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recognized in general international law and stipulated also in Art. 2, para. 2 UN Charter as a general duty of the member States. The principle of good faith has a series of 'concretizations' in the field of procedural law.¹³⁹

First, it requires the parties not to undertake any action which could frustrate or substantially adversely affect the proper functioning of the procedure chosen, the point being to protect the object and purpose of the proceedings. As has already been said, the proceedings are also characterized by their adversarial nature and the opposing claims of the parties. Thus, it is perfectly open to a party to further its own interests even at the expense of the other party. But this selfishness has some limits. It cannot disregard requirements of a proper functioning of the procedure as such.¹⁴⁰ Thus, a party may not deliberately present false or forged pieces of evidence. It may not impede the production of evidence by the other party by having recourse to pressure or any other equivalent device. Second, the principle forms the basis of the more specific rule on the prohibition of abuse of procedure.¹⁴¹ Third, it is the basis for the application of procedural estoppel, or of the maxim *nemo commodum capere potest de sua propria turpitudine*. The last two propositions can be applied to evidentiary issues. To that extent, they can be said to govern the proceedings of international tribunals. It is proposed to focus here on the three aspects of abuse of procedure, estoppel and *nemo commodum*.

1. The Prohibition of Abuse of Procedure

49 Abuse of procedure is a special application of the prohibition of abuse of rights, which is a general principle applicable in international law as well as in municipal law.¹⁴² It consists of the use of procedural instruments or rights by one or more parties for purposes that are alien to those for which the procedural rights were established, especially for a fraudulent, procrastinatory or frivolous purpose, for the purpose of causing harm or obtaining an illegitimate advantage, for the purpose of reducing or removing the effectiveness of some other available process or for purposes of pure propaganda. To these situations, action with a malevolent intent or with bad faith can be added. The existence of such an abuse is not easily to be assumed; it must be rigorously proven. The concept cannot be caught completely in the abstract, since it can relate to a variety of different situations.

50 The case law of the ICJ is replete with instances where the principle of abuse of procedure has been invoked. The Court, however, has never found the conditions for an application of the principle to be fulfilled. But it did not reject the concept as such; it merely affirmed that its application was not warranted in the cases under consideration. In each case, its analysis seems to have been correct.

The contentious cases in which the principle has so far been invoked are the following:¹⁴³

- *Ambatielos* (claim of abuse of procedure by excessive delay in presentation of a claim);¹⁴⁴

¹³⁹ Cf. the detailed analysis in Kolb (2000), pp. 579 *et seq.*

¹⁴⁰ Cf. *ibid.*, pp. 587 *et seq.* (in the context of negotiation).

¹⁴¹ Cf. *infra*, MN 49 *et seq.*

¹⁴² Kolb (2000), pp. 429 *et seq.* There is no room here to venture into a description of the various contents of the principle.

¹⁴³ Cf. *ibid.*, pp. 640 *et seq.*

¹⁴⁴ *Ambatielos* (Greece/United Kingdom), ICJ Reports (1953), pp. 10, 23.