Vilnius University Faculty of Law

Department of Private Law

Kyryl Mygas,

II study year, International Law Programme Student

Master`s Thesis

The Legal and Practical Aspects of Third Party Intervention into the ICJ Case

Trečiųjų šalių įsitraukimo į TTT bylą teisiniai ir praktiniai aspektai

Supervisor: lect. dr. Inga Martinkutė

Reviewer: prof. dr. Gabija Grigaitė-Daugirdė

Vilnius

2023

ABSTRACT AND KEY WORDS

This thesis explores third-party intervention in the ICJ, examining the concept, legal framework, and dynamics. It analyzes discretionary and as-of-right intervention, delves into the status of intervening states, and addresses ongoing challenges using the Ukraine v. russian federation case. The study also evaluates amicus curiae, comparing its role in the ICJ and other bodies, and assesses third-party intervention in Erga Omnes violations.

Keywords: International Court of Justice, concept of intervention, discretionary intervention, intervention as of right, legal interest, third states, amicus curiae, erga omnes obligations.

Šioje disertacijoje nagrinėjamas trečiųjų šalių įsikišimas į ICJ, nagrinėjama koncepcija, teisinė bazė ir dinamika. Jame analizuojamas diskrecinis ir pagal teisę vykdomas įsikišimas, gilinamasi į įsikišančių valstybių statusą ir sprendžiami nuolatiniai iššūkiai, naudojant Ukrainos ir Rusijos Federacijos bylą. Tyrime taip pat vertinamas amicus curiae, lyginamas jos vaidmuo TTT ir kitose institucijose, taip pat vertinamas trečiųjų šalių įsikišimas į Erga Omnes pažeidimus.

Raktiniai žodžiai: Tarptautinis Teisingumo Teismas, intervencijos samprata, diskrecinis įsikišimas, įsikišimas kaip teisė, teisinis interesas, trečiosios valstybės, amicus curiae, erga omnes įsipareigojimai.

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INTRODUCTION

The International Court of Justice is an essential judicial body within the United Nations. Its primary function is to resolve conflicts between different countries and provide insight on legal matters referred to it by various UN organizations and specialized agencies. The jurisdiction of the ICJ is contingent upon a State's agreement, which can be in the form of a special agreement, compulsory jurisdiction, or incidental jurisdiction. In other words, the ICJ holds the power to determine whether or not it has jurisdiction over a specific case. A noteworthy aspect of incidental procedures is a State's ability to appeal to the ICJ as a third party, as outlined in Articles 62 and 63 of the ICJ statute and Articles 81-85 of the Court's 1978 Rules.

The process of intervention in accordance with Article 62 differs from that of Article 63. In the former, a State must present compelling evidence of their "legal interest" to justify their involvement. On the other hand, Article 63 is applicable when the International Court of Justice is interpreting International Conventions. This grants participating States the opportunity to intervene in cases initiated by other parties, and the resulting verdict would hold weight for all intervening third parties. Surprisingly, literature on third-party intervention was scarce in the Permanent Court of International Justice (PCIJ) in contrast to the ICJ.

Throughout the 20th century and into the present day, the concept of intervention by third parties in international judicial proceedings has been a topic of ongoing and careful examination within the scientific community. The **relevance** of this research cannot be overstated, as the international judicial system continues to evolve. With the growing number of cases before the ICJ that involve third party intervention, it is crucial to thoroughly analyze both the legal and practical implications. In light of the current global landscape, highlighted by the highly significant Ukraine vs. russian federation case with involvement from a whopping 32 countries, it is more crucial than ever to grasp the complexities of third party intervention in the ICJ. This study seeks to add to the existing knowledge by delving into the nuances of these interventions.

The main **aims** of this work include analysis of concept of third party intervention, legal provisions of the statute of the International Court of Justice regulating the process of intervention both under articles 62 and 63, highlighting problems facing Court during its litigation, determination of a status of an intervening state and examining ongoing cases (Ukraine v. russian federation in particular). Additionally, the study will consider the

possibilities of expanding third-party intervention in cases involving violations of erga omnes obligations and the presentation of amicus curiae briefs by third states.

Tasks of this work is to analyze the system of international adjudication regarding third party intervention, its evolution and its case law, compare it to the domestic litigation and highlight its main characteristics.

The research employs a multifaceted **methodological approach** to comprehensively address the various aspects of third-party intervention in ICJ cases. It combines legal analysis through an in-depth examination of statutes, case law, and historical developments related to third-party intervention in the ICJ. A focused case study is employed to provide real-world insights into the dynamics of state intervention, reasons for abstention, and ongoing challenges. A comparative analysis of practices in other international judicial bodies enriches the study by identifying variations and potential best practices. The research also includes a thorough literature review, drawing on existing scholarly works and legal literature, to contribute to and build upon the existing body of knowledge. A conceptual analysis explores theoretical frameworks and key concepts associated with third-party intervention in ICJ cases, and an interdisciplinary approach is adopted to draw insights from legal, political, and international relations perspectives, ensuring a rigorous and well-rounded examination of the legal and practical complexities surrounding third-party intervention in the ICJ.

The **originality** of this master's thesis becomes evident through its distinctive exploration of previously unexplored facets of third-party intervention, with a specific focus on addressing erga omnes violations. By delving into the Ukraine v. russian federation case, this work not only sets itself apart, but also brings fresh and inventive perspectives to the ongoing discourse surrounding third-party intervention in international legal proceedings.

1. CONCEPT OF INTERVENTION

In light of the complex interrelationships of international actors and the constant development of global challenges, the International Court of Justice plays a key role in ensuring justice and stability in interstate relations. Intervention in disputes between states, going beyond simple conflict resolution, becomes a complex mechanism that requires careful consideration and understanding. A detailed analysis of the concept of "intervention" reveals the variety of forms of participation of third states in conflict resolution, and also defines the role of the International Court of Justice in this complex context.

1.1. Definition and Legal Character of Intervention

When addressing the matter of intervention in an ICJ case, it is important to begin by elucidating the term's meaning within the national context. Understanding the concept at the national level provides a foundational framework, as many principles and procedures related to intervention originate from domestic legal systems.

In national legal contexts, intervention is a process enabling a nonparty, referred to as an intervenor (or intervener), to become involved in an existing legal dispute. This involvement may occur either as a matter of right or at the court's discretion, without requiring the consent of the initial litigants. The fundamental reasoning behind intervention lies in the recognition that a court's decision in a specific case could have implications for individuals or entities not originally involved. Ideally, these nonparties should have the opportunity to present their perspectives and arguments before the court to ensure a fair and comprehensive resolution that considers their rights and interests. (Wikipedia, n.d.) Intervention should occur relatively early in the legal proceedings, typically soon after the submission of a complaint and response. It is crucial to avoid intervening right before the trial, as such late involvement could potentially harm one or both parties who have already made trial preparations based on the involvement of the original litigants. (Law.com - Legal Dictionary, n.d.)

In civil cases, a party seeking to intervene initiates the process by submitting a motion to intervene. This motion must be filed in a timely manner and include a statement outlining the reasons for intervention, along with a presentation of the pertinent claims or defenses. An intervenor has the flexibility to align with the plaintiff, the defendant, or take an adversarial

stance against both the plaintiff and the defendant. This allows the intervenor to actively participate in the legal proceedings and advocate for their interests in a manner consistent with the dynamics of the case. (LII Legal Information Institute , n.d.)

Under U.S. Civil Law, there are two types of intervention: Intervention of Right and Permissive Intervention. First occurs when an external party wishes to participate in a case by filing a motion. To qualify, the party must provide compelling evidence of their interest in the case's financial aspects, property, or related issues. They need to establish the risk of suffering some form of injustice if not included and demonstrate that none of the existing parties can effectively represent their interests. This legal process ensures that individuals or entities with a legitimate stake in the case can actively engage in the proceedings. Permissive Intervention involves an external party seeking to join a case without a direct financial interest. In this scenario, the party aims to demonstrate that there is a specific question of law or statute requiring clarification or interpretation by the judge. This type of intervention allows parties to contribute to the legal proceedings by addressing important legal questions, even if they do not have a direct financial stake in the outcome of the case. (Isaacs & Isaacs , n.d.)

It is necessary to note that the nature of intervention varies across legal systems, but common characteristics include the necessity for the intervenor to establish standing, demonstrating a significant and direct interest in the outcome. Courts generally have discretion to grant or deny intervention based on factors such as the relevance of the intervenor's involvement, potential impact on existing parties, and adherence to procedural rules. The intervenor, once granted permission, may present legal arguments, submit evidence, and participate in hearings, contributing a unique perspective to the resolution of the legal dispute. The concept of intervention is designed to balance the interests of justice, allowing interested parties to participate while ensuring the efficiency and fairness of the legal process.

In the proceedings of the International Court of Justice (ICJ), the term "intervention" typically refers to the voluntary involvement of a third State in an ongoing contentious case between other States. (Zimmermann, 2019) This mechanism finds its basis in Articles 62 and 63 of the Statutes of the PCIJ and the ICJ, which outline the provisions for a third State to participate in cases initiated by other States.

Functioning as a legitimate and suitable remedy, intervention serves as a mechanism allowing third states not initially involved in an ongoing legal dispute to join the proceedings

actively. This grants them the opportunity to safeguard their legal rights or interests that could be impacted by the unfolding course of the litigation. (Koray, 1992) In essence, intervention serves as a recognized institution, permitting external parties to join ongoing legal proceedings to ensure the defense of their legal concerns, a principle upheld by legal systems both ancient and contemporary across the globe.

The Chamber of the ICJ has also expressed in its Judgements that a State, when it believes that a decision in a case may impact its legal interests, has the option to either intervene or refrain from doing so. In the event that the State chooses not to intervene, the proceedings may proceed, and the State is safeguarded by the provisions outlined in Article 59 of the Statute. (Park, 2013)

1.2. Subject of intervention

When examining the issue of intervention in International Court of Justice cases, it is essential to define the entities authorized to intervene in its proceedings. In the realm of international law, a distinction is frequently drawn between primary and secondary subjects. Primary subjects, such as states and entities pursuing national liberation, emerge on the international stage due to historical processes. On the other hand, secondary subjects encompass international organizations and similar entities, whose origins, powers, and participation in global affairs are shaped by primary subjects of international law. In the context of ICJ cases, the discussion of intervention involves not only traditional subjects but also non-traditional entities recognized universally as subjects of international law. (Savchenko, 2022)

Indeed, the doctrine of international law recognizes various subjects, but the Statute of the International Court of Justice (1945) specifically addresses the question of third-party participation in the Court's proceedings. According to Article 34(1), only States may be parties to a dispute before the International Court of Justice. Therefore, it becomes evident that only states may request intervention. If a state that is not a party to the Statute were allowed to intervene, there would be a need to ascertain its connection to the Court in that specific case, including the determination of its role as an intervening party. (Chinkin, 1986)

In accordance with Article 34(2) of the Statute, public international organizations are authorized to provide pertinent information to the Court, either at their own initiative or upon

the Court's request. Additionally, any such organization holds the right to receive notification if the interpretation of its constituent convention is under consideration. Although international organizations possess specific rights, they do not have the standing to intervene in contentious cases. Miller has contended that the option of intervention should be extended to other international actors, aiming to enhance its possibilities and broaden the scope of international adjudication. This would clearly involve revising the Statute and endorsing a considerably broader perspective on the Court's role in international adjudication than the limited one mentioned earlier. In her work, Prof. Chinkin states that In the light of recent judicial practice "such a proposal is unlikely to be acceptable to the Court. Yet situations can be envisaged where the proposal could have advantages". An instance of this could be the allowance for a multinational corporation to intervene, safeguarding its interests in situations akin to the Barcelona Traction case. This scenario arises when no capable state is identified as willing to represent the shareholders' interests. (Chinkin, 1986)

1.3. The Correlation between Domestic and International Law on Intervention

Intervention in legal proceedings holds a unique position in both domestic and international law. This section explores the intricate relationship between these two legal realms.

1.3.1. Commonalities in Domestic and International Litigation

Courts, whether dealing with domestic or international matters, share a common goal of achieving judicial efficiency. This entails resolving multiple disputes within a single case, avoiding the need for separate proceedings. From the perspective of interveners, both in domestic and international contexts, an opportunity arises to safeguard their rights within ongoing litigation without initiating independent actions.

In both contentious domestic and international forums, courts rely on information presented by involved parties to inform their decisions. However, acknowledging that parties may not present a complete picture of the dispute's setting, the inclusion of third parties becomes instrumental. These external contributors furnish additional elements of law and fact, ensuring a more comprehensive understanding that aligns with the pursuit of truth and justice. This inclusion mitigates the risk of collusion between parties and avoids the potential for conflicting judgments on the same subject matter.

The involvement of a second judge in considering a prior decision, particularly if it introduces changes to legal doctrine, is a shared characteristic. The continuity of judicial decisions is evident, as judges are inclined to follow and build upon previous judgments, whether it be the same judge or another. This practice not only avoids unnecessary repetition but also contributes to a more effective and harmonious delivery of judgments. Ultimately, by considering the direct and indirect interests of all parties involved, courts can achieve a balanced and fair resolution, reinforcing the credibility and authority of the justice system. (Weeramantry, 2001)

1.3.2. Distinctive Aspects in International Litigation

In the realm of international litigation, specific factors set it apart from domestic proceedings. The International Court of Justice does more than just resolve disputes; it also works to prevent conflicts in a broader sense. This expanded jurisdiction reflects a recognition of the court's influence in shaping the conduct and legal interests of all states. The court's decisions strongly influence how states follow laws, even though they aren't strictly binding between parties.

Functioning as both a court of first instance and court of last resort, the International Court of Justice assumes a unique position. The court's findings about facts are very decisive, unlike in domestic courts. This highlights the crucial need to have a full understanding of the subject when making these findings.

In the context of international law, the International Court of Justice leans heavily on precedent, using past decisions as persuasive authority. Unlike domestic courts, the International Court cannot annul its decisions, as highlighted by Judge Jennings in the Continental Shelf (Libyan Arab Jamahiriya v. Malta) case. A basic understanding of the Court's legal principles reveals that Article 59 does not in any way eliminate the influence of persuasive precedent. (Jennings, 1984)

Unlike domestic procedures, only parties directly involved in a dispute possess the standing to request interpretation or revision of a decision by the International Court of Justice. This contrasts with systems like the French tierce opposition, emphasizing the exclusive access granted to involved parties in seeking clarification or adjustment. (Weeramantry, 2001)

In the sphere of international law, a third party may lack the ability to initiate legal action to protect its rights, further distinguishing it from domestic litigation. The fact that third

parties have few options emphasizes the special difficulties and limitations in the international legal field. This means it's harder for outside parties to take action or address issues in international law.

1.3.3. Distinctions Between Domestic and International Legal Procedures

Divergences between domestic and international legal procedures are notable in several aspects. First, domestic intervention law allows two forms of intervention: compulsory and voluntary. The former, based on the court's compulsory jurisdiction over subjects, lacks a counterpart in international law. Second, while domestic judgments generally impact immediate parties, international judgments can have repercussions on global interests, such as nuclear testing affecting neighboring states. Third, the imposition of a jurisdictional link in international litigation can hinder affected states from intervening, creating a hiatus in international justice. This gap's intensity varies depending on the connection of another dispute to the issues determined by the case at hand. Moreover, requiring a jurisdictional link may prevent a state from asserting its position on matters important to itself, like interpreting a treaty to which it is not a party.

While the International Court is a significant entity in the international legal system, it's crucial to note that, owing to the decentralized nature of the international legal system, there is no strict hierarchy among international courts. Nevertheless, its pronouncements hold special recognition, even in matters not directly tied to the specific dispute. In international litigation, maintaining confidentiality in pleadings can impede others from participating, diminishing their capacity to contribute compared to the more transparent pleadings prevalent in domestic law." Distinguishing between International Court determinations and arbitral awards is also crucial, as the former, despite being binding between parties to the case, affects non-parties due to its weight and authority.

Furthermore, the role of the International Court goes beyond settling immediate disputes. It involves the development and clarification of international law. While domestic courts may view disputes narrowly, focusing exclusively on the immediate parties and the dispute at hand, international courts, especially the International Court of Justice, must consider the rights of other states, even those not parties to the dispute. This broader perspective aligns with the International Court's obligation to preventive diplomacy and comprehensive conflict resolution. Sir Robert Jennings emphasized this role, noting that the

International Court's procedure is now seen as a resort in a closer relationship with normal diplomatic negotiation, not solely as a 'last resort' when all negotiation has failed. (Jennings, 1994)

1.4. Purposes of Intervention

In the complicated world of international law and the activities of the International Court of Justice, it's really important to clearly explain why states want to get involved in the particular case. This imperative gains prominence against the backdrop of Article 59, which absolves nonparties from the binding effects of the Court's decisions. While the utilization of the intervention procedure is relatively infrequent, the motivations underlying such requests carry profound implications, offering insights into the strategic considerations and protective measures adopted by states to safeguard their vital interests.

The latest revisions of the ICJ's Rules underscore the necessity for states to articulate with precision the objectives driving their proposed interventions. This explicit requirement not only renders the expressed motives readily identifiable but also prompts a deeper exploration into potential implicit motives that may underscore the strategic use of intervention. An illustrative case, such as Italy's application in the Libya/Malta case, highlights the nuanced dynamics wherein the mere act of applying for intervention can strategically serve as a mechanism to alert the Court to a state's interests without necessitating separate proceedings. (Chinkin, 1986) This strategic approach, as argued by Judge Nagendra Singh, acts as a safeguard for states, particularly those foreseeing the potential impairment of their vital rights in the short or long term. (Singh, 1984) Consequently, the establishment of a clear and legitimate purpose for intervention emerges as a fundamental consideration, subject to the evolving framework defined by the ICJ's judicial practice and recent decisions.

In its Application for Permission to Intervene in the Tunisia v. Libya case (1978) Malta indicated its aim to provide its insights to the Court concerning the issues presented in the ongoing case before the Court reached a decision on those matters (Application of Malta, 1981). It aimed to express these perspectives due to its asserted legal interest, rooted in its geographical position relative to Libya and Tunisia. Malta emphasized that it did not seek a judgment specifically related to its continental shelf but was concerned that the Court's decision

could impact its interests in that area, both procedurally and in terms of the articulation of legal principles. (Chinkin, 1986) Hence, Malta's intention was not to intervene based on shared interests with either party but to act as an autonomous participant, addressing its unique concerns.

In its Application to Intervene, Italy, as well as Malta, had no intention of aligning itself with the original parties. Instead, it sought to independently present and secure protection for its individual interests (Application of Italy, 1983). Malta and Italy explicitly disclaimed any intention to initiate new disputes, assert particular claims against the existing parties, or align their interests with those of the original parties. The stress on refraining from seeking intervention as a party was driven, in part, by the desire to prevent the rejection of their applications due to a perceived absence of a jurisdictional connection between them and the original parties. This concern was a prominent aspect of their submissions. (Chinkin, 1986)

The Court deemed the Maltese request inadmissible, stating that mere preoccupation with the legal principles that might be articulated in the Court's judgment was inadequate. Despite being a shared interest among many states, the Court determined that it was not a legal interest applicable to Malta, thereby denying Malta the opportunity to present its views on the matter. Examining "legal interest" in this manner, the Court overlooked the subjective wording of Article 62 and instead opted to independently determine the validity of the interest. Furthermore, the Court emphasized that the stated purpose should not be vaguely expressed, as this would pose challenges for the original states in understanding which issues they needed to address. Malta contended that its failure to provide precise details was, in part, due to the parties' denial of access to their pleadings, leaving Malta to speculate on their arguments. In their individual opinions, Judges Oda and Schwebel pointed out that Libya and Tunisia had also not detailed their claims with precision. (Oda, 1981; Schwebel, 1981) These judges concluded that Malta's lack of assertive claims or a pursuit of definitive rulings should not be used as a reason to dismiss its intervention request.

Through these decisions, the Court safeguarded the interests of the original parties, granting them flexibility in defining the scope of their claims—a latitude not afforded to a state seeking intervention. This stance aligns with the principle of party autonomy in international legal proceedings, as it discourages interventions that lack clarity and precision in their presentation.

Italy in its request sought to provide greater clarity in articulating its purpose. It expressed its intent as safeguarding its legal interests with a specific focus on upholding sovereign rights over specified regions of the continental shelf before the Court (Lybian Arab Jamahiriya v. Malta, 1984). This example serves to confirm the importance of legal interest in the context of the purpose of the intervention. When distinguishing the true object of the claim, the Court must consider various factors, including the overall circumstances of the case, the subject matter's nature, the legal interest involved, and the possible consequences of its judgment.

By dismissing Italy's request, the Judges were influenced by practical concerns, avoiding an expansion beyond the case's intended scope. It was concluded that permitting the intervening state to introduce an extraneous dispute or assert additional individual rights was not a valid purpose of the intervention. The Court, in fact, interpreted the objective in broader terms than Italy had presented, deeming Italy's request inappropriate. In this particular instance, Professor Chinkin astutely noted that the authority exercised by the Court to ascertain a valid purpose essentially translates into shaping the admissibility of intervention, despite the absence of any explicit mention of a proper purpose in the statutory provisions (Chinkin, 1986).

If a state seeks intervention in a case for improper reasons, such as delaying proceedings for its own agenda or using intervention as part of diplomatic actions against involved parties, the International Court may rightfully reject the request. The refusal should be grounded in the absence of a bona fide request under Article 62 (Chinkin, 1986). Similarly, attempting to seek an advisory opinion through intervention, a privilege not granted to states, should be rejected. The Court must balance rejecting clearly wrongful motives while avoiding excessive restrictions that could nearly make it impossible to meet intervention conditions.

In the situations described earlier, both Malta and Italy refrained from aligning themselves with the original parties. However, it's important to note that this stance may vary, and a legitimate reason for intervention could involve the requesting state seeking to align its interests with those of one of the parties. Therefore, when Fiji sought intervention in the Nuclear Tests cases (Application of Fiji, 1973), it clearly aimed to align itself with Australia and New Zealand against France. The underlying motive facilitates viewing the intervening state as a participant or party. The perceived role of the intervenor may hinge on its purpose in seeking intervention.

Another purpose of intervention involves serving as a substitute for one of the parties, allowing it to withdraw. However, it's worth noting that this form of intervention has not been practically applied. A state might seek intervention to assert its rights against all parties involved, rather than taking sides. If Albania had intervened in the Monetary Gold Case (1954) with this intention, it seems the Court would have deemed it a valid purpose. Alternatively, a state may want to intervene against one of the parties on an issue unrelated to the main proceedings, as opposed to Fiji where the intervention was directly related to the main case (Chinkin, 1986).

Italy put forth another argument to justify its intervention request, stating that it would aid the Court in forming a comprehensive understanding of the situation. The Court declined the offer of assistance, asserting that the basis for intervention is not determined by its utility or necessity to the Court but rather by the satisfaction of the conditions outlined in Article 62 of the Statute (Lybian Arab Jamahiriya v. Malta, 1984). The language used in Article 62 implies that the Court does not have the authority to direct intervention. Prior to intervening in an ICJ case, a state must believe that its interests could be influenced, and the Court can only make a decision after receiving a formal intervention request. While the Court can suggest that intervention could be suitable, it cannot go beyond that.

Even when Article 63 allows intervention without specifying the purpose, the Court may assess if the intervention is "genuine" when other motives seem predominant. In the Haya de la Torre case (1951), Cuba's intervention, ostensibly under Article 63 concerning the 1928 Havana Convention on Asylum, was deemed not genuine. The Court concluded it was an effort to reopen a previous case and essentially appeal against the judgment, a use of subsequent proceedings that the Court did not permit.

2. LEGAL FRAMEWORK FOR THIRD PARTY INTERVENTION IN THE ICJ

2.1. Discretionary Intervention (Article 62)

Discretionary intervention before the International Court of Justice is governed by Article 62 of the Statute of the ICJ. This provision allows states that are not parties to a case before the Court to seek permission to intervene. The relevant text from Article 62 states:

1. "Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene."

2. "It shall be for the Court to decide upon this request."

In essence, Article 62 grants the ICJ the discretion to permit non-party states to intervene in a case if they can demonstrate a legal interest that may be impacted by the court's decision. The decision to grant or deny intervention is at the discretion of the Court.

2.1.1. Historical Development of Statutory Provisions

Article 62 of the Statute of the International Court of Justice (1945) did not have a precedent in state practice before 1920. It was introduced during the drafting of the Permanent Court's Statute by the Advisory Committee of Jurists. Originally, the draft scheme included Article 23, which dealt with intervention in cases where the interpretation of a convention was in question. (Atul Alexander, 2022) The Advisory Committee suggested enhancing the concept of intervention by incorporating Article 48 from a plan developed by a conference of five neutral powers. The first paragraph of Article 48 stated that "whenever a dispute submitted to the Court affects the interests of a third state, the latter may intervene in the case." It was emphasized that the affected interest must be legitimate during the discussions.

Baron Descamps, as the President of the Advisory Committee, suggested the following phrasing: If a state believes that it holds a legal interest that might be influenced by the case's decision, it can make a formal request to the Court for permission to intervene. The decision on this request rests with the Court. The Committee accepted this wording with the condition of possible amendments and incorporated it as a distinct article just before the existing Article 63. The revised provision, now designated as Article 60, was framed as follows: If a state believes it possesses a legal interest that might be impacted by a case's decision, it can formally

request the Court's permission to intervene as a third party. The Court will be responsible for determining the outcome of this request. (Oda, 1981)

Article 62 remained unchanged despite the revision of the Statute through a Protocol addressing the Revision of the Statute of the Permanent Court of International Justice. This protocol was the focus of a resolution by the League of Nations Assembly on September 14, 1929, and it became effective on February 1, 1936. The United Nations Committee of Jurists convened in Washington in April 1945 to formulate and present a Draft Statute of the International Court of Justice for consideration at the San Francisco Conference. (Koray, 1992) When revising the text of the Permanent Court's Statute based on the American draft, the only alteration made to Article 62 was the removal of the phrase "as a third party" from its English version due to potential confusion. The Drafting Committee clarified that the formal changes in the English text did not alter its meaning. (Oda, 1981) Consequently, the adopted version of Article 62 in the Statute of the International Court of Justice reads as follows:

(1) Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

(2) It shall be for the Court to decide upon this request.

The act of intervening to safeguard a legal interest is comparable to a widely acknowledged practice found in every legal system around the globe without any exceptions.

Intervention, similar to the acceptance of the Court's jurisdiction, is a voluntary act, determined solely by the decision of the concerned state. The International Court itself articulated this perspective when it differentiated the Italian Intervention Case (Lybian Arab Jamahiriya v. Malta, 1984) from the Monetary Gold Case (1954). The Court emphasized that, due to the absence of a compulsory intervention system where a third state could be summoned by the Court, it is within the Court's purview and duty to provide the most comprehensive decision possible in each case's circumstances. (Koray, 1992) However, exceptions may arise, as seen in the Monetary Gold Case, where a third state's legal interest is not only impacted by the decision but constitutes the very subject matter of the decision, a situation not applicable in the case at hand. In the latter case, the Court opted not to assume jurisdiction due to the absence of Albania, deemed "a necessary and indispensable party to the proceedings." (Read, 1954) Highlighting the voluntary nature of intervention as outlined in Article 62, Elias noted

that in the Monetary Gold Case, the Court stopped just short of actively encouraging Albania to participate in the proceedings. (Elias, 1983)

2.1.2. Legal Requirements

The nature of the interest required for intervention under Article 62 is distinct from that envisioned under Article 63. While the latter involves an abstract interest in the Court's interpretation of a convention, the Court consistently maintains that, in the context of Article 62, a state cannot intervene based solely on a general interest in the Court's pronouncement regarding the applicable general principles and rules of international law (ICJ Reports, 1981), deeming such an interest too broad. (Indonesia v. Malaysia, 2001) For intervention under Article 62, a state must articulate the specific content of its legal interest in relation to a particular claim. In cases brought before the Court thus far, the identified interest has primarily been associated with specific rights that the intervening states claim against the parties in dispute (Ago, 1984). The Court has rigorously assessed whether the third state's claimed interest has been sufficiently specified to justify intervention.

The state wishing to intervene must also demonstrate how its rights or interests may be impacted by the decision in the case. This is particularly evident when the third state's legal interest is connected to the subject matter of the ongoing dispute before the Court. This situation arises, for example, when the third state's legal claims pertain to areas contested by the parties involved in the proceedings, as seen in the intervention applications from Italy in Continental Shelf case (Libya v. Malta, 1984) and, more recently, Equatorial Guinea in Land and Maritime Dispute case (Cameroon v. Nigeria, 1994). Similarly, in the case of Nicaragua's Application (El Salvador v. Honduras, 1990), when the Court is tasked by the parties to determine the legal framework of an area, and that determination unavoidably affects the rights of the third state. In such instances, the rights or interests asserted by the third state may be directly impacted by the operative part of the decision. The Court's determination of the rights of the parties involved may implicitly influence the conflicting legal claims presented by the intervening third state.

In cases where the rights or obligations of a third state are raised in proceedings before the Court, the principle of consensual jurisdiction may be invoked to safeguard the legal position of that state. As articulated in the Monetary Gold Case (1954), this principle dictates that the Court cannot adjudicate on the rights or obligations of a state not party to the case (ICJ

Reports, 1984). When the legal position asserted by a third state is not the central focus of the dispute, the Court might, based on this principle, limit the scope of its decision to avoid affecting the rights claimed by the third state (Palchetti, 2002). This approach was evident in the Continental Shelf Case (1983).

While this method effectively safeguards the interests of third states, it introduces potential challenges. The Court's ability to resolve disputes could be significantly hindered if it is compelled to refrain from deciding a dispute, at least in part, simply because it is aware of the possible involvement of rights belonging to third states. (ICJ Reports, 1985) Adopting this approach could allow a third state to request the Court to restrict its jurisdiction to protect its rights without having to substantiate its claim. This might lead to an unjustifiable advantage for the third state and also pose a risk of excessively limiting the Court's mandate entrusted by the parties involved. Intervention under Article 62 is primarily seen as a tool intended to address such situations. However, the precise nature of this remedy has not been distinctly outlined or specified.

In the Application by Nicaragua Case (1990), the Chamber clarified that non-party intervention aims to safeguard the legal interests of a third state. This protection does not entail seeking a judicial pronouncement on the claims of that state; rather, it involves providing the Court with information about the content of those claims. (ICJ Reports, 1990) Through this process, the intervening state helps the Court in restricting the scope of its decision to avoid impacting the rights it asserts. (Palchetti, 2002)

The Chamber's distinction between protecting or preserving the rights claimed by an intervening state and recognizing them is not entirely clear. It does not explicitly address whether intervention allows the Court to assess the merits of the claim presented by the intervening states and decide on its validity compared to the opposing claims of the parties. This aspect is crucial for precisely defining the nature of intervention under Article 62.

If it is acknowledged that the Court can evaluate the legal validity of the claim put forth by the intervening state, the distinction between intervention for protection and intervention for recognition becomes less significant. In such a scenario, the primary purpose of intervention would be to enable a third state to defend the merits of its claims for recognition by the Court. The only distinction would lie in the fact that, in the absence of a jurisdictional

link, the rights of the intervening state could only be recognized negatively, through a Court decision rejecting the opposing claims of the parties.

When Italy sought to intervene in the Application by Italy Case, asserting that it was solely pursuing the protection of its rights, not their recognition, the Court acknowledged this argument. However, the Court deemed the distinction irrelevant in that specific case. It argued that granting intervention would inevitably involve delving into the merits of the intervening state's claim, leading to a decision either recognizing or rejecting the validity of that claim. (ICJ Reports, 1984) To safeguard Italy's position without delving into the claim's merits, the Court found no alternative but to deny the intervention request. Subsequently, on the merits, the Court refrained from making a decision that would impact the rights claimed by Italy.

The stance adopted by the Court in 1984 was arguably excessively restrictive. (Ago, 1984) Even if one accepts, as implied by that ruling, that the Court cannot delve into the merits of a claim presented by a third state, it doesn't necessarily mean that the option of intervention should be entirely ruled out. Instead, a middle-ground approach could be considered. A state might be allowed to intervene solely for the purpose of specifying the content of its claim. (ICJ Reports, 1984) Even with this restricted objective, intervention could still serve a valuable function. The Court would then be tasked with assessing whether the claim presented by the intervening state is prima facie reasonable or not. This, in turn, would help mitigate the inherent risk of granting a third state, claiming an interest in the dispute's subject matter, the ability to constrain the Court's jurisdiction.

An alternative perspective, which marks a more significant departure from the Court's approach in 1984, could be considered next. While not explicitly stated, the primary rationale for rejecting Italy's application appeared to be the lack of a jurisdictional link. (Palchetti, 2002) Although the Court indirectly alluded to this issue by attempting to demonstrate that Italy was essentially seeking recognition of its rights rather than mere protection, the central concern seemed to revolve around the Court's jurisdiction to address the merits of a claim put forth by a third state. The underlying notion in the Court's reasoning was that delving into the merits of Italy's claims, even if solely for the purpose of making a non-prejudicial decision, would unavoidably broaden the scope of the dispute presented by the parties. (ICJ Reports, 1984) This expansion, in turn, would be impermissible without a specific jurisdictional foundation. The notion put forth by the Court is open to questioning. Contrary to the Court's assumption,

one could argue that when a third state's claims are related to the subject matter of a dispute, permitting intervention does not necessarily mean expanding the dispute to include matters not already under consideration by the Court.

Regardless of intervention, the rights of the third state are already implicated in the dispute submitted by the parties; indeed, any Court decision on the rights of the parties would inherently involve a judgment on the claims of the third state. Therefore, if, in resolving the dispute between the parties, the Court finds it necessary to assess the claim presented by a third state, this should not be construed as introducing a new dispute (ICJ Reports, 1984).

The issue of extending the Court's jurisdiction could be addressed in a similar manner. The 1984 conclusion reached by the Court might lead one to argue that the Court lacks jurisdiction to decide a dispute, at least in part, when the rights of third states are implicated. For instance, in 1985, when the Court engaged in the merits of the dispute between Libya and Malta, it stated that it had not been granted jurisdiction to demarcate maritime areas claimed by Italy. (ICJ Reports, 1985) This approach would significantly limit the Court's ability to handle disputes involving the interests of multiple states, requiring the consent of all states claiming potential rights affected by the Court's decision.

However, when the interest of a third state is directly entangled in the ongoing dispute before the Court, a more adaptable approach could be proposed. It might be argued that, in principle, the Court does have jurisdiction over the dispute submitted to it even if the interest of a third state is involved. Regarding the issue of safeguarding the rights of third states, the Court should consider propriety: it should assess, taking into account the potential impact of its decision on the interests of third states, whether or not it should abstain from exercising its jurisdiction over the entire dispute or a specific part of it.

Until now, in the context of contentious proceedings, the Court has refrained from clearly defining the situations in which it can exercise discretion in asserting jurisdiction. (Fitzmaurice, 1970) However, considerations of propriety seem to have played a role in the Court's reasoning in certain cases, particularly when addressing disputes involving the interests of third states. (ICJ Reports, 1992) In its decisions on preliminary objections in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (1994), for instance, the Court addressed Nigeria's objections that the question of maritime delimitation necessarily implicated the rights of third states. The Court noted that, in order to assess "to

what extent it would meet possible claims of other states, and how its judgment would affect the rights and interests of these states, the Court would of necessity have to deal with the merits of Cameroon's request." It further added that "the Court cannot rule out the possibility that the impact of the judgment required by Cameroon could be such that the Court would be prevented from rendering it in the absence of these states." (ICJ Reports, 1998) Despite the cautious language used by the Court, the issue of the possibility of not rendering a judgment appears to be treated here as a matter of propriety rather than a lack of jurisdiction. This inference is supported by the fact that the decision on whether or not to render a judgment is contingent on the Court's evaluation of the potential impact of a judgment on the rights of third states. (Palchetti, 2002)

If it is acknowledged that, in a dispute involving the rights of third states, the Court has jurisdiction but retains the discretion not to exercise it, the possibility for the Court to delve into the merits of a claim presented by an intervening state becomes plausible. Given the active participation of the interested state in the proceedings, concerns about propriety are alleviated. As long as that state has willingly agreed to defend its claim before the Court, it seems appropriate for the Court to exercise the jurisdiction conferred upon it by the parties. In resolving the dispute between the parties, the Court can also determine the validity and extent of the rights claimed by the third state. (ICJ Reports, 1971) It's noteworthy that the conclusions reached by the Chamber in its judgments on the merits in the Application by Nicaragua Case (1990) align with this approach. The Chamber did not shy away from addressing the merits of the claims presented by Nicaragua. In essence, the dispute was treated as one involving three states, even though Nicaragua was not formally a party to the dispute. It is notable that the Chamber, while determining that Nicaragua was not bound by the judgment, made reference to the rights and duties of that state in the operative part of the decision. (ICJ Reports, 1992)

If it is acknowledged that the sole purpose of intervention is to secure the Court's recognition of the rights of the intervening state, then the only distinction that can be made is between intervention as a party and intervention as a non-party. In the Application by Nicaragua Case, the Chamber rejected the idea that the purpose of intervention could be to introduce a new case against either or both of the parties. (ICJ Reports, 1990) However, the possibility of intervening as a party, in the presence of a jurisdictional link, should be accepted, particularly when a state has an interest in the subject matter of a dispute before the Court. (ICJ Reports, 1990) Since, in this kind of situation, a state can intervene as a non-party in any case,

it seems unreasonable that, in the same situation, a state would be barred from intervening as a party.

Regardless of a jurisdictional link, intervention would, in any case, be aimed at the Court recognizing the rights of the intervening state. The primary difference between these two forms of intervention would be that, in the presence of a jurisdictional link, the Court would be authorized to make binding decisions on the rights of all the states involved in the proceedings. Indeed, a solution allowing the Court to issue a binding decision on the intervening state should be favored. For this reason, even in the absence of a prior jurisdictional link, the Court should recognize the possibility of extending its jurisdiction over the intervening state based on some form of ad hoc consent between the intervening state and the parties.

The determination of the exact nature of intervention under Article 62 has significant implications, particularly concerning the procedural rights associated with the status of an intervener. Contrary to some suggestions, a non-party intervener should not be equated with an amicus curiae. While it is true that the Court's subsequent decision will not be binding on the intervener, this point should not be overly emphasized, as such a decision will still impact the intervener's ability to maintain its claim in relation to the other states. From this perspective, it does not appear that the intervening state, which is not a party, is in a more advantageous position than the parties to the case. In reality, the interests of an intervening state are just as much at stake in the proceedings as those of the parties.

However, under the Rules of Court, the intervener is endowed with more limited procedural rights. Apart from the fact that a non-party intervening state has no right to appoint a judge ad hoc, the means provided to an intervener under Article 85 of the Rules of Court to defend its claims are not as extensive as those available to the parties. This could be attributed to the fact that when the current Rules were adopted in 1978, there was still uncertainty about the precise function of intervention under Article 62. (Palchetti, 2002) Once this question has been clarified in the Court's practice, the Rules should be revised to expand the scope of procedural rights associated with the status of an intervener. Specifically, an intervener should be allowed to present its arguments before the Court on an equal footing with the parties.

2.1.3. Court`s Position on Intervention under Article 62

The Court's stance regarding the scope of intervention seems to be based on the premise that a third state, with an interest in the legal or factual issues addressing in a case, may be affected by the decision to the same degree as a state whose interest is directly tied to the actual dispute being resolved by the Court. However, contrary to this assumption, the impact of a Court's decision on third states appears to differ depending on whether a state has an interest in the specific dispute to be adjudicated by the Court or in one of the questions that the Court must address in order to decide a case.

When the interests of a third state are influenced by the operative part of a decision, the fact that the rights and obligations established by the operative part serve as the final resolution of the dispute between the parties is not irrelevant to the third state. Although the third state technically has the freedom to initiate new proceedings, the assumption that the Court could decide differently on the same issue should not be taken for granted. (ICJ Reports, 1984) This would imply accepting the idea that the Court could issue contradictory judgments on the same matter, which contradicts the concept of res judicata. Res judicata dictates that a dispute should be considered definitively settled once the Court has made a decision on it.

Does the issue of res judicata also arise when a third state is impacted by the Court's reasoning? While the Court's position on the scope of intervention may hint that the effect of res judicata extends to the reasons underlying a decision, the impact on third states of the Court's reasoning in a case is distinct from the problem of res judicata. (Palchetti, 2002) This impact is influenced by the Court's tendency to adopt similar solutions in other disputes where similar issues of law or fact arise. Although the Court has an interest in maintaining consistency in its holdings, it is evident that the Court has the freedom to reconsider its previous findings and deviate from them.

The varying impact of a Court's decision on a third state is a factor that needs to be considered when examining the issue of third states' participation in proceedings. It is in this context that the question of whether to expand the scope of intervention under Article 62 should be evaluated.

In the Application by The Philippines Case (Indonesia v. Malaysia, 1999), the Court has notably acknowledged that the position of a state with an interest in the Court's reasoning

may not be adequately safeguarded by Article 59 of the Statute. It recognized that proper protection can only be ensured by providing the third state with an opportunity to present its views to the Court. Judge Oda within the Court has consistently argued that intervention under Article 62, when interpreted in the context of Article 63, could encompass situations where a state seeks to intervene to present its views on aspects of law that the Court may decide in the course of its reasoning in a case. (ICJ Reports, 1981) He contended that if, under Article 63, a third state can protect its interests in the interpretation of a convention to which it is a party, there is no compelling reason why the same state should not be allowed to intervene to protect its interest in the interpretation of general principles and rules of international law. In the Application by The Philippines Case, the Court appears to have, to some extent, aligned with the direction suggested by Judge Oda.

While one might agree with the Court on the need to enhance the access of third states to the Court, expanding the scope of intervention under Article 62 may not be a comprehensive solution. As determined, third states can have varying levels of interest in a Court's decision, and it may not be appropriate for the same form of intervention to apply to significantly different situations. It seems reasonable to argue that the conditions for intervention and the extent of third states' involvement in the proceedings should be flexible, reflecting the diverse degrees of interest in the Court's decision.

The absence of a clear distinction in this regard might explain the Court's position in the Application by The Philippines Case concerning the nature of the interest a third state must demonstrate to be granted intervention. As discussed earlier, the Court maintains that a state with an interest in the Court's reasoning must show that its interest is not merely general but is tied to a specific claim. While the Court does not explicitly state whether there should be a certain link between the third state's claim and that of the parties, this condition seems to be implied in the Court's reasoning. (ICJ Reports, 1990) The necessity of a connection has also been emphasized by Judge Oda in his dissenting opinion.

When the third state's interest is related to the subject matter of the dispute, the requirement for the intervening state to specify the content of its legal interest with reference to a given claim is easily understandable. In such situations, intervention aims to submit a claim for recognition by the Court. However, when a third state has an interest in the Court's reasoning, it is questionable whether the state needs to demonstrate a specific claim connected

to the dispute before the Court. In this case, intervention does not seek to obtain recognition of a specific claim by the Court. The Court cannot address the merits of the third state's claim if it concerns a dispute different from the one submitted by the parties. Since the state seeking to intervene aims to present its views on abstract points of law that may arise in a case, it seems reasonable to determine the existence of the third state's interest solely in relation to the potential impact of the Court's pronouncements on that state. Similarly, a state wishing to intervene under Article 63 does not have to demonstrate a specific claim linked to the dispute before the Court; the interest in the Court's interpretation of a convention to which a state is a party is presumed.

The limitation on the possibility of intervention may stem from the necessity to restrict the number of states that can access the Court in certain proceedings. Without this restriction, the Court would be compelled to allow intervention by every state willing to argue points of law that may arise in a dispute. Indeed, the Court would face a challenging situation if every state with an interest in a rule of general international law applicable in a case were entitled to intervene. While this concern may be valid, it does not seem reasonable that views on general points of law before the Court should only be presented by states with a specific interest in the dispute. This is especially true since there are cases where it is evident from the outset that the actual point at issue before the Court is more about the pronouncement of the Court on the question of law involved than the resolution of a specific dispute.

The Fisheries Case (United Kingdom v. Norway, 1949) serves as a notable example in this context. If one were to adhere strictly to the Court's approach, only states engaged in fishing in the maritime area claimed by Norway would likely have been allowed to express their views to the Court on the legality, under general international law, of the method of straight baselines. (Palchetti, 2002) However, any limitation in this regard would have been inadequate, given that it was evident the Court's pronouncement on that matter would have far-reaching implications.

2.2. Intervention as of Right (Article 63)

Intervention as of right before the International Court of Justice is covered by Article 63 of the ICJ Statute. This provision allows certain entities, such as international organizations and non-

party states, to intervene without seeking permission from the Court. Here are the relevant provisions:

Article 63 of the ICJ Statute states:

1. "Whenever a treaty or convention in force provides for the appearance of a State, or of a specified number of States, before the Court, the Registrar shall notify all States entitled to appear before the Court."

2. "Any such State may intervene in the proceedings; but if it uses this right the construction of the treaty or convention in force shall be at issue between all the States entitled to appear."

This means that if a treaty or convention allows for the participation of specific states before the ICJ, those states have the right to intervene in the proceedings without seeking additional permission from the Court. However, the construction or interpretation of the treaty or convention will become a matter at issue among all the entitled states if one chooses to intervene.

2.2.1. Evolution of main provisions

While discretionary intervention has been a longstanding practice in major legal systems globally for centuries, it's essential to recognize that intervention as of right is unique to international law and lacks a counterpart in domestic legal systems. In the realm of international law, this form of intervention not only has a more extended historical presence but, until fairly recently, it constituted the sole type of intervention through which the international judicial system could assert any tangible experience.

The initial international document acknowledging aspects of discretionary intervention was the draft rules of international arbitral procedure sanctioned by the Institute of International Law on August 28, 1875. According to Article 16 of these regulations: Without specific authorization stated in the compromise and the prior agreement of the third party, neither the involved parties nor the arbitrators can independently bring in any other states or third parties into the case. The voluntary intervention of a third party is permissible only when the parties that entered into the compromise provide their consent. (Park, 2013)

The delegates at the 1899 Peace Conference, endorsing the concept of restricted intervention, likely drew inspiration from the stance taken by the International Law Institute. During the conference, Mr. T.M.C. Asser, the Dutch representative, suggested a modification to the russian-proposed arbitral code. This amendment, with slight adjustments, eventually evolved into Article 56 of the 1899 Convention for the Pacific Settlement of International Disputes. (Koray, 1992) The 1907 Hague Peace Conference incorporated a similar provision, (Atul Alexander, 2022) essentially retaining the same content, in Article 84 of the 1907 Convention for the Pacific Settlement of International Disputes.

Aside from the Hague Conventions, the explicit provision for third-party intervention occurred only in the context of Article 6 of the 1903 Protocols of Agreement between Venezuela and Great Britain, Germany, and Italy. The United States and other nations were also parties to this agreement, leading to the Venezuelan Preferential Claims Arbitration. This particular provision articulated that:

Any country with claims against Venezuela has the option to participate as a party in the arbitration outlined in the agreement. (Koray, 1992)

The initial proposal for the establishment of a Permanent Court of International Justice, outlined in Article 23, included provisions for the intervention of third states in cases related to the interpretation of conventions. This provision underwent a subsequent revision and became Article 61 in the draft scheme. The revised text is as follows:

Whenever the interpretation of a convention, involving states beyond those directly involved in the case, is under consideration, the Registrar is required to promptly notify all such states. Each state receiving such notification possesses the right to intervene in the proceedings. However, if it chooses to exercise this right, the interpretation rendered by the judgment will be equally binding on it as it is on the original parties in the dispute. (Koray, 1992)

Without undergoing any changes, the aforementioned text was later accepted. During the eighth session of the League Council in San Sebastian, taking place from July 30 to August 5, 1920, a resolution was passed on August 5, endorsing the draft presented by the Hague Advisory Committee of Jurists. (Koray, 1992)

During the tenth session of the Council in Brussels, occurring from October 22 to 28, 1920, a report on a Permanent Court of International Justice was endorsed. This report, presented by M. Leon Bourgeois of France, was subsequently adopted. Following this, the Third Committee of the First Assembly of the League, meeting from November 17 to December 11, 1920, formed a sub-committee that presented a draft scheme featuring Article 63. Remarkably, Article 63 in this draft was identical to Article 61 of the Brussels text. (Koray, 1992)

Mr. Hagerup, representing the sub-committee, provided a report accompanying the draft scheme but did not offer substantive explanations for Article 63. (Koray, 1992) Despite the lack of detailed discussion or amendment, the Third Committee reviewed the plan for a Permanent Court of International Justice, and Article 63, along with other provisions, was accepted without objection.

During the twentieth and twenty-first preliminary meetings on December 13, 1920, the First Assembly of the League unanimously adopted a resolution regarding the establishment of a Permanent Court of International Justice. (Koray, 1992) Notably, there was minimal discussion or modification of the draft scheme's provisions, including Article 63. Consequently, the wording of Article 63 in the Statute of the Permanent Court remained unchanged. Article 63 remained unchanged during the amendment of the Statute through a protocol focused on the revision of the Permanent Court's Statute.

The United Nations-appointed Committee of Jurists convened in Washington from April 9 to 19, 1945, with the task of preparing and presenting a draft Statute for an International Court of Justice to the San Francisco Conference. On April 20, the Committee presented its report, including a draft Statute for the International Court of Justice. Notably, Article 63 of the adopted Statute mirrored Article 63 of the Permanent Court's Statute. In essence, this article's language was derived from Article 84 of the 1907 Hague Convention for Pacific Settlement of International Disputes, which, with minor modifications, originated from Article 56 of the 1899 Hague Convention for the Pacific Settlement of International Disputes. (Koray, 1992)

2.2.2. Principle Legal Conditions

As participants in multilateral treaties, States are inherently bound to ensure the accurate interpretation of these agreements. In the case of treaties addressing matters of collective concern, such as human rights, the environment, or other issues of general interest, third-party intervention takes on a distinctive character—a shared interest—that extends beyond the specific interests of individual third States.

The submission of a declaration under Article 63 is categorized as intervention "as of right," acknowledging a State's inherent entitlement to participate in proceedings due to its adherence to a convention under dispute. However, as emphasized in the judgment regarding the admissibility of Cuban intervention in the Haya de la Torre Case (1951), it is ultimately the Court's responsibility to determine whether the conditions outlined in Article 63 are met. The Court exercised this authority in the Nicaragua v. United States Case (1984), and more recently, in the Whaling in the Antarctic Case (2010), it reiterated that the mere fact that intervention under Article 63 is considered a right does not automatically grant the declarant State the status of an intervener upon the submission of a declaration.

The rationale behind third State submitting observations on the interpretation of multilateral treaties in judicial proceedings between other States is rooted in the understanding that ICJ judgments have far-reaching implications beyond the involved parties. (Atul Alexander, 2022) This is in contrast to Article 59 of the Statute, which stipulates that a decision of the Court does not bind any State other than those directly participating in the case. ICJ judgments, however, have broader impacts on the international community. Article 63 appears to be an exception to Article 59, as the construction of the convention provided in the judgment also binds the intervening State

Regardless, the Court's judgments can serve as precedents in other cases. (Palchetti, 2002) The ICJ's interpretation of a legal rule can guide decision-makers when interpreting the same provision, and the Court is likely to adhere to its established jurisprudence rather than deviate from earlier pronouncements. Furthermore, the submission of States' perspectives can be beneficial in aiding the Court's task of interpreting relevant provisions of a convention.

Remarkably, in contrast to discretionary intervention, intervention "as of right" has been infrequently utilized by third States. There have been only five instances of declarations of intervention "as of right" recorded on the Court's docket:

- Poland in the case concerning the S.S. "Wimbledon" (1923);

- Cuba in the Haya de la Torre Case (1951);

- El Salvador in the case concerning Military and Paramilitary Activities in and against Nicaragua (1984);

- Samoa, the Solomon Islands, the Marshall Islands, and the Federated States of Micronesia in relation to the Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court’s Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case;

- New Zealand in the case concerning Whaling in the Antarctic (Australia v. Japan).

Intervention was only granted in the first two cases and the last case.

Specifically, third-party intervention under Article 63 was employed for issues of collective interest in two cases:

1. In the case involving the Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court’s Judgment of 20 December 1974 in the Nuclear Tests Case (New Zealand v. France), Samoa, the Solomon Islands, the Marshall Islands, and the Federated States of Micronesia submitted declarations of intervention under Article 63.

2. In the case concerning Whaling in the Antarctic (Australia v. Japan), New Zealand utilized third-party intervention under Article 63.

In the first case, there were both applications for permission to intervene under Article 62 and declarations of intervention under Article 63 of the Statute. However, the Court dismissed both the applications for permission to intervene under Article 62 and the declarations of intervention under Article 63 submitted by Australia, Samoa, the Solomon Islands, the Marshall Islands, and the Federated States of Micronesia. This decision was based on the grounds that these proceedings were incidental to New Zealand's primary request. (ICJ Reports, 1974)

In the Whaling case, the ICJ approved New Zealand's intervention, addressing a subject of collective interest related to marine life, resources, and the international protection of the environment. Unlike cases primarily centered on bilateralized matters, such as land and maritime delimitation cases, the mechanism of third-party intervention in this instance dealt with a concern of relevance to the global community. Specifically, it involved the interpretation of the 1946 Convention for the International Regulation of Whaling, a matter not confined to the disputing parties before the Court.

New Zealand's declaration of intervention (2012) specifically focused on interpreting Article VIII of the International Convention for the Regulation of Whaling, which outlines the conditions for permitting the killing of whales under special permit—a provision to which New Zealand is a party. After affirming that the requirements for intervention under Article 63 were met and clarifying that New Zealand did not intend to become a party to the proceedings, the Court found no valid reason to reject the intervention request.

The Japanese written observations on certain procedural issues related to the equality of the parties did not impact the Court's determination of the admissibility conditions for the intervention declaration. According to the Court, New Zealand and Australia cannot be considered parties with identical interests. As a result, there is no hindrance for the applicant to select a judge ad hoc, irrespective of the presence of a judge from the intervening State's nationality on the bench. (Almeida, 2019). This stance, criticized for being New Zealand's maneuver to intervene under Article 63 rather than as a party under Article 62, was seen as a legal strategy aimed at advancing the shared interests of New Zealand and Australia. Critics argued that this approach might compromise the principle of equality between parties and the fair administration of justice.

While the Court accepted the intervention application in this case without a detailed analysis of the admissibility conditions, it missed an opportunity to provide clarification on certain aspects of the procedure related to this type of intervention. As pointed out by Judge Cançado Trindade, despite intervention under Article 63 being a suitable means to address community interests—given the natural commitment of States parties to multilateral treaties to their accurate interpretation—experts acknowledge the need for additional clarification regarding the meaning and scope of such intervention. (Trindade, 2013)

The reluctance of third States to utilize intervention under Article 63 of the Statute may stem from the obligatory nature of the treaty interpretation in the judgment, which binds the intervening State. (Almeida, 2019) In simpler terms, the Court's interpretation of a multilateral treaty in its judgment becomes legally binding on any party that has intervened. This binding nature is implicitly established through the consent given by States upon becoming parties to the Court's Statute.

To enhance the appeal of intervention 'as of right' to third States and strike a balance between bilateralism and community interests, several challenges merit reconsideration:

1. The necessity to provide a hearing in all phases of the proceedings: ensuring that third States have the opportunity to present their perspectives throughout the entire legal process;

2. Expanding the possibilities for intervention by broadening its scope: enabling a more inclusive range of issues and concerns that third States can address when intervening;

3. Ensuring transparency in identifying relevant provisions or rules of law: making it easier for potential interveners to identify the provisions of the convention or the content of the invoked rule of law, even if the Court does not lighten the burden of proof.

2.2.3. Question of Admissibility

A state is required to determine the most opportune moment to submit an intervention request, as per Article 81(1) of the Rules of Court (1978). These rules specify that applications under both Article 62 and Article 63 should be made promptly, ideally before the conclusion of written proceedings under Article 62 or before the designated date for the commencement of oral proceedings under Article 63. It is emphasized that the application must be made as soon as possible, with allowances for late applications in "exceptional circumstances." However, the concept of what qualifies as exceptional circumstances lacks clear definition, and there is no authoritative guidance on this matter.

Rosenne observes that the purpose behind the distinct time limits for Article 62 and Article 63 is not explicitly explained. (Rosenne, 1983) In a specific case, the Libya v. Malta dispute (1984), Libya argued that Italy's request was untimely, creating a disadvantage for the original parties due to the last-minute submission, just two days before the deadline. The Court responded by noting that Italy adhered to the prescribed limits outlined in Article 81 of the

Rules, and thus, had not exceeded the allotted time. Similar objections were raised against Malta in the Continental Shelf case (1978), which asserted that its delayed intervention was justified since it had not yet received the pleadings. (Chinkin, 1986) Consequently, a state may strategically time its request to maximize the available time, as long as it remains within the stipulated deadline.

The Rules do not explicitly specify the stage of proceedings to which these time limits apply. The question arises as to whether a state can request intervention during interim measures or at the jurisdictional phase. Article 62 mentions a "decision of the Court," seemingly encompassing jurisdiction since, according to Article 36(6) of the Statute, jurisdiction is determined by "the decision of the Court." However, the Court issues interim measures, which may not neatly align with the scope of Article 62. On the other hand, Article 63 allows intervention "whenever" the construction of a convention is in question, suggesting a broader interpretation. There is no apparent reason why this provision should be limited to a specific phase of the proceedings. Therefore, it implies that intervention can be sought whenever the interpretation of a convention is at issue.

In a similar manner, the Court has adopted a restrictive approach in certain instances. For example, in response to Fiji's application (1973) and request to be heard, the Court chose not to respond immediately. Instead, it decided that issues of jurisdiction and admissibility should take precedence, deferring consideration of Fiji's request. This decision had the consequential effect of excluding Fiji from participating in the provisional measures of protection phase. (Rosenne, 1983)

In the Nicaragua Case (1984), Judge Schwebel highlighted that Article 41 of the Statute allows for interim measures to safeguard the rights of "either party," suggesting that an intervening state may be excluded (Schwebel, 1984), particularly since its status may not have been clearly defined at that early stage. (Chinkin, 1986) However, if a request for intervention focuses solely on protecting interests rather than seeking interim measures, it could be reasonable to permit it, provided it can be expeditiously addressed to avoid undue delays in the application for interim measures. In the case of Pakistani Prisoners of War, Judge Petren dissented from the decision to postpone notifying other parties to the 1928 General Act and the Genocide Convention until after deciding on interim measures. (ICJ Reports, 1973) This

dissent underscores the majority's seemingly restrictive stance toward intervention, even in the face of the mandatory language in Article 63 of the Statute. (Chinkin, 1986)

Similar observations have previously been expressed regarding the jurisdictional phase. The situation surrounding the rejection of El Salvador's Declaration (1984) raises uncertainty about whether it signifies a denial of intervention at the jurisdictional phase or a determination that the specific claim was more appropriately addressed during the merits phase. The decision's least defensible aspect remains the denial of a hearing to El Salvador, where potential clarifications could have been provided. Suppose the Court issues a decision in a specific case, and a third state later realizes that it affects its legal interests. According to positivist principles, Article 59 asserts that the decision only binds the states involved in the case, making it seem that intervention at this stage is not a valid concern.

Reisman highlights that certain decisions, aimed at clarifying a value regime between two litigants, can significantly influence, if not predominantly impact, third parties. (Reisman, 1971) Despite this, without further proceedings, formal intervention is not possible at this juncture. The Haya de la Torre case illustrates that reopening a prior decision is not a legitimate purpose for intervention. (ICJ Reports, 1951)

The ICJ Statute lacks an equivalent to Article 39 of the Protocol of the Statute of the European Court of Justice. Article 39 of the ECJ Protocol permits member states, Community institutions, and other entities to initiate proceedings under specific conditions to challenge a judgment that adversely affects their rights, especially if rendered without their involvement. In contrast, the relevant provisions in the ICJ Statute, namely Articles 60 and 61, only grant parties the authority to seek an interpretation or, in exceptional cases, revision of a judgment. The jurisdiction of the European Court operates differently from that of the International Court; the Treaty of Rome imposes broader obligations on its parties than the ICJ Statute, creating non-parallel situations. (Chinkin, 1986) Nevertheless, the mechanism established for the European Court illustrates the potential challenge that a state might face in similar circumstances under the ICJ.

Reisman examines an atypical case involving Costa Rica and Nicaragua before the Central American Court of Justice. The dispute arose because Nicaragua had entered into the Bryan-Chamorro Treaty with the United States without consulting Costa Rica, as required by the Treaty of Peace and Amity of 1858 between Costa Rica and Nicaragua. Despite the absence

of the United States before the Court, it ruled that the Bryan-Chamorro Treaty did indeed infringe upon Costa Rica's treaty rights, and it asserted its competence to adjudicate on the matter. (Chinkin, 1986) This judgment effectively amounted to a successful intervention by Costa Rica in the earlier Cleveland award between Nicaragua and the United States—a situation that had adversely affected Costa Rica's rights. (Reisman, 1971) This case illustrates the efficacy of such intervention procedures in safeguarding the interests of a state.

3. EXPLORING THE DYNAMICS OF STATE INTERVENTION: STATUS, ABSTENTION, AND ONGOING CHALLENGES

3.1. Status of Intervening State

The precise role of an intervening state in legal proceedings remains a subject of uncertainty, as delineated by the Rules of the International Court of Justice. Articles 85 and 86 of these rules outline specific guidelines for intervening states, emphasizing the provision of all written documents filed in the case and the entitlement to submit a written statement within a designated timeframe, along with participation in oral proceedings. Nevertheless, these rules do not explicitly define the intervening state's position concerning the party states involved.

A pivotal case, Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras , 1990), introduced clarity on this matter by establishing that an intervening state, though granted permission to intervene, does not automatically attain the status of a party to the case. This determination rests on the principle of consensual jurisdiction. The argument posits that allowing a third state to become a party solely through intervention could undermine the necessity for the parties' agreement, a fundamental requirement for the ICJ's jurisdiction. Therefore, the intervening state can only achieve party status if the disputing parties expressly consent.

This stance, asserting that an intervener does not transform into a party to the proceedings, has faced criticism for potentially relegating the intervener to a role akin to that of an amicus curiae. This concern becomes more pronounced in the context of Article 63, where an intervener is legally bound by the court's decision.

Several key distinctions exist between the status of an intervening party and that of a third party to the proceedings. Notably, an intervening state does not necessitate a jurisdictional link to participate, while a third state can only attain third-party status with the explicit consent of the disputing parties. Additionally, an intervening state is only bound by the decision under Article 62 and is further constrained solely regarding the treaty's construction under Article 63. (Chinkin, 2012) Importantly, an intervening state possesses fewer procedural rights in the proceedings compared to the actual parties involved.

Should a State intervene as a party under Articles 62 or 63, the ICJ's decision in the case will bind the intervening State, as outlined in Article 59 of the ICJ Statute (1945). Article 59 states that the ICJ's decision is binding solely between the involved parties and is applicable only to that specific case. While Article 59 primarily pertains to judgments on the merits, it also encompasses other decisions, including judgments on preliminary objections and orders for provisional measures. (Park, 2013)

It is essential not to exclude any decision from Article 59 if its content can be binding. Generally, only the operative part of a judgment or decision holds binding force. The PCIJ, in the Polish Postal Service in Danzig Case (1925), emphasized that the reasons beyond the operative part have no binding force between the concerned parties. Similarly, in the Bosnian Genocide Case (1996), the ICJ pointed out the importance of distinguishing various aspects within a particular judgment.

The concept of 'binding force' as outlined in Article 59 should be differentiated from the force of res judicata. In the case of ICJ judgments, the force of res judicata is a result of the combined impact of Articles 59, 60, and 61. In the Bosnian Genocide case, the ICJ clarified that the principle of res judicata pro veritate habetur signifies that the Court's decisions are not only binding on the parties but are also final. This finality implies that the parties cannot reopen issues that have been conclusively determined, except through procedures of an exceptional nature specifically established for that purpose. (Park, 2013) In the Land, Island, and Maritime Frontier Dispute (El Salvador v. Honduras, 1990), the Chamber emphasized that the force of res judicata operates bidirectionally. If an intervener becomes a party and is thus bound by the judgment, it also gains the right to assert the binding force of the judgment against the other parties.

Conversely, orders indicating provisional measures by the ICJ under Article 41 do not carry the force of res judicata (Zimmermann, 2019), although they are binding. According to Article 76, paragraph 1, of the Rules of Court (1978), the ICJ has the authority to revoke or modify any decision on provisional measures at the request of a party, at any time before the final judgment, if a change in the situation justifies such action. Additionally, as per Article 76, paragraph 3 of the Rules, the rejection of a request for provisional measures does not preclude the party from making a fresh request in the same case based on new facts.

When the interpretation of a convention, of which the intervener is also a party, is in question, the Court's judgment's interpretation becomes equally binding on the intervening State under Article 63. However, in the case of intervention under Article 62 of the ICJ Statute, the situation appears less clear. Article 62 acknowledges that the legal interest of an intervening State may be affected by the Court's decision in the case. However, Article 59 specifies that the Court's decision lacks binding force except between the parties involved and only in relation to that specific case. Therefore, when a third State intervenes as a non-party, there has been uncertainty about whether the Court's decision in the case would also bind the non-party intervener.

In the case of the Land, Island, and Maritime Frontier Dispute, the ICJ Chamber stated that it is pertinent to make some remarks on the impact of the current Judgment for the intervening State. The conditions for intervention, as outlined in paragraph 102 of the 1990 Judgment, specified that Nicaragua, as the intervening State, would not become a party to the proceedings. Consequently, the binding force of the present Judgment, as outlined in Article 59 of the Court's Statute, does not extend to Nicaragua as the intervener. The Chamber affirms the notion that a State permitted to intervene under Article 62 of the Statute, without attaining party status, is not obligated by the Judgment rendered in the proceedings in which it intervened. (Zimmermann, 2019)

However, this approach is susceptible to criticism. It can be argued that this approach diminishes the significance of the intervening State's right to participate in the proceedings without incurring subsequent obligations. The intervention process is not designed for the Court to gather additional information about the case from non-parties, nor is it akin to the receipt of amicus curiae briefs. Instead, it serves as a mechanism for a third State with relevant interests to safeguard itself from potential impacts on its legal interests arising from the decision in the main proceedings.

The Chamber has asserted that a State, when anticipating potential effects on its legal interests from a case's decision, has the discretion to either intervene or abstain. If the State chooses not to intervene, the proceedings can proceed, and the State is safeguarded by the provisions of Article 59 of the Statute. (Zimmermann, 2019). This assertion might suggest that a third State, upon intervening, no longer benefits from protection under Article 59. Although the Chamber has acknowledged the potential for a third State to intervene as a party, thus being

bound by the case's decision, it has not provided compelling justifications for why a non-party intervener under Article 62 is not similarly bound by the judgment in the proceedings in which it has intervened.

The rationale articulated in Land, Island, and Maritime Frontier Dispute Case in 1990 remains unchanged: the intervening State does not assume party status in the proceedings and does not acquire the rights or obligations associated with the status of a party, as outlined in the Statute, Rules of Court, or general legal principles. In 1992, the Chamber further clarified that the right to be heard acquired by an intervener does not come with the obligation to be bound by the decision. While a non-party intervener may not be bound by the decision under Article 59, it might still be bound by the judgment on other grounds, as seen in cases like New Zealand's intervention in the Whaling in the Antarctic case (2010) involving treaty interpretation.

However, uncertainties arise when a third State has the option to intervene under either Article 62 or Article 63. If a convention's construction is under consideration, and a third State, party to the convention, has legal interests affected by the construction, it may intervene as a non-party under either Article 62 or Article 63. According to the Chamber, under Article 62, such a non-party intervener would not be bound by the judgment, while under Article 63, it would be bound to some extent. This distinction has been criticized as lacking logic.

A more reasonable interpretation, considering both Article 62 and Article 63, suggests that a non-party intervener should be bound, at least to a limited extent, by the decision in the proceedings in which it intervened. Professor Chinkin argues that, by analogy with Article 63, a non-party intervener under Article 62 must be bound by the judgment to the extent that it relates to the intervention. (Chinkin, 1986)

3.2. Reasons to Abstain From Intervention

A state may have valid reasons for refraining from intervention. It might opt not to specify its potential reasons for intervention, as doing so could reveal its intentions and limit other diplomatic options, especially if the intervention request is denied.

A state may opt not to seek intervention as a tactic to challenge the Court's competence in resolving a dispute between other states, as exemplified by the Monetary Gold Case (1954).

In this case, the Court declared a lack of jurisdiction because its decision would significantly impact the interests of a third state not involved in the proceedings.

Another avenue for strategic abstention involves choosing parallel proceedings over intervention. If a state chooses to initiate parallel proceedings instead of intervening, the Court has the option to encourage efficiency by directing the joinder of proceedings under Article 47 of its Rules (1978). This article permits formal joinder or common action in either oral or written proceedings. The Court's customary approach indicates that, even though the rule states that it is within the Court's authority "to direct joinder," the parties will be consulted, and if they do not wish for joinder, it will not be imposed. Therefore, this presents another strategic consideration. In the Nuclear Tests cases, three states brought similar claims against a single state. Australia and New Zealand opted for parallel proceedings without joining their cases, while Fiji sought intervention in each. The abrupt conclusion of the case prevented an assessment of the effectiveness of these diverse strategies. Notably, for joinder, each party must have an established basis of jurisdiction, whereas the position remains uncertain for intervention.

A state might face challenges in determining its strategy due to the uncertainty surrounding the scope of a specific case before the Court. While Article 63 theoretically resolves this issue through the duty of notification, practical challenges persist. While pleadings can be made available to third parties upon request to the Court, the assumption is that they are not public, and requests for access may be denied. For example, both Malta and Italy were denied access to the pleadings due to objections from the parties, forcing them to rely on limited public information to understand the scope of the original parties' claims.

It is essential to highlight that granting access to pleadings does not necessarily increase the likelihood of intervention, as reviewing them may reveal that there is no basis for intervention. For instance, Iceland contemplated intervening in the Western Greenland Case (1931) but chose not to after scrutinizing the pleadings. Refusing access to pleadings appears unjustified, as long as the rights of the original parties are safeguarded by allowing them the opportunity to respond to any claims made by an intervening state and even to reformulate their arguments.

Nevertheless, parties to the original proceedings must decide whether to agree to grant another state access to the pleadings and how to respond to an intervention request. In this

context, parties should be prohibited from formally or informally consenting to intervention, as such agreements would compromise the Court's jurisdiction to make determinations on the issue.

3.3. Ongoing Challenges in the Field of Intervention (Ukraine v. russian federation Case)

One of the main principles of international law requires that disputes between states be resolved only by peaceful means. This principle, as well as other basic principles of international law, is grossly neglected by the russian federation, turning into an aggressor state, a terrorist state, and a law-breaking state. It is in international courts that these characteristics are transformed into purely legal, indisputable and impartial qualifications, which lead to further isolation of russia in international relations.

Ukraine, in contrast to russia, upholds the rule of law and actively combats any violations committed by its neighbor. To protect itself, Ukraine utilizes all available means of international law, with a particular focus on international courts and arbitration bodies. Among these, the International Court of Justice holds a significant role. As previously established, this court only handles disputes between states within its jurisdiction, and can also offer advisory opinions in certain situations.

An important condition for consideration of a dispute by the ICJ is its jurisdiction. The Court's jurisdiction is contingent upon three key conditions: the involvement of relevant states in the international treaty, the existence of a provision allowing the Court to hear disputes related to said treaty, and the absence of any reservations made by states regarding the Court's jurisdiction. In particular, there are currently three conventions that satisfy the specified requirements and that can be applied in connection with the aggression of the russian federation against Ukraine. These include the International Convention on the Elimination of All Forms of Racial Discrimination (1966), the International Convention for the Suppression of the Financing of Terrorism (1999), and the Convention on the Prevention of the Crime of Genocide and its Punishment (1948). In 2017, Ukraine sought recourse from the International Court of Justice in response to the russian federation's violations of the first two conventions. Through this legal avenue, Ukraine has obtained a temporary measures order, successfully navigated

the jurisdictional stage, and is currently active in hearings related to the main dispute. (Nazarchuk, 2023)

On March 16, 2022, the International Court of Justice issued an order on provisional measures in the case Ukraine v. russian federation concerning allegations of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide. The triggering event for this case was russia's unfounded and groundless allegations of genocide aimed at Ukraine, which were used as a pretext for escalating their illegal armed aggression on February 24, 2022. In a cunning effort to justify their unjustifiable invasion of Ukraine, the russian federation callously relied on fabricated claims of genocide supposedly committed by Ukraine in Donetsk and Luhansk regions.

The prohibition of genocide as the most serious violation of international law and the most serious international crime is contained in the Convention on the Prevention and Punishment of the Crime of Genocide (1948). Ukraine and the russian federation are parties to the Convention. According to Art. IX Convention, all disputes regarding the interpretation, application or fulfilment of this Convention shall be submitted to the International Court of Justice at the request of any of the parties to the dispute. Therefore, the International Court of Justice has jurisdiction to consider disputes between Ukraine and the russian federation regarding a possible violation of this Convention.

Ukraine seized the chance to challenge the widely-accepted duty of nations to halt and penalize genocide, which had been manipulated by russia. Taking action on February 26, 2022, Ukraine initiated legal proceedings against the russian federation at the International Court of Justice. Additionally, Ukraine urgently requested the Court to implement provisional measures against russia. (Boyko, 2022)

In the ongoing lawsuit, Ukraine is demanding that the ICJ acknowledge the absence of any "genocide" committed in the Donetsk and Luhansk regions, and that russia has no authority to employ military force against Ukraine in a misguided attempt to prevent this imaginary atrocity. Furthermore, Ukraine contends that russia's recognition of the self-proclaimed "DPR" and "LPR" was predicated on fictitious claims of genocide and is therefore illegitimate under the terms of the Convention. As such, Ukraine is seeking to hold russia accountable for its unlawful actions and is requesting that the court impose measures to prevent future violations and provide compensation for the damage inflicted. (ICJ, 2022)

In terms of provisional measures, which can be implemented at a faster pace compared to deliberating on the merits of the dispute, Ukraine has formally requested the Court to compel the russian federation to: halt the so-called "special operation" and all military actions within Ukrainian territory; refrain from initiating any further "special operations" or military activities on Ukrainian soil; ensure that any armed groups under its influence or control refrain from engaging in military actions; and not take any actions that could escalate or complicate the dispute governed by the Convention. Furthermore, Ukraine has urged the International Court of Justice to require a report from the russian federation on the implementation of these provisional measures.

Just over a week after convening on March 7, the Court delivered a resounding victory for Ukraine by issuing its order on provisional measures on March 16. The order, which reflected all of Ukraine's demands, outlined that the russian federation must immediately cease the military operation launched on February 24th, 2022 within Ukraine's territory. Furthermore, the order commanded that any military or other entities or individuals under russian oversight halt their involvement in this operation. With a strong majority vote of 13 to 2, the majority of judges from the UN's International Court supported this portion of the order, with only opposing votes from the russian federation and China. Both parties in the dispute must adhere to the second part of the decision on provisional measures, which was unanimously adopted by all 15 judges. This means refraining from any actions that may exacerbate or broaden the dispute being considered by the Court, or impede its resolution.

The ICJ received an unprecedented number of applications from 32 states, all parties to the Genocide Convention, seeking to join the case. This not only illustrates the significance of the case in terms of interpreting the Convention's content, but also reflects the global interest in upholding international justice. Never before has the Court encountered such extensive third-party interventions. These interventions were made possible by the provisions of Art. 63 of the Statute of the International Court of Justice, making this case the first in the Court's history to involve such a large number of third-party states in the dispute.

The Court took great care in organizing the proceedings, and there were concerns among some of the Judges about the fairness of the process due to the large number of intervening States. As part of the Court's decision on the admissibility of intervention declarations, Article 86(2) of the ICJ's Rules of Court mandates that all intervening States have

the right to present their observations during the oral proceedings. However, due to the fact that all of the intervenors have clearly aligned themselves with one party, this effectively gives one side an unfair advantage in terms of time allotted to present their arguments. (Juliette McIntyre, Kyra Wigard and Ori Pomson, 2023) It is important to acknowledge that the involvement of the state in this case, while it may appear to show support for the party's statement, is primarily motivated by its desire to ensure the accurate interpretation, application, and implementation of the Genocide Convention.

To ensure a fair and unbiased hearing, the Court took several measures. First, the intervenors were given a maximum of ten to fifteen minutes to present their arguments. In addition, they were only allowed one chance to make an oral plea, while the parties had the privilege of two rounds. Furthermore, russia was granted twice as much time during the second round. (Juliette McIntyre, Kyra Wigard and Ori Pomson, 2023) While this may have provided the opportunity for political taunts and diversions, the Court's primary focus was on upholding the equality and legitimacy of all involved parties. The Court strives to maintain an impartial image and guarantee impartial proceedings in this case.

Additionally, the Court imposed a relatively short deadline for intervening States (Juliette McIntyre, Kyra Wigard and Ori Pomson, 2023) to submit their written observations. In its Order on the admissibility of the intervention declarations, released on 5 June 2023, the Court granted the intervenors just one month to prepare and submit their observations. This left limited time for States to properly coordinate their efforts and be fully prepared. Nonetheless, a few of the intervenors were able to facilitate the proceedings by organizing their submissions effectively. Regrettably, not all of the States who expressed a willingness to cooperate through written submissions followed through.

While most States focused their comments on interpreting Article IX, others went beyond this. Lithuania called out russia’s clear disregard for international law, while the United Kingdom extensively shared their perspective on the application of Article I. New Zealand's contribution centered on russia's failure to comply with the Court's provisional measures and the argument that this constitutes a significant violation of Article IX. In contrast, Norway delved into the reasons why the interventions should be seen as promoting the effective administration of justice. This perspective is at odds with the Court's previous warning, stated in its order on admissibility, that it will not entertain any arguments from intervenors regarding

the existence of a dispute between the Parties, the evidence presented, the facts at hand, or the application of the Convention in the current case. (Juliette McIntyre, Kyra Wigard and Ori Pomson, 2023)

Russia's objections to the International Court of Justice's jurisdiction include six grounds, such as disputing the existence of a dispute, lack of jurisdiction ratione materiae, and a four-part objection to the case's admissibility. The first objection questions the definition of a dispute, distinguishing between two purported disputes related to genocide allegations in Ukraine. Russia's second objection asserts that Ukraine is trying to merge the legality of the 2022 invasion with the interpretation of the Genocide Convention.

Another key point is russia's claim that there is no obligation under the Genocide Convention to act within international law limits when preventing or punishing genocide. This raises questions about the Court's authority to rule on the invasion's legality under different legal frameworks.

In addition, russia argues against Ukraine's submission requesting the Court to declare it has not committed genocide, labeling it a 'reverse compliance request.' Russia accuses Ukraine of abuse of process, engaging in lawfare, and orchestrating an abusive mass intervention. However, the Court has previously rejected abuse of process arguments.

Despite doubts surrounding certain aspects of jurisdictional link in this case, its final ruling does not necessarily signify the conclusion of the matter. Ukraine's 'reverse compliance request' may continue even in the absence of a current dispute or if certain allegations fall outside of the compromissory clause. This case has broken records at the Court, providing valuable insights for both the Court and intervenors when addressing intricate issues like this.

The Ukraine v. russian federation case has significantly influenced the ICJ's practice on interventions, marked by an unprecedented involvement of 32 states seeking to join the dispute, showcasing global interest in upholding international justice. The case set a precedent by addressing fairness concerns through measures such as limiting time for intervenors and strict adherence to ICJ rules, maintaining a balance between efficiency and fairness.

The Court's imposition of a relatively short deadline for written observations highlighted challenges for states to coordinate efforts. Despite diverse intervenor perspectives,

ranging from interpreting specific articles of the Genocide Convention to broader issues like russia's disregard for international law, the Court aimed to ensure a fair and impartial process.

The case also raised insights for the ICJ and future intervenors in managing intricate issues associated with large-scale interventions. Russia's objections challenging the ICJ's jurisdiction and disputing the existence of a dispute underscored the need for careful consideration of jurisdictional issues in cases involving extensive third-party interventions, contributing to potential clarifications in future cases.

4. THIRD PARTY INTERVENTION AND AMICUS CURIAE

4.1. Definition and Purpose of Amicus Curiae

The expression "amicus curiae" originates from Latin, meaning "friend of the court." (Britannica, n.d.) This concept, rooted in Roman law, has found contemporary application in global legal proceedings.

In the context of national legal disputes, "amicus curiae" pertains to an impartial individual or a collective entity that aids the court by presenting pertinent information related to the case. Importantly, these "friends of the court" are not actual participants in the legal proceedings, nor are they formal parties involved in the case. (Shostak, n.d.) An "amicus curiae" can be any individual or entity, whether natural or legal, seeking to submit information during legal proceedings. Frequently, these entities include non-governmental organizations, scientific institutions, or respected individual experts. The information provided by amicus curiae to the court can encompass both factual and legal perspectives. While in practice, an amicus curiae may function similarly to a lobbyist, formally, it does not hold that designation. In essence, de facto, it may engage in lobbying activities, but de jure, it is not officially recognized as such in the legal context.

Originally, the role of amicus curiae was specifically geared towards providing impartial assistance in interpreting laws, serving as an additional information source for the court. However, in contemporary legal systems, particularly in countries with a general legal framework, this institution has undergone some transformation, taking on characteristics of a judicial lobbying model. For instance, in jurisdictions like England and Canada, where the term "interveners" is used for independent assistants of the court, "friends" of the court may effectively function as representatives of one of the parties, openly advocating for a particular stance. (Vallindas, n.d.) To become involved in the proceedings in this manner, the court's decision on the case must be of such societal significance that it directly impacts the interests of these "interveners."

The practice of amicus curiae has become particularly prominent in the United States, with Rule No. 37, "Brief for an amicus curiae," of the Supreme Court of the United States outlining that a lawyer can present an amicus curiae opinion to the Court with the written

consent of all parties involved. In cases where such consent is lacking, permission from the Court is required. Presently, amicus curiae opinions are submitted in 85% of cases before the US Supreme Court, and they are effectively utilized by both commercial and non-governmental organizations (NGOs), as well as by officials and individuals acting on behalf of specific interests. In a similar fashion, NGOs actively engage in the role of "friends" in the European Court of Human Rights. To be granted permission to submit an amicus curiae brief, a public organization must demonstrate a genuine interest in the case and provide evidence that its participation will contribute to the administration of justice. (Shostak, n.d.)

The procedural law of the International Court of Justice lacks a clear provision explicitly permitting State submissions by amici curiae in contentious proceedings. The Statute of the ICJ does not establish a specific mechanism for a State to present its views without formally intervening in an official capacity (Chinkin, 1986). Intervention under Article 63 has been viewed as a type of involvement similar to participating as an amicus curiae.

Allowing states to act as amici curiae is both necessary and advantageous. (Miller, 1976) This is crucial to ensure that the Court possesses all relevant information that can shed light on the issues under consideration, particularly considering the often biased nature of contentious proceedings. (Jessup, 1981) It is also in the interest of justice for the Court to have access to impartial information when making decisions in accordance with international law on submitted disputes.

Determining the motives of an amicus curiae can be extremely challenging. While an objective amicus curiae may contribute beneficially to the case of one of the disputing parties, there is also the possibility that a third state seeks to highlight its own interests, safeguarding them from potential harm resulting from the proceedings' outcome.

This form of participation aligns with the perspective expressed by the late Judge Nagendra Singh in his separate opinion in the Italian Intervention Judgment. He argued, among other points, that if there's a need to caution the Court about the interests of a third party, this can always be accomplished through an application under Article 62. Although the utility of this provision may be limited, it still serves a specific purpose. (Koray, 1992)

Given the often multilateral nature of international disputes, allowing amicus curiae appearances before the Court could provide a means for representing or bringing attention to

interests beyond those of the involved parties. (Chinkin, 1986)While this process would enable third states to notify the Court of their interests, its primary aim would be to offer assistance to the Court. Considering the Court's stance that intervention for the purpose of aiding or facilitating the Court is impermissible, (Koray, 1992) such a role could be fulfilled by the amicus curiae.

Implementing this proposal would likely require amendments to the Statute, possibly in alignment with Article 66 on advisory proceedings. (Chinkin, 1986)Amicus curiae entities in this context would not be considered "parties" in the sense of Article 59; instead, their status would resemble that of participants in advisory proceedings. However, the Court would need to reconsider its current practice of limiting the publication of pleadings initiating contentious proceedings. It would be essential to devise mechanisms for making public the legal questions on which input from amici curiae might be sought. (Miller, 1976) The involvement of states as amici curiae should be at the discretion and direction of the Court.

4.2. Presenting Amicus Curiae before the ICJ

The procedural rules of the International Court of Justice do not explicitly allow for States to submit amicus curiae briefs in contentious proceedings. The Statute lacks a specific mechanism for a State to express its views without formally intervening. (Chinkin, 1986) The current practice permits the presentation of amicus curiae briefs only by intergovernmental organizations in contentious proceedings, as outlined in Articles 34 of the Statute and 43 of the Rules.

According to Article 69, paragraph 4 of the Rules of Court (1978), the term 'public international organization' is specified to mean "an international organization of States." An amendment to Article 43 in 2005 grants the Court the authority to direct the Registrar to notify any public international organization party to a convention relevant to a case. Consequently, any duly notified public international organization may submit written observations on specific provisions of a convention before the closure of written proceedings. If deemed necessary by the Court, these observations can be additionally provided verbally in accordance with Article 69, paragraph 2 of the Rules.

Regarding States, the absence of an explicit prohibition against amicus curiae briefs does not necessarily imply that such a practice is forbidden by the International Court of Justice, particularly in contentious proceedings. The Statute does not contain any provisions that can be construed as preventing the Court from accepting views presented by States in the form of amicus curiae. (Palchetti, 2002) The ICJ's past practices seem to align with this perspective. In the Judgment on the Application for Intervention by Malta in the Continental Shelf case (1978), the Court referred to amicus curiae while distinguishing it from Malta's intervention request, without openly condemning the practice. In the Gabčíkovo-Nagymaros Project case (Hungary v. Slovakia, 1993), the ICJ permitted the introduction of amicus curiae-type briefs (by NGOs) as part of the submissions of the disputing parties. Furthermore, the argument that the participation of States as amici curiae would compromise the principles of consensual jurisdiction or equality of States is not compelling. Since these States would not be intervening under the purview of Articles 62 or 63, their involvement would likely have minimal interference with the judicial proceedings. (Almeida, 2019)

Expanding the options for amicus curiae submissions would signify acknowledging the plurilateral nature of international disputes "without entailing the consequences of intervention." (Chinkin, 1986) This could be beneficial for States, particularly those whose intervention requests have been denied or in cases where intervention conditions were not met. It would provide them with an avenue to draw the Court's attention, especially when community interests are involved. The use of amici curiae would also prove valuable in preventing potential delays in judicial proceedings, particularly in cases with multiple interveners, where multiple States decide to intervene concerning the interpretation of a multilateral convention.

Hence, there could be alternative pathways for States seeking to provide valuable observations to the Court. The Court could derive benefits from such insights when interpreting a convention. (Forlati, 2014) Without being bound by the Court's interpretation, a State could present its observations using a procedure similar to that stipulated for international organizations in Article 43 of the Rules of Court. (Palchetti, 2002) An amendment to this article could enable a third State to "submit its observations without having to appoint an agent and being formally admitted by the Court as an intervening State," (Almeida, 2019) akin to an amicus curiae. Consequently, the State's participation in the proceedings would be restricted

to presenting views on specific questions, without impacting the principles of consensual jurisdiction or equality among States.

In line with Judge Gaja's suggestion, the Rules and Practice Directions could be amended "to allow for third States to submit a short amicus brief on the issues of general international law that the Court might address before the oral hearings, instead of formally intervening." (Almeida, 2019) Such an amendment would enhance efficiency by avoiding interference or delays in judicial proceedings, offering a more adaptable and less time-consuming form of third-state participation (Palchetti, 2002) that prioritizes the protection of general interests. (Almeida, 2019)

An alternative approach could involve interpreting such a power based on the autonomy enjoyed by the Court in seeking and obtaining evidence. As per Article 62 of the Rules of Court (1978), the Court possesses the authority to independently seek relevant information without relying on the assistance of parties. This autonomy in establishing evidence could be associated with the power of accepting amicus curiae briefs, offering the Court additional means for collecting evidence. In the words of Palchetti, "the power to acquire evidence proprio motu includes also the possibility of accepting and evaluating views submitted by third States as amici curiae." (Palchetti, 2002) In this scenario, there might be no need to amend the Rules, except for providing further guidance to third States interested in submitting amicus curiae briefs.

In addition to permitting States to participate as amici curiae, a revision of the Rules or Practice Directions could also be beneficial to facilitate increased involvement by non-State actors, including NGOs or corporations, as suggested by Philippe Sands, Alina Miron, Hélène Ruiz-Fabri, and Judge Tomka. (Almeida, 2019) The formal submission of amicus curiae briefs by NGOs in contentious cases is not clearly specified in the International Court of Justice, except when it comes to advisory proceedings, as mentioned in Article 66, paragraph 2 of the Statute. Nevertheless, non-governmental organizations have infrequently participated in advisory proceedings before the ICJ.

This possibility could be broadened to include individuals, as there have been instances where individuals sought to participate in proceedings before the Court. The ICJ's case law addresses issues related to individual rights, particularly in cases involving diplomatic protection. (Razzaque, 2002) States have the authority to litigate the international rights of their

citizens or citizens of other States. Human rights cases, including those related to genocide, war crimes, and other human rights violations, have been adjudicated by the ICJ, as seen in the case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide and the Jurisdictional Immunities case. (Shelton, 1994) Environmental law cases, such as the Gabčíkovo-Nagymaros case, also reflect widespread concern or broad public interest. Additionally, even boundary disputes may have a significant impact on individuals. This underscores a developing pattern where international legal proceedings transcend issues solely relevant to the involved parties' private concerns. Such broadening could indirectly foster public engagement with the Court's activities, offering various benefits. The involvement of individuals directly impacted, acting as amici curiae, would enhance the effective administration of international justice.

Regardless, a modification of the Rules would be necessary to permit the inclusion of NGOs, and potentially corporations and individuals, in contentious cases. Nevertheless, even without such a revision, Article 50 of the Statute could offer a distinct avenue for the Court to extend invitations to "any individual, body, bureau, commission, or other organization" to participate as amicus curiae in contentious cases. (Almeida, 2019) As suggested by Shelton, these organizations could utilize Article 50 of the ICJ Statute to provide their opinions as experts. (Shelton, 1994) Moreover, information submitted by such organizations could be annexed to the submissions of the involved parties.

The matter of the European Union`s involvement in the International Court of Justice as amicus curiae has also been the subject of some discussion in recent days. On August 18, 2022, the International Court of Justice made an official statement revealing that the European Union (EU) had submitted pertinent information regarding the Ukraine v. russian federation Case. (ICJ, 2022) Since the EU is not considered a State or a Party to the Genocide Convention, it is unable to formally intervene under Articles 62 or 63 of the ICJ Statute (1945). However, being a public international organization, the EU maintains the right to provide information to the Court as amicus curiae under Article 34(2) of the ICJ Statute.

To date, there have only been two instances where non-State actors have attempted to submit unsolicited briefs in contentious proceedings under Article 34(2) of the ICJ Statute. Unfortunately, both of these attempts were met with rejection by the Court. Regrettably, the Court provided little to no explanation for their decisions. The first case involved a submission

by The League of the Rights of Man in the Asylum Case, which was most likely turned down due to its non-intergovernmental status. The second case, filed by the International Labour Organization in the South West Africa Case, could have been rejected due to the inclusion of legal arguments in the brief, which falls outside the scope of Article 34(2) of the ICJ Statute. (Melzer, 2022)

4.3. Practice of Introducing the Amicus Curiae before Other International Judicial Bodies

The inclusion of the practice of introducing amicus curiae before other international judicial bodies, beyond the International Court of Justice, is a logical extension in the exploration of alternative procedures and practices in the realm of international law. While the primary focus of the work is on the ICJ, incorporating examples from other international courts and tribunals provides a comparative perspective and enriches the understanding of the broader landscape of amicus curiae participation in the context of third party intervention.

In the context of the European Court of Human Rights, there were no explicit provisions in either the European Convention or the 1959 Rules of the Court addressing the participation of third parties in the proceedings. An example of this situation is evident in the Winterwerp v. The Netherlands case (1979), where the United Kingdom Government sought permission from the Court to submit a statement regarding the interpretation of certain Convention provisions. The United Kingdom invoked Article 38, paragraph 1, of the 1959 Rules, which granted the Court the authority to decide, on its own initiative, to hear a person as a witness or expert if their evidence or statements were likely to assist the Court in its task. The Court declined the United Kingdom's request but allowed the Commission to submit the state's written statement as part of its own submissions.

In the case of Young, James, and Webster (1981), the Court granted the request of the Trade Union Congress, under Article 38, paragraph 1, to submit observations on specific factual questions in the case. In doing so, the Court essentially permitted a third party, based on the authority conferred by Article 38 of the 1959 Rules, to participate in the proceedings and present its views. (Krommendijk, 2022) Subsequently, the Court opted to amend its rules to explicitly introduce a form of amicus curiae procedure.

The Inter-American Court of Human Rights shares a similar experience with the European Court regarding amicus curiae participation. Even though neither the American Convention nor the 1980 Rules of Procedure of the Court explicitly addressed this type of procedure, the Inter-American Court chose to allow the submission of amicus curiae briefs. The Court did not explicitly state the legal basis for its decision to permit third-party participation in the proceedings. However, it has generally been understood that this authority of the Court stems from Article 34, paragraph 1, of the 1980 Rules, which contained a provision similar in essence to Article 38 of the 1959 Rules of the European Court. The 1996 Rules of Procedure of the Inter-American Court now expressly include, at least for advisory proceedings, a provision for the participation of third parties as amicus curiae. (Moyer, n.d.)

In the case of United States – Import Prohibition of Certain Shrimp and Shrimp Products (1996), the World Trade Organization's panel and, on appeal, the Appellate Body addressed the issue of amicus curiae participation for the first time. This matter was examined and resolved in light of the provisions of the DSU (Understanding on Rules and Procedures Governing the Settlement of Disputes), specifically the DSU provision regarding the panel's "right to seek information." (Shaffer, 1999)

The panel initially declined to accept amicus curiae briefs, asserting that, according to Article 13 of the DSU, panels possess the authority only to proactively seek information on their own initiative, not to accept unsolicited information from third parties. The Appellate Body, however, reached a different conclusion by adopting a broader interpretation of Article 13. According to the Appellate Body, the power to seek information does not inherently exclude the possibility of receiving unsolicited information. The panel, in this interpretation, retains discretionary authority to either accept or reject information submitted to it. Subsequent decisions by the Appellate Body clarified that it has the legal authority under the DSU to accept amicus curiae briefs. (Shaffer, 1999) However, these decisions did not explicitly indicate the specific provision of the DSU from which this authority derives.

The practice of the World Trade Organization's Appellate Body receiving amicus curiae briefs in several cases has sparked criticism from numerous WTO Member States. Critics argue that the introduction of an amicus curiae procedure exceeds the Appellate Body's mandate under the DSU (Understanding on rules and procedures governing the settlement of disputes). (Matsushita, 2004) The concerns expressed by WTO Member States primarily

revolve around the fear that allowing this procedure could potentially undermine their control over the proceedings.

In response to such criticism, the Appellate Body has taken a cautious approach, particularly in assessing the admissibility of amicus curiae briefs. The initial response from the Appellate Body appears to reflect a careful consideration of the potential implications and concerns raised by WTO Member States.

4.4. Amicus Curiae and Erga Omnes Obligations

The introduction of an amicus curiae procedure could offer a viable solution, especially regarding the involvement of third states in cases where obligations erga omnes are at the center of a dispute before the Court.

In the Barcelona Traction case (1962), the Court noted that "when one such obligation is particularly in question, in a specific case, [...] all states have a legal interest in its observance." (ICJ Reports, 1970) The possibility for non-directly injured states to initiate proceedings before the Court regarding violations of erga omnes obligations has been a subject of differing opinions. (Palchetti, 2002) Assuming a state has successfully brought a case against the alleged wrongdoer, the question arises whether other states, equally affected by the violation and sharing the same interest as the applicant state, should have the opportunity to participate in the proceedings.

It appears that in situations where a state is not directly harmed by the conduct in question, the purpose of intervention would likely be to allow states to emphasize before the Court the collective nature of the breached obligation. A Court decision acknowledging the erga omnes character of an obligation could effectively serve as a means of safeguarding the interests of the international community. States may, therefore, seek to express their perspectives on the existence and content of rules imposing obligations that aim to protect communal interests, thereby seeking the Court's endorsement of these rules.

As stated by Paolo Palchetti while the Court acknowledges that "all states can be held to have a legal interest" in cases involving violations of erga omnes obligations, it remains unclear whether this "legal interest" justifies intervention under Article 62. (Palchetti, 2002) The Court has interpreted this form of intervention as a means for a third state to protect an

individual right of its own, shared by all or a number of states, such as the interest in the Court's pronouncement on a legal question. However, this interest has not been recognized as sufficient to warrant intervention.

According to Article 49 of the Articles on the Responsibility of States for Internationally Wrongful Acts (2001) any state not directly harmed by a breach of an erga omnes obligation is entitled to assert a specific claim for the cessation of the breach and, in some circumstances, reparations. The Court cannot be called upon to adjudicate on these claims through intervention, at least not without a jurisdictional link. It could be argued that an interest in upholding rules aimed at protecting fundamental values of the international community is a more qualified basis for intervention than a general interest in the development of international law. Nevertheless, the Court might still consider even the former interest, shared by all states, as too broad in nature.

The broad interpretation of legal interest in the Application by The Philippines in Pulau Ligitan and Pulau Sipadan case (1998) may have theoretically opened the door for third states to intervene under Article 62 to protect the interests of the international community. (Palchetti, 2002) However, even if this possibility is considered, an amicus curiae procedure seems more appropriate than intervention in cases involving an erga omnes obligation. In situations where the participation of third states serves to affirm the collective nature of the obligation in question, submitting amicus curiae briefs would serve as a suitable and sufficient means for these states to present their views to the Court.

5. THIRD PARTY INTERVENTION FOR ERGA OMNES VIOLATIONS

5.1. Concept of Erga Omnes Obligations

Erga omnes obligations, a frequently debated concept in international law, has sparked numerous scholarly discussions and judicial interpretations over the years. The Latin roots of "erga omnes" suggest meanings like 'in relation to all,' 'as against all,' or 'flowing to all.' In the context of contemporary international law, erga omnes obligations refer to a specific category of responsibilities that a State owes not only to another specific State but to the entire international community. This concept gains significance in contrast to the common bilateral structure of rights and obligations in conventional international law. (Zemanek, 2000)

Erga omnes obligations are duties that universally apply to all states, addressing fundamental values of the international community. When a state breaches these obligations, it not only commits an illegal act against the directly affected state but also transgresses the rights of all members of the international community collectively. In these instances, every state possesses a legal interest in preventing violations of rights. This forms the foundation for any state to file an international claim against the offending state, without the requirement to demonstrate direct harm. The Erga Omnes obligation stands as an exception to the typical rule in international law, where typically only the state directly affected by the breach can initiate a claim for that violation. (Dydenko, n.d.)

It's not surprising that judicial bodies such as the International Court of Justice utilize erga omnes obligations to go beyond the traditional consent-based reciprocity between States, typical in international law. Instead, they extend the boundaries of such law by employing natural law doctrines as guiding principles. Despite its potential, there is no precise definition outlining what qualifies an obligation as assuming an erga omnes nature. (Ardit Memeti, 2013) Neither the ICJ nor the international community has produced an exhaustive list of such obligations that a State may generally owe to the entire global community.

The key characteristics of erga omnes obligations include:

- Universality: They apply universally to all states.

- Clear Objective Definition: These obligations have a clearly defined objective.

- Non-Reciprocity: Unlike many international obligations, erga omnes obligations do not require reciprocal actions.

- Dominant Negation: A breach of erga omnes obligations is considered a violation against all, not just the directly affected state.

- Relationship and Interdependence with Jus Cogens: Erga omnes obligations are closely linked to jus cogens, as the latter serves as the foundation for the emergence of erga omnes. Jus cogens norms share all the characteristics of erga omnes.

- Common Goal - Protection of Common Moral Values and Interests: These obligations aim to protect shared moral values and interests of the international community.

- Maximum Interest in Implementation: There is a high level of interest among states in ensuring the fulfillment of erga omnes obligations.

- Everyone's Right to Prosecution: States, regardless of direct involvement, have the right to bring legal actions against a state that breaches erga omnes obligations. (Biletskyi, 2017)

It is demonstrated that a close connection exists between the concepts of erga omnes and jus cogens, with jus cogens norms possessing all the features of erga omnes. While obligations erga omnes and erga omnes partes share common elements in terms of protecting common interests, the latter pertains specifically to interests arising from multilateral international treaties. The connection between jus cogens norms and erga omnes obligations can be characterized as follows. The essence of jus cogens signifies the "gravity" or exceptional importance of norms, while erga omnes obligations mirror the "extent" or procedural significance. (Kyivites, 2010) Jus cogens norms inherently possess an erga omnes "scope"; however, it's crucial to note that not all erga omnes obligations carry the same "weight" or significance as jus cogens norms.

Additionally, erga omnes exhibits similarities with actio popularis, particularly in granting everyone the right to seek protection for violated rights even without demonstrating personal harm. (Kopteva, 2010) However, actio popularis is confined to national courts as a means of protection, and the applicant acts in a representative capacity on behalf of the injured party, lacking personal legal interest.

The International Law Commission (ILC) acknowledged the potential for States to bring claims for breaches of erga omnes obligations in its 1976 and 2001 reports. However, even before these reports, the International Court of Justice recognized the concept in the 1970 decision on the Second Phase of the Case Concerning Barcelona Traction, Light, and Power Company. In that decision, the ICJ not only distinguished erga omnes obligations from bilateral obligations between states but also identified four specific obligations with erga omnes status. These obligations included prohibiting acts leading to genocide and aggression, as well as ensuring protection against slavery and racial discrimination – all with a clear human rights dimension. (Atul Alexander, 2022) Nigreeva highlights that, considering the nature of the Barcelona Traction case, a crucial aspect the court sought to address was whether the involved parties had the authority to bring the matter to court in order to safeguard the violated right. (Yurova, 2023) Hence, the term "erga omnes" could accurately describe the procedural capability of any state to approach the court for the protection of rights that are deemed to be "in the interest of all states." Unfortunately, the court's use of this expression, which was not entirely successful or clear, has sparked numerous scholarly debates regarding the specific obligations that can be considered as having an "erga omnes" nature.

This recognition implies that a state can justifiably intervene on humanitarian grounds before the ICJ if it alleges that another state has violated its erga omnes obligations. Over time, additional obligations, such as respecting the right of self-determination and prohibiting torture, have been added to the list.

5.2. ICJ`s Approach to Erga Omnes Violations and Third Party Intervention

The International Court of Justice's stance on successful third-party intervention for violations of erga omnes obligations has been somewhat inconsistent over the years. While specific cases have attributed such status to certain obligations, there have been instances where the ICJ indicated its reluctance to adjudicate on such matters unless the offending state consents to its jurisdiction. (Portugal v. Australia, 1995) Notably, Judges Weeramantry and Skubiszewski expressed dissenting opinions favoring a greater focus on the often-neglected concept of erga omnes obligations, urging against allowing procedural technicalities to further sideline these obligations. (Atul Alexander, 2022) This judicial inconsistency may, in part, contribute to the

limited body of ICJ jurisprudence on cases involving third-party intervention by states based on the violation of erga omnes obligations by other states.

Certain members of the Court have characterized erga omnes obligations as not only conferring locus standi for initiating proceedings but also as constituting an "interest of a legal nature" for the purpose of intervention under Article 62 of the Court's Statute. Judge Cançado Trindade advocated for intervention to contribute to the progressive development of international law, especially when matters of collective or common interest and collective guarantee are involved. (Trindade, 2013) Similarly, Judge Gaja, in his course at the Hague Academy on the protection of general interests in the international community, noted that whatever "interest of a legal nature" is required under Article 62, it cannot exceed the level that justifies bringing a claim before the Court. (Gaja, 2011)

Fundamentally, the legal standing to initiate new proceedings and the statutory requirements for incidental proceedings, like intervention, (Atul Alexander, 2022) are distinct concepts in jurisprudence, with markedly different practical implications. Judge Gaja himself recognized that intervention based on an interest in customary obligations erga omnes would represent a novel form of participation. (Gaja, 2011) His role as a rapporteur for the Institut de Droit international also included aspects of proposing future law (lex ferenda), suggesting that the International Court of Justice should afford a state, to which an erga omnes obligation is owed, the opportunity to participate in ongoing proceedings. These perspectives acknowledge that, presently, there seems to be no provision for such participation under Article 62 of the ICJ Statute. (Ahmadov, 2018)

The cases examined prior to the year 2000 include: A request to investigate the situation as per Paragraph 63 of the Court's judgment on December 20, 1974, in the Nuclear Tests (New Zealand v. France) Case; The Haya de la Torre (Colombia v. Peru) Case; The Land, Island, and Maritime Frontier Dispute (El Salvador v. Honduras: Nicaragua intervening) case; The Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) Case; The Continental Shelf (Libyan Arab Jamahiriya v. Malta) Case; The Continental Shelf (Tunisia v. Libyan Arab Jamahiriya) Case; The Nuclear Tests (Australia v. France) Case; and, The Nuclear Tests (New Zealand v. France) Case.

Among the mentioned cases, only one—the Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court’s Judgment of 20 December 1974 in

the Nuclear Tests (New Zealand v. France)—involves a third-party intervention petition that was filed on the basis of, among other things, the violation of erga omnes obligations. (Atul Alexander, 2022) In this instance, New Zealand submitted an intervention application asserting rights shared by all members of the international community, of which New Zealand was a part. These rights included the entitlement to prohibit nuclear tests leading to radioactive fallout and the right to prevent unjustified artificial radioactive contamination of the terrestrial, maritime, and aerial environment, especially in the region where the tests occurred. Other nations, such as Solomon Islands, Marshall Islands, the Federated States of Micronesia, and Samoa, also relied on similar obligations for their interventions. Although the ICJ ultimately rejected these applications, certain separate and dissenting opinions, particularly those from Judges Ranjeva, Shahabuddeen, Weeramantry, and Koroma, offer valuable insights into the rights of states to initiate interventions based on grounds that extend beyond a direct statute or treaty.

In another instance, the Haya de la Torre Case, the intervention application presented by Cuba, while not explicitly framed in terms of an erga omnes obligation, centered on the expansive interpretation of the 1928 Havana Convention. The focus was on a humanitarian right pertaining to the granting and receiving of political asylum. Although the ICJ permitted this intervention, it did not explicitly address whether the right in question was specifically linked to any erga omnes obligation. None of the remaining six cases make any reference to erga omnes obligations or similar concepts.

Hence, using obligations erga omnes as a foundation for establishing an "interest of a legal nature" for the inclusion of third-party intervention is subject to skepticism. This determination aligns with the International Court of Justice's legal precedent, which mandates a specific and individualized "interest of a legal nature" for non-party interventions under Article 62. The ICJ maintains a clear distinction between incidental proceedings and the admissibility criteria applicable to applications initiating new cases.

There is still ambiguity regarding whether a petition for full-party intervention under Article 62 should prompt the Court to assess the third State's legal standing using the same criteria applied to the main parties in the case. Alternatively, it is equally plausible that the Court might choose to emphasize the incidental nature of intervention, evaluating the request

solely based on the specified criteria of Article 62 and the existence of a jurisdictional connection with the involved parties.

CONCLUSIONS

1. The concept of intervention, as elucidated in this thesis, refers to the involvement of a third state in an existing legal dispute, particularly in the context of the International Court of Justice. At the national level, intervention allows nonparties to participate in a case, either as a matter of right or at the court's discretion, to ensure a fair and comprehensive resolution that considers their rights and interests. In the realm of international law, intervention in the ICJ involves the voluntary participation of a third state in an ongoing contentious case between other states, based on the provisions outlined in the Statute of the ICJ. The purposes of intervention range from safeguarding legal rights and interests to contributing a unique perspective to the resolution of the legal dispute, with a focus on ensuring justice, balance, and fairness in interstate relations. The concept of intervention serves as a recognized institution, permitting external parties to join ongoing legal proceedings and actively engage in the defense of their legal concerns.

2. The legal provisions for intervention in the International Court of Justice, as outlined in Articles 62 and 63 of its Statute, present distinct approaches. Article 62 grants states not parties to a case the discretion to seek permission to intervene, necessitating a demonstration of a specific legal interest and how their rights may be affected. In contrast, Article 63 allows certain entities, like non-party states and international organizations to intervene without seeking permission, provided a treaty or convention allows for their appearance. However, the construction of the treaty becomes a matter at issue among entitled states upon intervention. While Article 62 emphasizes specific legal interests and the contribution to the Court's understanding, Article 63 focuses on the entitlement derived from treaties, with the construction becoming a contentious issue among involved states.

3. The status of an intervening state is complex, as clarified by the Land, Island, and Maritime Frontier Dispute case. While an intervening state does not automatically become a party to the case, it can attain party status only if the disputing parties expressly consent. The intervening state's rights and obligations are limited compared to the actual parties, and the binding force of the Court's decision varies depending on the articles under which intervention occurs.

The main challenges in the sphere of intervention in the case Ukraine v. Russian Federation include the unprecedented number of 32 states seeking to join the dispute, posing

fairness concerns in terms of time allocation and adherence to ICJ rules. Russia's objections to the Court's jurisdiction and disputing the existence of a dispute highlight the need for careful consideration of jurisdictional issues in cases involving extensive third-party interventions. Despite diverse perspectives from intervenors, the Court aims to ensure a fair and impartial process while addressing complex issues associated with large-scale interventions.

4. Amicus curiae briefs by third states refer to the submission of legal opinions or information by impartial entities that are not direct parties to a case before an international court, such as the International Court of Justice. While the ICJ's procedural rules do not explicitly allow states to submit such briefs in contentious proceedings, there is a growing recognition of the potential benefits of permitting third states to participate in this capacity. Allowing third states to present amicus curiae briefs can enhance the court's access to relevant information, particularly in cases involving complex legal or factual issues, and contribute to a more comprehensive and informed adjudication process.

5. Third-party intervention for erga omnes violations involves a state, not directly affected by a breach, initiating legal actions against another state for violating obligations that extend to the entire international community. The possibilities of expanding third-party intervention in cases involving violations of erga omnes obligations remain uncertain due to inconsistent stances within the International Court of Justice. While some judges advocate for recognizing such interventions based on the interest in customary obligations erga omnes, the existing legal precedent and procedural challenges create ambiguity about the feasibility of expanding this form of intervention.

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SUMMARY (IN ENGLISH)

The Legal and Practical Aspects of Third Party Intervention into the ICJ Case

Kyryl Mygas

This master's thesis delves into third-party intervention in the ICJ, with a spotlight on the ongoing Ukraine v. Russian Federation case. The objectives encompass analyzing the intervention concept, scrutinizing the legal framework under ICJ Statute articles 62 and 63, exploring state intervention dynamics, and contemplating potential amicus curiae expansion.

Intervention in ICJ cases involves non-parties actively participating in ongoing legal disputes, aligning with the Court's dual role in resolving conflicts and preventing them. This thesis navigates the legal framework, examining discretionary intervention and intervention as of right. Article 62 necessitates a specific legal interest related to the dispute, emphasizing the Court's discretion for information gathering. Article 63 permits certain entities to participate without seeking permission, reflecting shared state interests in collective concerns.

The study probes state intervention dynamics, encompassing the status of intervening states, the binding force and res judicata of ICJ decisions, challenges, and reasons for abstention. The ongoing Ukraine v. Russian Federation case serves as a case study, illustrating the complexities and the evolving nature of international law.

Amicus curiae's role is explored, proposing potential ICJ expansion. The absence of explicit provisions has prompted discussions on allowing states to submit amicus curiae briefs, enhancing the court's understanding and contributing to justice administration. The analysis extends to non-state actors, suggesting a potential revision of ICJ rules for a more inclusive participation framework.

The thesis proposes an opportunity to enhance the ICJ's effectiveness through amicus curiae expansion, fostering transparency and diverse perspectives. The ongoing discourse on third-party intervention for erga omnes violations underscores the need for a consistent approach to legal standing and intervention in international disputes.

SUMMARY (IN LITHUANIAN)

Trečiųjų šalių įsitraukimo į TTT bylą teisiniai ir praktiniai aspektai

Kyryl Mygas

Šiame magistro darbe gilinamasi į trečiosios šalies įsikišimą į TTT, atkreipiant dėmesį į tebevykstančią Ukrainos ir Rusijos Federacijos bylą. Tikslai apima intervencijos koncepcijos analizę, teisinės bazės pagal TTT statuto 62 ir 63 straipsnius išnagrinėjimą, valstybės įsikišimo dinamikos tyrimą ir galimo amicus curiae išplėtimo apmąstymą.

Kišimasis į TTT bylas reiškia, kad šalys, kurios nėra šalys, aktyviai dalyvauja vykstančiuose teisminiuose ginčuose, derinant su dvigubu Teismo vaidmeniu sprendžiant konfliktus ir užkertant jiems kelią. Šioje disertacijoje naršoma teisinėje bazėje, nagrinėjant diskrecinį įsikišimą ir įsikišimą kaip teisę. 62 straipsnis reikalauja specifinio teisinio intereso, susijusio su ginču, pabrėžiant Teismo diskreciją renkant informaciją. 63 straipsnis leidžia tam tikriems subjektams dalyvauti neprašant leidimo, o tai atspindi bendrus valstybės interesus sprendžiant kolektyvinius interesus.

Tyrimas tiria valstybės intervencijos dinamiką, apimančią įsikišančių valstybių statusą, TTT sprendimų privalomąją galią ir res judicata, iššūkius ir susilaikymo priežastis. Šiuo metu vykstanti Ukraina prieš Rusijos Federaciją byla yra atvejo analizė, iliustruojanti tarptautinės teisės sudėtingumą ir besikeičiantį pobūdį.

Nagrinėjamas Amicus curiae vaidmuo, siūlant galimą ICJ plėtrą. Aiškių nuostatų nebuvimas paskatino diskusijas dėl leidimo valstybėms pateikti amicus curiae trumpus dokumentus, didinant teismo supratimą ir prisidedant prie teisingumo vykdymo. Analizė apima ir nevalstybinius veikėjus, o tai rodo, kad TTT taisyklės gali būti persvarstytos siekiant įtraukti labiau įtraukiančio dalyvavimo sistemą.

Baigiamajame darbe siūloma galimybė padidinti TTT efektyvumą plečiant amicus curiae, skatinant skaidrumą ir įvairias perspektyvas. Nuolatinis diskursas dėl trečiųjų šalių įsikišimo dėl erga omnes pažeidimų pabrėžia nuoseklaus požiūrio į teisinę padėtį ir įsikišimo į tarptautinius ginčus poreikį.