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The Revival of Third-State Participation Before the International Court of Justice: Rethinking Intervention Under Articles 62 and 63

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Abstract

The growing practice of third-state intervention before the International Court of Justice (ICJ) reflects an important development in international adjudication, particularly in disputes concerning multilateral treaty obligations. This article examines the evolving relationship between Articles 62 and 63 of the ICJ Statute, focusing on their distinct legal foundations, admissibility requirements, and implications for the participation of non-party states. While Article 62 requires a state to demonstrate an interest of a legal nature that may be affected by the Court's decision, Article 63 provides a treaty-based right of intervention to states that are parties to the relevant multilateral convention. The comparatively accessible requirements of Article 63 have contributed to its increasing prominence in contemporary proceedings. Drawing primarily on *Ukraine v. Russian Federation*, alongside *The Gambia v. Myanmar* and *South Africa v. Israel*, the article analyses the expansion of third-state participation, particularly in disputes concerning the Convention on the Prevention and Punishment of the Crime of Genocide. It further examines concerns regarding political alignment, judicial impartiality, and the potential abuse of process arising from mass intervention. The analysis argues that political motivations alone should not render an intervention inadmissible where the applicable legal requirements are satisfied. Nevertheless, a valid procedural basis should not automatically immunise intervention from scrutiny where clear evidence of procedural misuse exists. The article concludes that the growing use of Article 63 presents both opportunities and institutional challenges for the ICJ. Although third-state participation can enrich treaty interpretation and facilitate the collective development of international law, its exercise must remain within the permissible scope of intervention and preserve the integrity and orderly administration of international judicial proceedings.

Keywords: International Court of Justice; Third-State Intervention; Article 62; Article 63; Multilateral Treaty Interpretation; Abuse of Process

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1. Introduction

In recent years, the International Court of Justice ["ICJ"] has witnessed a remarkable surge in third-state participation in its proceedings.[2] Most recently, litigation arising from allegations of genocide, such as *Ukraine v. Russian Federation*,[3] *The Gambia v. Myanmar*,[4] and *South Africa v. Israel*,[5] has created a ripple effect in international adjudication. What stands out is the sheer number of third states now seeking to participate in proceedings concerning obligations owed to the international community. These proceedings have attracted participation from states that are not parties to the underlying disputes, but nevertheless seek to place their views before the ICJ on questions concerning the interpretation of treaty obligations. The scale of this participation raises an important question about the evolving role of third states in international adjudication: are they merely assisting the Court in interpreting multilateral treaties, or is intervention increasingly becoming a means through which states collectively engage with, and seek to influence, the development of international law?

The concept of intervention was first devised in the late nineteenth century in the context of international arbitration.[6] The notion was subsequently institutionalised and addressed in more specific terms in the Hague Convention for Pacific Settlement of International Disputes, with Article 63 being a direct descendant of these formulations.[7] Article 62 introduced a significant procedural avenue in international law, one without clear precedent in nineteenth-century international arbitration. Instead, it drew largely from concepts already familiar in domestic legal systems.[8]

The Statute of the ICJ provides two principal mechanisms through which third states may participate in contentious proceedings: Articles 62 and 63.[9] Although both provisions permit a state that is not a party to the dispute to intervene, they are founded on distinct legal requirements and serve different procedural purposes.

Article 62 of the Statute of the ICJ allows a state to request permission to intervene when it demonstrates that it has an "interest of a legal nature" which may be affected by the Court's

[2] Gian Maria Farnelli & Alessandra Sardu, 'Third-party Participation in International Adjudication: Recent Trends and Ongoing Issues' (2023) 1 Questions of International Law <Third-party participation in international adjudication: recent trends and ongoing issues - QIL QDI> accessed 28 October 2026.

[3] Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation) (Application Instituting Proceedings, 26 February 2022) <https://www.icj-cij.org/case/182> accessed 28 October 2026.

[4] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar) (Provisional Measures, Order of 23 January 2020) <https://www.icj-cij.org/case/178> accessed 28 October 2026.

[5] Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel) (Application Instituting Proceedings, 29 December 2023) https://www.icj-cij.org/case/192 accessed 28 October 2026.

[6] Institute of International Law, *Draft Regulations for International Arbitral Procedure* (1875) art 16.

[7] Convention for the Pacific Settlement of International Disputes (adopted 29 July 1899) 1 Bevans 230, art 56.

[8] Malcolm N Shaw, *Rosenne's Law and Practice of the International Court: 1920–2015* (5th edn, Brill 2016).

[9] Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 33 UNTS 993, arts 62–63.

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decision.[10] Conversely, Article 63 concerns the interpretation of a multilateral treaty to which the requesting states are parties.[11] Although intervention under Article 62 can appear to sit uneasily with the consensual basis of the Court's contentious jurisdiction,[12] both the drafting history and the Court's jurisprudence have consistently clarified that this tension has not posed real difficulties in practice.[13]

Despite the apparent clarity of these provisions, their application in the Court's jurisprudence has not been symmetrical. The ICJ has generally adopted a cautious approach to Article 62, requiring an intervening state to demonstrate a real and concrete legal interest capable of being affected by the decision. Article 63, by contrast, has assumed considerably greater prominence in recent proceedings, particularly those concerning multilateral conventions. The growing reliance on this provision is therefore not merely a question of increased participation; it also invites closer examination of why states have increasingly turned to Article 63 and whether its comparatively accessible procedural framework has altered the balance between the two forms of intervention.

The proceedings in *Ukraine v. Russian Federation* provide a particularly significant illustration of this development, with numerous states filing declarations of intervention under Article 63 of the Statute. Similar participation in *The Gambia v. Myanmar* and *South Africa v. Israel* suggests that this is not an isolated procedural development confined to a single dispute.[14] Rather, it reflects a broader willingness among states to participate in proceedings involving the interpretation of multilateral treaty obligations, even where they are not directly involved in the dispute. At the same time, the increasing scale of such participation raises concerns about the relationship between legal entitlement and political alignment. In particular, where intervening states appear to support the position of one party, questions arise as to whether political considerations can undermine the admissibility of an intervention or, in exceptional circumstances, amount to an abuse of process.

Against this backdrop, this essay article examines the evolving practice of third-state intervention before the ICJ, with particular emphasis on the relationship between Articles 62 and 63 of the Statute. It first considers the procedural framework governing both provisions and the manner in which the Court has interpreted their respective requirements. It then examines the expansion of Article 63 intervention through the proceedings in *Ukraine v. Russian Federation*, situating that development alongside the participation witnessed in *The Gambia v. Myanmar* and *South Africa v. Israel*. Finally, it considers the implications of this growing practice, particularly the extent to which political motivations may be distinguished from a genuine legal basis for intervention, and whether the doctrine of abuse of process provides an effective means of regulating third-state participation. It argues that, although Article 63 has emerged as a comparatively

[10] ICJ Statute art 62.

[11] ICJ Statute art 63.

[12] ICJ Statute art 36.

[13] Whaling in the Antarctic (Australia v Japan) (Declaration of Intervention, Order of 6 February 2013) [2013] ICJ Rep 3, [18]; Advisory Committee of Jurists, Draft Scheme for the Institution of the Permanent Court of International Justice (League of Nations, September 1920) LNOJ Special Supp No 2.

[14] ICJ, 'Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem' Press Release No 2023/43 (7 August 2023).

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accessible mechanism for states to participate in proceedings concerning multilateral treaties, its expanding use calls for a closer examination of the limits of that participation and the role of the Court in preserving the procedural integrity of its proceedings.

2. The Procedural Framework Governing Third-State Intervention

2.1 Intervention under Article 62: Interest of a Legal Nature

For a state seeking to intervene under Article 62, there are two essential prerequisites. First, the state must demonstrate the existence of an "interest of a legal nature," and secondly, such interest must be capable of being affected by the Court's decision. These are related, but distinct requirements. A state might have a genuine legal interest and still fail to demonstrate how the Court's decision could affect it. With respect to the former requirement, the ICJ has deliberately refrained from providing an exhaustive definition of the term "interest of a legal nature".[15] This conceptual uncertainty surrounding intervention was recognised in the early commentary on the Permanent Court of International Justice [("PCIJ")] Statute, where the provision was famously described as *"un monstre presque indéfinissable"*.[16]

Consequently, the content of the concept has largely developed through the jurisprudence of the ICJ. In the *Territorial and Maritime Dispute*,[17] the Court ruled that the term "interest of a legal nature" must be the object of a real and concrete claim of the state, based on law, as opposed to a claim of a purely political, economic, or strategic nature. Consistent with this approach since 1981, the ICJ in the *Continental Shelf case*[18] rejected the Republic of Malta's intervention application under Article 62, holding that a mere interest in the Court's prospective findings on "equitable principles" or alleged "New Trends in the Law of the Sea" did not amount to a sufficiently specific legal interest capable of being affected by the decision of the Court.[19]

The ICJ's restrictive approach was further reflected in the *Territorial and Maritime Dispute*,[20] where, in addition to Costa Rica, the Republic of Honduras sought permission to intervene. Honduras contended that its *raison d'etre* of intervention was to safeguard its rights in the Caribbean Sea and to inform the Court of the nature of its legal interests, relying in particular on the 1986 Maritime Delimitation Treaty between Honduras and Colombia and raising concerns regarding the implication of the Court's earlier 2007 judgment on the maritime boundary in the region.[21] The

[15] Permanent Court of International Justice, *Acts and Documents Concerning the Organisation of the Court: Revision of the Rules* (1922) 349, [3].

[16] Shaw (n 8) 157.

[17] Territorial and Maritime Dispute (Nicaragua v Colombia) (Application by Costa Rica for Permission to Intervene, Judgment) [2011] ICJ Rep 348, [37].

[18] Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Application by Malta for Permission to Intervene, Judgment) [1981] ICJ Rep 3, [28] – [37].

[19] Continental Shelf (n 17) [10], [12], [14].

[20] Territorial and Maritime Dispute (Nicaragua v Colombia) (Application by Honduras for Permission to Intervene, Judgment) [2011] ICJ Rep 420 [41].

[21] Territorial and Maritime Dispute (n 19) [59].

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Court nevertheless rejected Honduras' application. It emphasized that intervention cannot be used as a backdoor to bring an entirely new dispute before the Court alongside the existing proceedings.[22]

Accordingly, although Article 62 provides a procedural avenue for states to protect their legal interests in proceedings to which they are not parties, its application remains subject to a demanding threshold. A state must not only identify a concrete legal interest but also demonstrate a sufficiently direct connection between that interest and the decision that the Court may render.[23] This helps explain why, in recent years, states have increasingly relied on Article 63 as an alternative route for third-state participation.

2.2 Intervention under Article 63: Treaty-Based Participation

The second procedural avenue for third-state participation is set out in Article 63 of the ICJ Statute, which allows a state to intervene in proceedings where the construction of a multilateral convention to which it is a party is in question. Unlike Article 62, which requires a state to establish an interest of a legal nature that may be affected by the Court's decision, Article 63 provides a treaty-based right of intervention.[24] This right arises from the state's status as a party to the convention whose interpretation is before the Court, rather than from the need to demonstrate an individual legal interest in the outcome of the dispute.

The ICJ acknowledged this difference in the *Territorial and Maritime Dispute*.[25] It noted that, unlike Article 63, a third state does not have an automatic right to intervene under Article 62. Both provisions still reflect the idea of multilateral legal interests, but they operate in different ways, on different legal foundations. Under Article 63, the legal interest is deemed to be given because the state is already a party to the treaty. That is not the case with Article 62, where the state has to show that its own legal interest may be affected.[26] Even then, intervention under Article 63 is not guaranteed and ultimately depends on whether the Court considers the request admissible.[27]

Often classified as a relatively accessible form of intervention,[28] Article 63 does not require the intervening state to establish a jurisdictional link with the parties to the dispute.[29] By contrast, under Article 62, the question of jurisdiction becomes more significant and requires a more nuanced

[22] Territorial and Maritime Dispute (n 19) [47].

[23] Rules of Court (ICJ, adopted 14 April 1978, as amended) art 81; Shaw (n 8) 162–163.

[24] Gerald Fitzmaurice, 'The Law and Procedure of the International Court of Justice, 1951–4: Questions of Jurisdiction, Competence and Procedure' (1958) 34 British Yearbook of International Law 1, 124.

[25] Territorial and Maritime Dispute (n 19) [35] – [36].

[26] Bruno Simma, 'When "Community Interest" Intervenes: Article 62 of the ICJ Statute Facing Obligations erga omnes (partes)' (2025) 1 The Law & Practice of International Courts and Tribunals <When "Community Interest" Intervenes: Article 62 of the ICJ Statute Facing Obligations erga omnes (partes) in: The Law & Practice of International Courts and Tribunals - Ahead of print> accessed 29 October 2026.

[27] Fitzmaurice (n 23) 127; V S Mani, International Adjudication: Procedural Aspects (Nijhoff 1980) 259.

[28] Haris Huremagić, 'Intervening for the Community?—The Law and Politics of Third-Party Intervention before the International Court of Justice' (2026) 17(1) Journal of International Dispute Settlement <https://doi.org/10.1093/jnlids/idaf058> accessed 29 October 2026.

[29] Alina Miron and Christine Chinkin, 'Article 63' in Andreas Zimmermann and others (eds), *The Statute of the International Court of Justice: A Commentary* (3rd edn OUP 2019) para 22.

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distinction. As part of his separate opinion in the *Continental Shelf case*,[30] Judge Morozov observed that even where a valid jurisdictional link exists, the Court retains discretion to refuse intervention under Article 62 for legitimate reasons; however, in the absence of such a link, the Court would have no choice but to refuse the request. Judge Morozov's observations, however, should be distinguished from the Court's general position on non-party intervention. The distinction between the two forms of intervention is therefore important when assessing the procedural advantages of Article 63.

Upon a successful application for intervention, the intervening state does not become a party to the proceedings.[31] Rather, the intervenor acquires only a limited set of procedural rights, such as having access to the pleadings and annexed documents submitted before the Court.[32] At the same time, certain rights ordinarily available to the principal parties remain unavailable to the intervening state, such as the appointment of a judge *ad hoc*.[33] The intervenor may, however, submit written observations on the subject matter of the intervention at the relevant stage of the proceedings.[34] Interestingly, while earlier provisions guaranteed the participation of intervening states in oral hearings, the current rules leave such participation to the ICJ's discretion.[35]

The scope of intervention under Article 63 is confined to questions concerning the construction of the Convention in issue. Accordingly, addressing other aspects of the dispute, such as evidentiary matters or broader issues of general international law, ventures beyond the confines of an intervening state Article 63.[36] This limitation is significant because it preserves the distinction between contributing to the interpretation of a multilateral treaty and participating in the wider dispute between the principal parties. Nevertheless, in contemporary times and throughout the ICJ's history, the Court has generally refrained from declaring an intervention inadmissible on the sole ground that the submissions extended beyond treaty interpretation, instead indicating that such arguments will not be considered in deciding the case.[37]

Article 63(2) also states that a state exercising its right of intervention will be equally bound by the Court's interpretation of the Convention.[38] This is often seen as carrying potential 'sovereignty costs'. In practice, however, its implications tend to be quite narrow.[39] This binding effect must be understood in its proper context. It attaches to the Court's construction of the convention in question and does not, by itself, transform the intervening state into a party to the proceedings or make it subject to every aspect of the judgment in the same manner as the principal

[30] Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (n 17) Separate Opinion of Judge Morozov.

[31] Whaling in the Antarctic (n 12) [18].

[32] ICJ Rules of Court (n 22) art 86.

[33] Whaling in the Antarctic (n 12) [21].

[34] ICJ Rules of Court (n 22) art 86(1).

[35] ICJ Rules of Court (n 22) art 86(2).

[36] Allegations of Genocide (Order) (n 2) [84]; The Gambia v Myanmar (n 3) (Admissibility of the Declarations of Intervention Order 25 July 2025) Declaration of Judge Cleveland <Declaration of Judge Cleveland> accessed 29 October 2026.

[37] The Gambia v Myanmar (n 3) (Admissibility of the Declarations of Intervention, Order) [2024] ICJ Rep 729, [45]; ibid (Order 25 July 2025) [60].

[38] Whaling in the Antarctic (n 12) Declaration of Judge Gaja [41–42].

[39] Serena Forlati and Paula Wojcikiewicz Almeida, 'Is There a Role for Intervener States in Inducing Compliance with Decisions of the International Court of Justice?' (2023) 26 Max Planck Yearbook of United Nations Law Online 145, 167.

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parties.[40] Although this consequence is not insignificant, it remains narrower than the obligations ordinarily associated with becoming a party to contentious proceedings.

As a result, the legal consequences for intervening states tend to be modest, which explains why states do not view Article 63 as placing any serious constraint on their sovereignty.[41] Looking at the two mechanisms side by side, Article 63 appears to be a relatively more accessible mechanism for third states to participate. The procedural demands are lighter; it does not require the intervening state to establish an independent legal interest capable of being affected by the Court's decision, nor does it require a jurisdictional link with the parties to the dispute, and the legal consequences that follow are fairly limited. In contrast, the higher threshold and uncertainty associated with Article 62 help explain why states have increasingly gravitated towards Article 63 in contemporary ICJ practice.

3. From Exception To Practice: The Rise Of Article 63 Interventions Before The ICJ

On 21 July 2022, Latvia became the first state to file a declaration of intervention under Article 63 in the proceedings between Ukraine and the Russian Federation before the ICJ.[42] This marked the beginning of what quickly evolved into a tsunami of intervention declarations,[43] with a total of 33 declarations being submitted at the preliminary objections stage alone.[44] The trend did not stop there and carried into the merits phase as well. By that stage, 23 states had either filed new declarations, revised their earlier submissions, or maintained them.[45] Seen together, this amounts to one of the most significant instances of mass intervention the ICJ has dealt with.

This wave of intervention might initially seem like a reflection of broader political support for Ukraine. The legal basis, however, is more specific. As set out in Ukraine's Application, the dispute centres on the claim that Russia invoked allegations of genocide under the 1948 Genocide

[40] Haris Huremagić, 'Article 63 of the ICJ Statute and the Legal Effects of Judgments on Intervening States – An Attempt for More Clarity' (2024) 23 *The Law and Practice of International Courts and Tribunals* 413, 436.

[41] Santiago T Bernárdez, 'L'Intervention dans la Procédure de la Cour internationale de Justice' (1995) 256 Recueil des cours 426, 430.

[42] Ukraine v Russian Federation (n 2).

[43] Juliette McIntyre, 'Less a Wave than a Tsunami: Procedural Implications for the ICJ of the Article 63 Interventions in Ukraine v Russia' (Völkerrechtsblog, 11 October 2022) <https://voelkerrechtsblog.org/less-a-wave-than-a-tsunami/> accessed 29 October 2026.

[44] International Court of Justice, 'Intervention in Ukraine v Russian Federation' <https://www.icj-cij.org/en/case/182/intervention> accessed 17 March 2026; Brian McGarry, 'Mass Intervention?: The Joint Statement of 41 States on Ukraine v Russia' (EJIL: Talk!, 30 May 2022) <https://www.ejiltalk.org/mass-intervention-the-joint-statement-of-41-states-on-ukraine-v-russia/> accessed 29 October 2026.

[45] International Court of Justice, 'Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)' (Press Release No 2024/59, 6 August 2024) <182-20240806-PRE-01-00-EN> accessed 29 October 2026.

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Convention as a pretext for its military operation.[46] Accordingly, the case before the Court does not concern the legality of Russia's use of force *per se*, but rather the validity of its claim that acts of genocide have been committed in Luhansk and Donetsk oblasts of Ukraine. In this sense, the interventions under Article 63 are not really about questions of aggression. They are better understood as attempts to challenge the legal narrative put forward by Russia under the Genocide Convention and the interpretation of the obligations arising from that instrument.[47]

Interestingly, the Russian Federation raised two principal objections to the intervention declarations. One was that such extensive third-state participation could affect the perceived impartiality of the Court,[48] especially since several judges are nationals of states that have sought to intervene. The other was that these interventions were politically motivated and not genuine, amounting, in its view, to an abuse of process under Article 63.[49] The Court rejected the former objection, observing that judges sharing nationality with the intervening states do not compromise judicial impartiality, given the strong presumption of judicial integrity.[50]

With respect to the latter objection, the ICJ adopted a similarly restrained approach. Drawing on its earlier jurisprudence, it observed that, when assessing the admissibility of an intervention declaration under Article 63, the Court's inquiry is directed towards whether the declaration satisfies the requirements of the Statute and the Rules of Court, including whether it concerns the interpretation of a multilateral convention forming the subject matter of the dispute.[51] The ICJ thus made clear that it does not ordinarily inquire into the political motivations underlying a state's decision to intervene. Consequently, the apparent alignment of intervening states with one party does not constitute a reason to render their participation inadmissible.[52] In the present case, while multiple declarants stated that they proposed constructions of the Genocide Convention which were "close to the views of Ukraine", this does not render their interventions inadmissible.[53]

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[46] International Court of Justice, 'Ukraine Files Application against Russian Federation and Requests Indication of Provisional Measures' (Press Release No 2022/4, 27 February 2022) <182-20220227-PRE-01-00-EN.pdf> accessed 29 October 2026.

[47] Juliette McIntyre, Douglas Guilfoyle and Tamsin Phillipa Paige, 'Is International Law Powerless against Russian Aggression in Ukraine? No, but it's Complicated' (The Conversation, 25 February 2022)<https://theconversation.com/is-international-law-powerless-against-russian-aggression-in-ukraine-no-but-its-complicated-177905> accessed 29 October 2026.

[48] Ukraine v Russian Federation (Written Observations of the Russian Federation, 18 October 2022) <https://www.icj-cij.org/sites/default/files/case-related/182/182-20221018-wri-12-00-en.pdf> accessed 30 October 2026 [48].

[49] Ukraine v Russian Federation (Preliminary Objections of the Russian Federation, 3 October 2022) <https://www.icj-cij.org/sites/default/files/case-related/182/182-20221003-wri-01-00-en.pdf> accessed 30 October 2026 [316 – 330].

[50] Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation) (Admissibility of the Declarations of Intervention, Order, 5 June 2023) <https://www.icj-cij.org/sites/default/files/case-related/182/182-20230605-ord-01-00-en.pdf> accessed 30 October 2026 [51– 52].

[51] Whaling in the Antarctic (n 12) [18]; Haya de la Torre Case (Colombia v Peru) [1951] ICJ Rep 71–76.

[52] Ukraine v Russian Federation (n 49) [44].

[53] Ukraine v Russian Federation (n 49) [45], [46].

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Finally, the Court also addressed the abuse of process argument. It made clear that such a finding would arise only in exceptional situations involving a clear misuse of procedure, which was not the case here.[54] The Court's approach therefore draws an important distinction between political motivation and procedural abuse. A state may possess political, diplomatic, or strategic reasons for intervening while still retaining a genuine legal basis for doing so. The mere fact that an intervention appears to support the position of one of the principal parties does not establish that the procedural mechanism has been abused. At the same time, this does not mean that Article 63 interventions are immune from scrutiny: the Court retains the authority to examine whether the requirements for intervention have been fulfilled and whether the intervention remains within its permissible scope.

The developments in *Ukraine v. Russian Federation* are not isolated. A similar pattern of third-state participation can be observed in *The Gambia v. Myanmar*, where states sought to intervene in proceedings concerning the interpretation and application of the Genocide Convention, and in *South Africa v. Israel*, which has likewise attracted declarations of intervention under Article 63. Although the factual and procedural circumstances of these disputes differ, their common reliance on the Genocide Convention illustrates how Article 63 has become an increasingly prominent mechanism through which states participate in proceedings concerning multilateral treaty obligations. In particular, these cases demonstrate that states need not be directly involved in the underlying dispute to have an interest in how a multilateral convention is interpreted and applied.

Taken together, these proceedings point towards a broader development in the Court's practice. Article 63 is no longer merely an occasional procedural mechanism invoked by a small number of states; it is increasingly being used as a means of collective participation in disputes involving multilateral treaty obligations. This development, however, also raises questions about the institutional consequences of mass intervention, particularly where the participation of numerous states appears to reflect a common political position. The challenge for the Court is therefore to preserve the treaty-based right of intervention while ensuring that its exercise does not compromise the orderly conduct of proceedings or extend beyond the limited purpose contemplated by Article 63.

4. Conclusion

The *Ukraine v Russia* judgment comes at a time when third-state participation before the ICJ is starting to change in noticeable ways. Article 63, which was once used only occasionally, is now being relied on much more often in practice. The Court's reasoning also raises a further question: whether an intervention under Article 63 can realistically be challenged on the basis of abuse of process. While the Court acknowledged that the doctrine is, in principle, applicable,[55] its refusal to examine the motivations of intervening states significantly limits its practical operation. In effect,

[54] Ukraine v Russian Federation (n 49) [56]; Immunities and Criminal Proceedings (Equatorial Guinea v France) (Preliminary Objections, Judgment) [2018] ICJ Rep 292, [150].

[55] Ukraine v Russian Federation (n 49) [57].

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only clear and objective misuse of procedure, rather than politically motivated participation, would meet this threshold. This suggests that the scope for successfully invoking abuse of process under Article 63 remains narrow, reinforcing its attractiveness as a relatively accessible avenue for third-state participation.

Notwithstanding the Court's position, it is not entirely convincing that the intentions of intervening states are wholly irrelevant in ascertaining abuse of process. Article 63 does not expressly require the Court to examine the motivations of intervening states. Even so, the ICJ has recognised that abuse of process can arise even where a valid procedural basis exists.[56] This leaves open the possibility that, at least in some cases, the purpose behind an intervention may be relevant, particularly where there is clear evidence of procedural misuse. Political motivation, by itself, should not amount to abuse of process; however, the existence of a valid procedural basis should not necessarily immunise an intervention from scrutiny.

That said, the ICJ's ultimate conclusion that no abuse of process arose in the present case remains persuasive. There is nothing to suggest that the intervening states were trying to expand the dispute beyond the interpretation of the Genocide Convention. In any event, the Court has made it clear that submissions falling outside the limited scope of Article 63 would be set aside.[57] These interventions may well be shaped by political considerations. However, that alone does not determine or diminish their legal character. It can also point to a genuine juridical interest in how the Convention is interpreted, particularly where states are concerned about it being used to justify conduct that would otherwise be unlawful under international law.

The increasing reliance on Article 63 also highlights the contrasting roles played by Articles 62 and 63 of the Statute. While Article 62 remains directed towards protecting a state's individual legal interest that may be affected by the Court's decision, Article 63 facilitates the participation of states in the interpretation of multilateral conventions. The growing use of the latter therefore reflects not merely a preference for a less restrictive procedural route, but also the recognition that the interpretation of multilateral treaties may have consequences extending beyond the immediate parties to a dispute.

Finally, the Court's approach clarifies that, although Article 63 permits intervention on the basis of a state's status as a party to the relevant convention, that entitlement is not unlimited. As illustrated in the *Ukraine v Russian Federation* proceedings, the ICJ declined to permit the United States to intervene at the preliminary objections stage in relation to a provision covered by its reservation to Article IX of the Genocide Convention. This demonstrates that treaty-party status does not automatically confer an entitlement to intervene in relation to every provision of a convention, irrespective of the reservations made by the state concerned. The scope of the right to intervene is therefore subject to the extent of the state's treaty obligations, placing a real, if limited, constraint on its exercise. The threshold for participation remains relatively low, but it is not open-ended.

[56] *ibid* [57].

[57] *ibid* [84].

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The increasing scale of participation, however, also presents an institutional challenge for the Court. While multiple interventions may enrich the Court's understanding of a multilateral convention and ensure that its interpretation takes account of the perspectives of a wider group of states, they may also complicate proceedings and risk creating the perception that judicial proceedings are becoming an extension of broader political alignments. The challenge, therefore, is not to discourage participation under Article 63, but to ensure that its exercise remains tied to the interpretation of the relevant convention and does not undermine the orderly administration of justice.

Ultimately, the *Ukraine v Russian Federation* proceedings mark a significant development in the practice of intervention before the ICJ. Article 63 is no longer merely a procedural mechanism for assisting the Court in construing multilateral conventions; it is increasingly becoming a means through which states collectively participate in the development of international law. Its growing use should therefore be understood as both an opportunity and a challenge: an opportunity to broaden the interpretative perspectives available to the Court, and a challenge to preserve the distinction between legitimate treaty participation and the use of judicial proceedings for purposes unrelated to their proper function.

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4. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar) (Provisional Measures, Order of 23 January 2020) .

5. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar) (Admissibility of the Declarations of Intervention, Order of 25 July 2024) [2024] ICJ Reports 729.

6. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar) (Order of 25 July 2025), Declaration of Judge Cleveland.

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