effect of the principle seems clear –

judges may, and sometimes must, reach beyond the pleadings to apply rules the parties ignored or omitted to invoke – its application takes various forms of varying degree of intrusiveness which also invites accusations of judicial law-making. Chapter 4 introduces these various manifestations of *iura novit curia*.

Finally, *non ultra petita* and *ne infra petita* secure the outer frame of consent. *Non ultra petita* obliges courts not to decide issues or grant remedies beyond those requested by the parties, while *ne infra petita* requires the tribunal to address all claims that have been submitted. Dependent on the claims of the parties, both derive from the consensual basis of the court's competence, operate throughout the adjudicatory process, and function as procedural safeguards for party autonomy. Their interaction with the other two principles is delicate. *Competence-competence* obliges a court to verify jurisdiction and admissibility even absent party objection, while *iura novit curia* allows it to recast the legal basis of the claim. *Non ultra* and *ne infra petita* reminds judges that such initiatives must never extend the dispute itself. When the three principles work in harmony, they safeguard both party autonomy and judicial integrity; when misaligned, they become breeding grounds for charges of arbitrariness or overreach. Viewed in concert, the trio offers a rounded lens on the mechanics of judicial discretion.

The discussion also engages *Robert Kolb*'s tripartite taxonomy of procedural general principles (structural-constitutional, procedural *stricto sensu*, and substantive general principles of procedural law) but argues that such principles are less neatly compartmentalised than Kolb's categorization suggests. Proper administration of justice and the related notion of inherent powers permeate and justify the other categories: courts invoke *iura novit curia* and *non ultra petita* precisely because they regard those competences as inherent tools when administering justice. It is submitted in the dissertation that whether *competence-competence* sits above or within Kolb's second tier is a "chicken-and-egg" question, since the doctrine both presupposes and sustains the tribunal's very capacity to pronounce on its own competence.

2. Research method: a comparative study with a functional universalist approach

Instead of measuring courts against an external ideal or transplanting one court's practices into another, the dissertation assumes that diverse legal systems confront the same underlying question – how judges exercise discretion when determining their own competence – and then studies the different doctrinal "tools and techniques" each system deploys to respond to it. The thesis therefore adopts the approach of *Shirlow*'s 2018 monograph on deference in

international adjudication[1] and examines the function rather than the form of those tools when it comes to the topic of judicial discretion in international adjudication in the context of competence-related decision-making.

To keep the analysis coherent, the inquiry is confined to permanent international courts and tribunals. It looks only at parts of judgments that concern questions of jurisdiction, admissibility, and closely related questions of competence (e.g. limitations on reparations under the *non ultra petita* principle). The dissertation analyses instances (through the judicial reasoning involved) where decision-makers invoke unwritten norms or broad contextual considerations as key expressions of judicial discretion, the point being to see how different areas of international law condition a court's sense of its own powers while still preserving party consent.

The scope of international courts and tribunals under analysis includes the PCIJ and the ICJ, three regional human-rights courts (ECtHR, the Inter-American Court of Human Rights, and the African Court of Human and People's Rights), the ITLOS, and a cluster of international criminal bodies (the International Criminal Court, the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Extraordinary Chambers in the Courts of Cambodia, and the Special Court for Sierra Leone). This institutional variety allows the dissertation not only to have a wide-ranging picture of the principles' use in international practice, it also allows us to probe how general principles as sources of international law interact with the much-discussed concept of fragmentation of international law.

For manageability and doctrinal comparability, the case selection is further filtered along three intersecting lines. *First*, the discussion of the *competence-competence* principle concentrates on inter-state and advisory proceedings before the ICJ, ECtHR, and ITLOS, excluding individual human-rights petitions and criminal prosecutions whose procedural frameworks differ too sharply. *Second*, both contentious and advisory matters are included to display competence-related reasoning in different procedural contexts. *Third*, depending on the principle under analysis, the research tracks competence questions across distinct procedural stages – preliminary objections, merits, incidental proceedings, and reparations – to capture shifts in the intensity of judicial self-limitation. Together, these methodological choices lay the groundwork for a systematic comparison of how international adjudicators "calibrate"

[1] Esmé Shirlow. Judging at the Interface: Deference to State Decision-Making Authority in International Adjudication.Cambridge: Cambridge University Press, 2021, pp. 52-53.

discretion in service of party autonomy, consensual jurisdiction, and their own institutional authority.

III. Main research findings

The dissertation's structure includes three main operational analytical chapters, each of which focuses on one of the principles, and introduces their main manifestations in the practice of the international courts and tribunals under assessment. Given the more general and extensive nature of the *competence-competence* principles (including its apparent functioning as "the core principle of judicial competence"), Chapter 3 is significantly more extensive than the chapters on *iura novit curia* and *non ultra* and *ne infra petita*. This, nevertheless, is inevitable given that the dissertation adopts the approach of *Shihata*'s monograph as regards the principle's scope and considers the principle to be applied on all occasions when courts deal with questions about the existence and scope of their competence. Although this approach may seem overly extensive, given that the principle's crux is that the court itself shall be the arbiter of questions of its own competence, a more restrictive approach would be arbitrarily removing questions of competence from the scope of the principle which matters are nevertheless discretionary issues pertaining to courts' competence.[2] Following the three operational chapters on the procedural general principles at issue, Chapter 6 provides a functional analysis of the general principles subject to the thesis by way of a comparative assessment of their use by identifying the adjudicatory tools and techniques in the practice of the above fora and grouping them based on their functions.

1. Findings as to the use of the *competence-competence* principle in international adjudication (Chapter 3)

Chapter 3 is structured into three main parts: the analysis of *competence-competence* in the practice of (*i*) the PCIJ and the ICJ, (*ii*) the ECtHR, and (*iii*) the ITLOS.

- *Ad (i)*: *The use of competence-competence by the PCIJ and the ICJ*

  Section I.A gives an extensive introduction to the use of *competence-competence* by the PCIJ and the ICJ through the issues which the Court addresses when it comes to

[2] For a different approach, *see*: Marija Đorđeska, General Principles of Law Recognized by Civilized Nations (1922–2018), Brill Nijhoff, 2018. Đorđeska considers as an application of a general principle only when the ICJ specifically names the principle in its practice or when it applies a recurring formulation / wording for a principle. As such, for *kompetenz-kompetenz*, she identifies only one PCIJ and 12 ICJ decisions (for the methodology of her monographs, see pp. 193-229, and for the analysis on *kompetenz-kompetenz*, see p. 293 and seq.).

determining its substantive jurisdiction, such as the parties' capacity to appear before the Court, jurisdictional questions of form and substance, joinder to the merits, or the case of non-appearance of the respondent State. It therefore introduces certain preliminary and miscellaneous questions of competence which arise regardless of the jurisdictional basis invoked for the case. As a next step, *Section I.B* follows up this analysis with considerations specific to different jurisdictional arrangements: the Court's original jurisdiction in contentious cases (split to subsections addressing each potential jurisdictional basis listed in Article 36 of the ICJ Statute), the ICJ's advisory competence, jurisdiction in incidental proceedings (including provisional measures, requests for revision or interpretation), and finally the special case of continuing jurisdiction (i.e. cases where the Court reserves jurisdiction over specific issues in its judgment for future proceedings or the parties agree beforehand to the possibility of returning to the Court after the judgment).

Turning to the admissibility aspect of *competence-competence*, without claiming exhaustiveness, *Section I.C* scrutinizes the three most frequently invoked admissibility arguments: *erga omnes* and *erga omnes partes standing*, diplomatic protection, and indispensable third parties. Lastly, *Section I.D* considers instances where the Court made reference to its judicial function either as a limit on its competence or a permissive circumstance. By tracing the different representations of *competence-competence* in the above-described details, the first part of Chapter 3 offers an overarching account of how the principle operates in the practice of the PCIJ and the ICJ, and these courts' attitude to the principle as a means to determine their competence.

- *Ad (ii): The use of competence-competence by the ECtHR*

The second part of Chapter 3 adopts a similar approach as the sections on the ICJ, with the inclusion of some dogmatic remarks at the start of this subchapter arguing that the ECtHR's approach contains dogmatic inconsistencies that obscure proper analysis of jurisdictional questions (*Section II.A*). The argument in this respect is twofold. *First*, the ECtHR conflates jurisdictional and admissibility requirements, treating jurisdiction as a subset of admissibility rather than following the established structure as seen in the practice of the ICJ. *Second*, the dissertation shows that the ECtHR misleadingly uses the term "jurisdiction" to refer to both its own competence to hear cases and States' obligations under Article 1 ECHR, creating unnecessary confusion as regards the

standards applicable. The introductory section posits that these inconsistencies undermine clear analysis of the Court's self-proclaimed boundaries of its own competence, and advocates for proper re-systematization distinguishing between genuine jurisdictional questions and admissibility criteria.

After introducing the different jurisdictional arrangements before the ECtHR in *Section II.B*, the subchapter illustrates the practical impact of these initial dogmatic remarks through the inter-State case law of the Strasbourg Court. It does so through the re-systematization of the currently applicable jurisdictional and admissibility requirements into categories more apt for the traditional jurisdiction-admissibility divide and for the analysis of the ECtHR's treatment of its competence. Thus, *Section III.C* differentiates between the genuine jurisdictional requirement of an allegation of an ECHR breach as required by Article 33, jurisdiction-based admissibility requirements as found in the practice of the ECtHR (i.e. jurisdiction *ratione personae*, *temporis* and *materiae*), and genuine admissibility requirements (as the four-month rule and the requirement of the exhaustion of domestic remedies). The subchapter addresses these requirements in turn, showcasing how the inter-State practice of the ECtHR handles these conditions in its practice.

- *Ad (iii): The use of competence-competence by the ITLOS*

Lastly, the third subchapter in Chapter 3 surveys the ITLOS' judicial reasoning in competence related questions. Given the relatively limited caseload and the specificity of the area of the law of the sea, the structure of this subchapter is less complex than those on the ICJ and the ECtHR and is only split into two main parts addressing jurisdictional matters in the different types of proceedings before the ITLOS (contentious, provisional measures, advisory, and prompt release), as well as the five types of admissibility pleas argued in ITLOS proceedings. At the same time, this limited nature of the case-law allows for a more exhaustive analytical approach.

The dissertation generally shows that ITLOS maintains strict adherence to the *competence-competence* principle, based on its consistent practice of examining jurisdiction *proprio motu*, even in case of the parties' agreement. Its approach is more permissive in case of provisional measures jurisdictional questions where it shows willingness to even infer disputes from State silence or the lack of a response, and it has never found the lack of *prima facie* jurisdiction in any case. Besides revealing the

concrete approaches ITLOS adopts to questions of competence, the analysis further demonstrates the Tribunal's heavy reliance on ICJ jurisprudence across jurisdictional questions, consistently following ICJ precedents for dispute existence, indispensable third-party doctrine, and interpretive methods. Lastly, and perhaps most controversially, the research identifies ITLOS's questionable expansion of its advisory competence beyond the original treaty framework, having created advisory jurisdiction not explicitly provided in UNCLOS.

2. **Findings as to the use of the *iura novit curia* principle in international adjudication (Chapter 4)**

Chapter 4 examines the application of *iura novit curia* across three distinct categories of international fora: the ICJ, international criminal courts and tribunals, and international human rights courts. It demonstrates that *iura novit curia* functions differently across international legal contexts based on the underlying values and objectives of each system.

- *Ad (i)*: *Iura novit curia in the jurisprudence of the PCIJ and the ICJ*

  The historical development of *iura novit curia* is traced in the widest timespan in the framework of PCIJ and ICJ practice, given the principle's emergence already in early PCIJ cases such as *Certain German Interests in Polish Upper Silesia* and *Chorzow Factory*. In these initial instances, the Court used the principle to assert its autonomous authority to interpret international legal norms and emphasized that it was not bound merely to affirm or negate parties' contentions. Chapter 4 shows that the principle evolved through landmark cases like *Lotus*, where the PCIJ demonstrated its commitment to thoroughly investigating all relevant legal sources beyond the parties' arguments, and the *Brazilian Loans* case, which established that international courts are "deemed itself to know what [the] law is."

  The ICJ formally embraced the principle in the 1974 *Fisheries* case, establishing what is considered the basic formulation: that the court is "deemed to take judicial notice of international law" and must "consider on its own initiative all rules of international law which may be relevant to the settlement of the dispute." The ICJ's subsequent jurisprudence, particularly in the *Nicaragua* case, confirmed this understanding while acknowledging important constraints imposed by the *non ultra petita* and *ne infra petita* principles. Nevertheless, Chapter 4's ICJ analysis displays that the Court favors this

traditional, "the court knows the law" type of use of the principle, which is in significant contrast to its use by criminal and human rights fora.

- *Ad (ii)*: *Iura novit curia in the case-law of international criminal fora*

  The analysis shows that international courts and tribunals encounter tensions between fair trial rights, judicial efficiency and the prevention of impunity when it comes to *iura novit curia*. The ICC has institutionalized the principle through Regulation 55, which allows trial chambers to modify charges after confirmation within certain constraints. The ICC's practice, demonstrated through cases like *Lubanga, Bemba*, and *Katanga*, shows three distinct applications: legal recharacterization of facts, modification of mental state requirements, and alteration of modes of liability. However, these applications are carefully circumscribed to protect the accused's right to adequate defense preparation and to maintain the fundamental scope of trials.

  In stark contrast, the ICTY adopted a restrictive approach in *Kupreškić*, concluding that *iura novit curia* does not fully apply in criminal proceedings due to the rudimentary state of international criminal law rules and potential risks to accused persons' rights. The ICTY emphasized that courts should be bound by prosecutorial characterizations rather than exercising independent recharacterization powers. This instance thus serves as an example for the fragmented treatment of a procedural general principle in between different international fora. The ICTR and the ECCC are shown to occupy middle positions, with the ICTR using the principle in a more traditional way, primarily to consider additional legal grounds beyond appellants' submissions, while the ECCC incorporates it into internal rules similarly to the ICC.

- *Ad (iii)*: *Iura novit curia in human rights practice*

  Chapter 4 finds that international human rights fora demonstrate the most expansive application of *iura novit curia*, driven by their mandate to provide comprehensive protection of human rights. The IACtHR has developed the most explicit jurisprudence, considering it as a general principle "solidly supported in international law". The analysis shows that it employs the principle in three primary ways: providing alternative legal grounds for violations based on provisions not explicitly invoked by petitioners, extending violations beyond specifically mentioned victims to address systemic issues, and ensuring comprehensive human rights protection despite petitioners' potential omission to litigate certain facts contained in their petition.

The ECtHR adopts a more restrained approach, distinguishing between legal recharacterization of facts specifically alleged by parties and consideration of facts not submitted by applicants. Besides introducing a significant array of case law utilizing *iura novit curia*, the chapter reflects on the landmark *Radomilja and Others v. Croatia* decision establishing important limitations, clarifying that while recharacterizing facts in law is acceptable, basing decisions on facts not covered by complaints would exceed the Strasbourg Court's jurisdiction and violate the *non ultra petita* principle. It is argued that this instance represents a significant development in delimiting the boundaries between the judicial knowledge of law and respect for party autonomy in defining the factual scope of disputes and sets out an appropriately balanced approach to the principle's use.

Chapter 4's comparative functional analysis leads to three main conclusions. *First*, that *iura novit curia* operates through context-specific adaptation mechanisms that modify its core function based on institutional objectives and systemic constraints. In inter-state adjudication, the principle functions as a sovereignty-respecting mechanism focusing on furnishing legal arguments. In criminal law, it operates as a constrained efficiency tool subordinated to fair trial requirements. Whereas in human rights adjudication, it primarily operates as to maximize protection for individuals who may lack legal expertise, compensating for structural inequalities, while ensuring that States can adequately defend against allegations.

Second, the analysis demonstrates functional evolution in response to these challenges, with courts developing over time increasingly sophisticated procedural mechanisms to operationalize the principle while addressing systemic concerns. The ICC's Regulation 55 represents codification that attempts to systematize previously *ad hoc* recharacterization practices. The ECtHR's *Radomilja* framework shows functional clarification that establishes clearer operational boundaries for court discretion.

Third, although the comparison is an apt example for the the significant effects the proliferation of international adjudicatory bodies has on the functioning of general principles, it also echoes diverse levels of intrusiveness when it comes to moving from the realms of the law towards the realm of facts. Human rights practice appears to use the principle as pretext for its activism in shaping the contours of the dispute at hand, not only by recharacterising the submissions under articles not invoked by the parties, but on occasions even through considering facts not complained of by the applicant. As such, the differing trends identified correspond to differing levels of judicial discretion applied.

3. Findings as to the use of *non ultra* and *ne infra petita* in international adjudication (Chapter 5)

With respect to *non ultra* and *infra petita*, the principles the functioning of which would appear to be the simplest at the outset, the dissertation reveals a complex landscape where seemingly straightforward procedural principles function as sophisticated tools of judicial discretion. Chapter 5 finds that it is in the case of these principles that the balancing of competing values of party consent, judicial authority, and effective dispute resolution is the most emphasized. This chapter adopts a different approach compared to the chapters on *competence-competence* and *iura novit curia*, and proceeds based on procedural phases and proceedings instead of based on each forum separately. This is due to the fact that, as Chapter 5 demonstrates, the principles' applicability varies significantly across different phases of international proceedings:

- *Ad (i): Preliminary objections phase*

  During the preliminary objections phase, their effect is substantially diminished due to the operation of the *competence-competence* doctrine. Courts have both the power and obligation to determine their jurisdiction and the admissibility of claims even without corresponding requests from parties.

- *Ad (ii): The merits phase*

  The merits phase represents the primary operational sphere for these principles. Here, courts apply what can be characterized as a formal adjudicatory approach, focusing on the parties' explicit claims rather than outcomes that correspond fully to substantive legal rights and entitlements. It is not surprising that the research reveals that courts consistently reference the jurisdictional basis of proceedings to indicate strict limits of consent and consequently the issues they should not address. This approach prioritizes procedural fidelity and fidelity to consent over comprehensive substantive justice.

- *Ad (iii): Reparations*

  Chapter 5 reveals the most complex dynamics in relations to reparations phases. It identifies two competing approaches: the restrictive approach sees courts refusing to award beyond requested relief, as demonstrated in cases like *Corfu Channel* or the *Bosnian Genocide* case, whereas the expansive approach involves courts exceeding party requests, particularly in human rights contexts involving absolute rights

violations. This latter approach reflects the judicial recognition that strict procedural compliance may not serve the interests of justice, particularly in cases involving serious human rights violations or situations requiring comprehensive remedial measures to prevent future harm.

- *Ad (iv): Provisional measures*

  In provisional measures proceedings, the principles are largely suspended due to courts' statutory *proprio motu* powers. International courts like the ICJ and ITLOS are empowered to issue orders beyond or different from those requested, driven by the need to prevent irreparable harm or preserve the effectiveness of dispute resolution. These powers effectively limit the reach of *non ultra petita* in this domain, as provisional measures also serve broader public interests that may transcend private claims of litigants.

- *Ad (v): Advisory proceedings*

  Advisory proceedings present a unique context where the strict application of these principles is questionable due to the absence of opposing parties and formal claims. Nevertheless, the underlying rationale still influences judicial approaches as they appear to consistently respect the boundaries of legal questions submitted while retaining interpretative discretion to clarify or reformulate questions essential to their judicial function.

Chapter 5 also underscores how the principles function as tools of judicial discretion. While it appears straightforward that courts should remain within boundaries posed by party submissions, what is actually requested by parties' claims ultimately depends on judges' interpretative activities. Courts exercise considerable interpretative autonomy in determining the actual scope of party requests, whether to rely on presumed party intentions, and how to balance formal compliance with substantive justice considerations. This interpretative authority manifests in various ways throughout international jurisprudence. Courts may interpret the terms of special agreements to broaden their competence, as demonstrated in the *Corfu Channel* case where the ICJ concluded that parties' subsequent conduct showed their intention not to preclude the Court from fixing compensation amounts. Conversely, courts may adopt restrictive interpretations that limit their scope of action, as seen in the *Upper Silesia* case where the PCIJ declined to presume applicant intentions regarding claim specifications.

Furthermore, Chapter 5 also reveals points of tension between formal adherence to party consent and considerations of substantive justice. This consent versus justice tension manifests in courts' struggles to maintain procedural integrity while ensuring that their decisions adequately address the real underlying dispute with an aim to prevent future conflicts. The principles also raise important questions about jurisdictional boundaries, functioning simultaneously as jurisdiction-conferring norms in some contexts and procedural constraints within established jurisdiction in others. This dual nature further displays the complex relationship between consent-based jurisdiction and judicial authority in international law.

Ultimately, this research reveals that while the *non ultra petita* and *ne infra petita* principles maintain their theoretical importance as consent-based limitations, their practical application demonstrates the sophisticated and discretionary nature of international judicial decision-making. The research demonstrates that despite their foundational status, they operate with significant flexibility rather than as rigid constraints. Courts consistently balance multiple considerations including party autonomy and consent, judicial integrity and coherence, public interest and dispute prevention, and the overall effectiveness of international adjudication. This balancing act reveals the inherently discretionary nature of judicial decision-making in international contexts.

4. Comparative findings (Chapter 6)

In the comparative chapter of the dissertation common trends and diverging practices as regards the principles under analysis are identified, and some theoretical and field specific remarks are made. This is carried out from four different perspectives:

- *Ad (i): The functional grouping of the different application of the general principles*

  Chapter 6 starts off by mapping the different uses of the principles on a spectrum displaying the different levels of courts' engagement with general principles concerning their competence. At one end of the spectrum lies the category where the principle's existence and applicability are assumed but not spelt out, and it is either applied implicitly without naming the principle (*1*) or it is not applied at all (*2*). There are also cases where courts merely pay "lip service" to these general principles, reciting them perfunctorily, yet refraining from substantially integrating them into the legal reasoning in a way which determines the outcome (*3*). Third category is substantive application, subdivided into (a) cases where the principle is woven into an already established competence to resolve the dispute before it, and (b) where the court proactively extends

its own competence through the principle. This exercise not only illustrates the variable weight courts ascribe to general principles but also reveals how such principles can serve alternately as silent premises, rhetorical ornaments, or decisive analytical tools in shaping the contours of judicial authority.

- *Ad (ii): Findings as regards the tools and techniques applied by international courts when resorting to the three general principles under analysis*

  Chapter 6 also categorizes the judicial tools and techniques of courts and tribunals when applying the general principles under analysis based on their function in the judicial reasoning. The dissertation differentiates between four categories of techniques, in addition to *iura novit curia* and *non ultra petita* / *ne infra petita* which in themselves may be argued to be tools courts resort to in their treatment of competence-related issues: (*1*) tools pronouncedly centered around judicial discretion and tools of procedural management (i.e. judicial economy, the freedom to select the order of addressing conditions of competence or the basis of the judgment, and the creation of judge-made procedures); (*2*) tools directly based on judicial reasoning or its absence (*i.e.* interpretation; resorting to fundamental values as standards; using hypotheses, analogies and inferences; the explicit omission of providing reasoning for competence-related decisions; and stealth inconsistency); (*3*) doctrinal or structural techniques (i.e. the recharacterization of claims, issues and questions in law; the separation of two interrelated aspects of a dispute; the separation of different phases of the proceedings); and (*4*) tools characterized by institutional roles, characteristics and limitations (i.e. reference to judicial function as either an enabling authority or an inherent limitation in a competence-related decision or the subsequent perfection of the underlying jurisdictional instrument). *Iura novit curia* and *non ultra petita* / *ne infra petita* are presented by the thesis both as tools in themselves, as well as sources of certain of the above-mentioned sub-categories of tools courts may apply with reference to them. The dissertation finds this duality in the more general, "umbrella" nature of *competence-competence* in relation to other competence-related principles.

- *Ad (iii): Field/forum-specific findings*

  After the above, principle-specific findings, the chapter continues by shifting focus to the comparison of the fora and fields analysed. As regards the PCIJ and the ICJ, it concludes that the analyses in Chapters 3-5 mostly show consistent adherence to

traditional formulations of the principles: a conservative approach to *competence-competence* prioritizing legitimacy over efficiency, a restrained approach to *iura novit curia* and strict respect for *non ultra petita*. Every doctrinal move – whether broadening jurisdiction under Article 36 or declining to adopt *ultra petita remedies* – is ultimately justified (or limited) by reference to State consent.

As regards human rights adjudication, the dissertation finds that the same triad of principles is re-weighted in favour of individual protection and systemic effectiveness. This is especially true for *iura novit curia* which is employed intrusively to re-characterise both legal *and* factual questions; and *non ultra petita* which is even absolutely disregarded when violations of absolute rights are alleged. The dissertation finds that human rights bodies may instrumentalize the principles to tilt adjudication toward maximizing remedial reach, even at the price of doctrinal neatness.

When it comes to the array of criminal adjudicatory fora, the three principles appear to be treated through the prism of fair-trial guarantees and judicial discretion is ratcheted in direct proportion to procedural safeguards – a functional compromise that distinguishes criminal courts from both inter-State and human-rights adjudication. An example may be the narrowed applicability of *iura novit curia* only when defence rights can be re-balanced.

Lastly, ITLOS emerges as the most ICJ-deferential forum. In its very limited use of the principles, it borrows ICJ tests for matters such as the existence of a dispute and indispensable parties.

- *Ad (iv): Finding with respect to the nature of general principles and their connection to other sources*

In concluding this chapter, the dissertation circles back to the introductory proposition concerning the possibility of the fragmentation of general principles. It reveals a paradox in scholarship: whereas general principles are frequently argued to be gap fillers in international law, the dissertation shows that the application of *competence-competence*, *iura novit curia* and *non ultra* and *ne infra petita* varies dramatically across different adjudicatory contexts. This is argued to underscore that the much-discussed phenomenon of the fragmentation of international law does not only concern substantive legal rules but extends to the very procedural foundations of how international courts operate.

IV. Possible application of the research findings

First and foremost, this dissertation raises scholarly awareness to the need for a more directed and conscious tracking of how international courts and tribunals interpret the boundaries of their judicial competence by way of application of procedural general principles, an exercise which is likely to go unnoticed due to the unwritten nature of the underlying rules.

The dissertation's findings can be directed at different audiences:

- For *academics*, the dissertation supplies a refined lens on how international adjudicators police the limits of their own authority. By cataloguing the concrete applications of the principles in the practice of a wide array of internation fora, it exposes patterns of functional convergence that formal comparisons often miss. It aims to feed into research projects concerning procedural dogmatic questions on international courts' competence and on the fragmentation of international law. For comparatists, the functional universalist approach adopted reveals something crucial that formalist comparisons miss, namely that courts facing similar structural pressures may resort to the application of general principles for different ends and with different outcomes, but they appear to develop analogous tools even when operating under different legal traditions. It is suggested that comparative international law scholarship should focus more on functional convergence than formal divergence.

- *Practitioners*, and especially advocates before international courts, can translate these findings into concrete pleading tactics. Knowing where each forum sits on the discretion spectrum lets counsel decide whether to invite, contest or pre-empt judicial initiatives – e.g. framing submissions narrowly to trigger *non ultra petita* protection, or, in human-rights litigation, encouraging broader remedial creativity. As *Lauterpacht* observed, "[d]ecisions given by a Court show what in all probability the Court will in future treat as law; and for those for whom the science of law is not mere speculation but a practical art of predicting the future conduct of judges – which is for many the test of science – this is the decisive consideration."[3] Thus, the overview may be of use to in navigating arguments when approaching questions of competence when appearing before international courts and tribunals.

[3] "General Rules of the Law of Peace" (1937), in International Law, the Collected Papers of Hersch Lauterpacht, Vol. I, p. 247.

- For *judges,* the dissertation highlights that written rules alone cannot cage discretion, but that their activities outside such rules and carried under the auspices of less concrete principles are equally scrutinized and measured against the due limits of judicial discretion. What matters is transparent reasoning and predictable tools. The phase-specific analysis further suggests that judges should be conscious about the limits and the competences specifically applicable to different procedural contexts, and that procedural design may need to be more phase-specific rather than assuming uniform application.
- At a governance level, for *treaty drafters and State representatives,* recognizing that courts inevitably "fill gaps" through these principles helps drafters decide where to codify guidance and where to rely on judicial practice, while offering clearer metrics for assessing whether particular exercises of discretion remain within the bounds of consent-based legitimacy. States, too, can calibrate *compromis* clauses or declarations accepting compulsory jurisdiction to signal how much interpretative leeway they are willing to tolerate.

V. The author's list of publications

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- Gábor Kajtár – Barbara Bazánth: A Bíróság költségei, In: Sonnevend, Pál; Bodnár, Eszter (szerk.) Az Emberi Jogok Európai Egyezményének kommentárja Budapest, Magyarország : HVG-ORAC (2021) 756 p. pp. 551-552;
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