

Challenges of the International Court of Justice in reappraisal of third party intervention in the case of Ukraine against Russia based on Articles 62 and 63 of the Statute

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Article Info	Abstract
<p>Original Article Main Object: International relations Scope: Russo-Ukraine War</p> <p>Received: 08 August 2023 Revised: 07 September 2023 Accepted: 09 September 2023 Published online: 18 September 2023</p> <p>Keywords: erga omnes obligation, ICJ, interest of a legal nature, third-party intervention, Ukraine v. Russian Federation case.</p>	<p>Third party intervention in international justice has become increasingly important in contemporary international law. Recent developments in the case of Ukraine against Russia in the International Court of Justice may force the Court to pay attention to an important point related to the procedure of the Court regarding the entry of a third country and the manner of proceeding based on Article 63 of the Statute of the Court. The present study is written in a descriptive and analytical method and based on the study of the case of Ukraine to analyse the right of entry of the third state based on Articles 62 and 63 of the Statute and Articles 81 to 86 of the International Court of Justice's Rules of Procedure for violating universal obligations. It is argued that the court, taking into account the legal rules, the judicial procedure, the principles of humanity and the public conscience on which it acts, has adopted a precise interpretation regarding the entry of the third state. The results show that in cases where the rights between the international community of countries as a common whole are involved, if the existence of comprehensive obligations is proven, the Court should adopt a broad interpretation that favors the legal entity of the entry of the third country.</p>

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Extended Abstract

Introduction

The International Court of Justice is the main judicial pillar of the United Nations (Article 92 of the Charter). The role of the International Court of Justice is to resolve disputes between countries (personal and arbitral jurisdiction) and to provide advisory opinions (advisory jurisdiction) on legal issues referred by specialized organs and agencies of the United Nations (Clause 34, Clause 1, Article 36 and Article 65 of the Statute of the Court).

One of the implicit procedures of the Court is the jurisdiction of governments to request intervention before the Court as a third party based on Articles 62 and 63 of the Statute of the Court and Articles 81 to 85 of the Rules of Procedure of the Court approved in 1978. The intervention procedure based on Article 62 is different from the intervention in Article 63. The first is based entirely on an "interest of a legal nature" that must be proven by the intervening state. While Article 63 is created when the Court is interpreting international conventions. Thus, the countries that are parties to the convention have the right to intervene in proceedings instituted by other parties. The ruling issued in this order will be binding for third parties to intervene.

Aim

This research was written with the purpose of Reappraisal new wave of third party intervention at the International Court of Justice based on articles 62 and 63 of the Statute (with emphasis on Erga Omnes Obligation and recent evolutions in the case in Ukraine v. Russian Federation).

Discussion

According to research findings, it is evident that the Statute of the Court gives countries the right to enter based on Articles 62 and 63. Although the entry of the third state does not require the creation of a jurisdictional link by the government, due to the nature and procedure and the attitude of the International Court of Justice towards the entry of the third state, there is a clear reluctance on the part of the governments to apply these rules. Moreover, the concept of universal obligations, despite the lack of a clear definition or a formal source in conventional international law, is slowly recognized and considered as a matter of debate. But, when it comes to states, there is a distinct reluctance to enter a plea of breach of such obligations by bringing a case of third-state intervention to the Court.

Therefore, in such situations, governments prefer to either seek compensation for the violation of certain rights that they are personally entitled to under some statutes, treaties, conventions or similar international instruments or, at most, in a few cases, seek

compensation. The uncertainty and contradiction created by the Court itself in its interpretation of such obligations and the overly cautious position it has adopted so far in this field may be an effective factor in creating such a phenomenon.

Results

Third party intervention in international justice has become increasingly important in contemporary international law. Recent developments in the case of Ukraine against Russia in the International Court of Justice may force the Court to pay attention to an important point related to the procedure of the Court regarding the entry of a third country and the manner of proceeding based on Article 63 of the Statute of the Court. The present study, which is written in a descriptive and analytical method and based on the study of the case of Ukraine, presents a detailed analysis of the right of entry of the third state based on Articles 62 and 63 of the Statute and Articles 81 to 86 of the International Court of Justice's Rules of Procedure for violating universal obligations. The court, taking into account the legal rules, the judicial procedure, the principles of humanity and the public conscience on which it acts, has adopted a precise interpretation regarding the entry of the third state. This research also briefly concludes that in cases where the rights between the international community of countries as a common whole are involved, if the existence of comprehensive obligations is proven, the Court should adopt a broad interpretation that favors the legal entity of the entry of the third country.

Conflict of interest

The authors declared no conflicts of interest.

Authors' contributions

All authors contributed to the original idea, study design.

Ethical considerations

The authors have completely considered ethical issues, including informed consent, plagiarism, data fabrication, misconduct, and/or falsification, double publication and/or redundancy, submission, etc.

Data availability

The dataset generated and analyzed during the current study is available from the corresponding author on reasonable request.

References

- Alhooii Nazari H. (2016). "Third party intervention in the International Court of Justice trials under Article 62 of its statute". *Public Law Studies Quarterly*. 45(4): 667-689. <https://doi.org/10.22059/jplsq.2016.56444>. [in Persian]

- Barrie G. (2020). "Third-party state intervention in disputes before the International Court of Justice: A reassessment of Articles 62 and 63 of the ICJ Statute". *The Comparative and International Law Journal of Southern Africa*. 53(1): 98-117. doi: [10.25159/0010-4051/6598](https://doi.org/10.25159/0010-4051/6598).
- Barzegarzadeh A. (2020). "Third intervention into the International Court of Justice with an emphasis on the issues of whaling in antarctic and nuclear tests". *Semi-Annual Journal of Civil Law Knowledge*. 9(1): 33-44. <https://doi.org/10.30473/clk.2021.52678.2737>. [in Persian]
- Beatrice B. (2012). "Interests of a legal nature justifying intervention before the ICJ". *Leiden Journal of International Law*. 25(3): 739-757. doi: <https://doi.org/10.1017/S0922156512000362>.
- Chinkin Ch, Andreas Z. (2012). *Article 62- The Statute of International Court of Justice: A Commentary*. Oxford: Oxford University Press.
- de Hoogh A. (2009). "Intervention Under Article 62 of The Statute and the Quest for Incidental Jurisdiction without the Consent of the Principal Parties". *Leiden Journal of International Law*. 6(1): 17-46. doi: <https://doi.org/10.1017/S092215650000162X>.
- Khubchandani M. (2022). "The Pandora's box of Article 63 interventions in the Ukraine v. Russia dispute at the ICJ: The need for joint interventions to strike a balance". Translated by Haji M. (Accessed: 25 April 2023), https://bigdeliacademy.com/1402/02/05/ukraine_mohammadhaji/. [in Persian]
- Kosha S, Mirabbasi SB.(2012). *The Jurisprudence of International Court of Justice*. Tehran: Jungle Pub. [in Persian]
- Mirabbasi S. (1984). "Overview of the organization and jurisdiction of the International Court of Justice of the Hague". *International Law Review An Academic Journal*. 1(1): 183-202. https://www.cilamag.ir/article_18474.html. [in Persian]
- Momtaz J, Alizadeh M, Zarneshan Sh. (2017). "A new reflection on 'consensual jurisdiction' in the practice of the International Court of Justice" . *International Law Review*. 33(55): 9-30. doi: [10.22066/CILAMAG.2016.23521](https://doi.org/10.22066/CILAMAG.2016.23521). [in Persian]
- Palchetti P. (2002). "Opening the International Court of Justice to Third States: Intervention and Beyond". *Max Planck Yearbook of United Nations Law*. 6: 139-181.
- Qi Xu. (2019). "Reflections on the presence of third states in international maritime boundary delimitation". *Chinese Journal of International Law*. 53(1): 91-128. doi: <https://doi.org/10.1093/chinesejil/jmz005>.
- Solhchi MA, Najandimanesh H. (2014). *International Disputes Settlement*. Tehran: Mizan legal foundation. [in Persian]
- Zamani SQ, Sode Sh. (2012). "Relativity of International Court of Justice rulings in theory and practice". *International legal research*. 5(16): 40-96. https://journals.iau.ir/article_513110.html. [in Persian]
- Case and Documents**
- Application for Revision of the Judgment of 11 September 1992 in the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening) (El Salvador v. Honduras) [2003] ICJ Rep. 392.
- Basis of the Court's Jurisdiction, available at: <https://www.icj-cij.org/en/basis-of-jurisdiction> (last visited on July 12, 2023). 30. Convention 1948 on the Prevention and Punishment of the Crime of Genocide" ("the Genocide Convention").
- Continental Shelf (Libyan Arab Jamahiriya/Malta) (Application to Intervene) [1984] ICJ Rep. 3 para. 46.
- Continental Shelf (Libyan Arab Jamahiriya/Malta) (Application to Intervene) [1984] ICJ Rep. 3 para. 39-43. In addition the intervening State cannot act of Amicus Curiae.
- Continental Shelf (Libyan Arab Jamahiriya/Malta) (Judgment) [1985] ICJ Rep. 13.

- Continental Shelf (Libyan Arab Jamahiriya/Malta) (Judgment) [1984] ICJ Rep. 3.
Italy filed the intervening application two-days before the time limit for filing the counter-memorial, however the world court held that it was within the time limit prescribed under Art. 81(1) Rules of the Court.
- Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Application to Intervene) [1981] ICJ Rep. 3.
- Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Application to Intervene) [1981] ICJ Rep. 3. In the Libya/Malta case, the ICJ stated while rejecting the application of Italy, highlighted that adjudicating on a legal relation between Italy and Libya or Malta without the consent of Libya and Malta would introduce fresh 'dispute' which is beyond the scope of Article 62 of ICJ Statute.
- Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Judgment) [1982] ICJ Rep. 18.
- East Timor (Portugal v. Australia) (Judgment) [1995] ICJ Rep. 90; Legal Consequences of the Construction of a Wall in the Occupied - Palestinian Territory (Advisory Opinion) [2004] ICJ Rep. 136.
- Haya de la Torre (Colombia/Peru) (Judgment) [1951] ICJ Rep. 71. The requirement includes a) Name of the agent- It shall specify the case and convention to which it is related, b) Basis on which the declarant State considers itself a party to the convention, c) Statement of the construction of those provision for which it is intended, d) a list of document in supporting the claim, e) identification of the particular positions of the conventions.
- I.C.J. Reports, 1990, Pa. 61
- I.C.J. Reports, Application by Costa Rica, op.cit, Pa. 26
- Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening) (Judgment) [2012] ICJ Rep. 99.
- Jurisdiction, available at: <https://www.icj-cij.org/en/jurisdiction> (last visited on July 9, 2023).
- Jurisdictional Immunities of the State (Germany v. Italy 2008: GREECE intervening): <https://www.icj-cij.org/public/files/case-related/143/143-20120203-JUD-01-00-EN.pdf>
- Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening) (Separate Opinion of Judge Cançado-Trindade) [2012] ICJ at para. 529.
- Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea Intervening) (Judgment) [2002] ICJ Rep. 303.
- Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening) (Judgment) [1992] ICJ Rep. 351.
- Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Declaration of Intervention) [1984] ICJ Rep. 215.
- Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Merits) [1986] ICJ Rep.14.
- Monetary Gold Removed from Rome in 1943 (Preliminary Question) (Italy v. France, UK, andUSA), 1958 icj Reports, 19.
- Nuclear Tests (Australia v. France) (Judgment) [1974] ICJ Rep. 253.
- Nuclear Tests (New Zealand v. France) (Judgment) [1974] ICJ Rep. 457.
- 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 [1995] ICJ Rep. 381.
- S.S. 'Wimbledon' (Government of His Britannic Majesty v German Empire) PCIJ Series A. No 1; Haya de la Torre (Colombia/Peru) - (Judgment) [1951] ICJ Rep.71; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Merits) [1986] ICJ Rep.14; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Declaration of Intervention) [1984] ICJ Rep. 215.
- Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia) (Judgment)

[2002] ICJ Rep. 625.

Whaling in the Antarctic (Australia v Japan: New Zealand intervening) (Judgment)

[2014] ICJ Rep. 228.

Uganda v Ogwang Patrick & Anor (Miscellaneous Application No. 4 of 2019)

[2019] UGSC 58 (11 November 2019)

Ukraine v. Russian Federation. February 25, 2022: 32 States intervening: Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide) (<https://www.icj-cij.org/case/182>: last visited on July 9, 2023).

Websites and other sources

<https://www.icj-cij.org>. Accessed: 9 July 2023.

<http://opiniojuris.org/2022/10/17/the-pandoras-box-of-article-63-interventions-in-the-ukraine-v-russia-dispute-at-the-icj-the-need-for-joint-interventions-to-strike-a-balance/>

https://bigdeliacademy.com/1402/02/05/ukraine_mohammadhaji