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Article

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Intervening for the community?—The law and politics of third-party intervention before the International Court of Justice

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ABSTRACT

This article explains why states intervene before the International Court of Justice (ICJ) and how they choose between Articles 62 and 63 of the ICJ Statute. Against accounts of a general turn from bilateralism to community interests, it offers a comprehensive mapping of all interventions and classifies them as 'community interest' or 'self-interest intervention' by reference to the rights invoked, the submissions made and the overall context of the interventions. Of 87 Article 63 interventions, about 77% advance community interests, whereas only 35% of Article 62 applications do so. Read through a 'costs and commitments' lens, the pattern coheres: Article 63 is comparatively low-cost and low-commitment and has become the principal vehicle for advancing community interests; Article 62 is higher-cost and is used mainly to pursue particularized rights and outcome-driven aims. Yet, the utility of Article 63 is constrained by its interpretive scope, which limits practical effect in contentious proceedings. The article therefore assesses whether existing avenues match contemporary practice and considers reform options. Two policy paths are outlined. One would maintain generous admissibility under Article 63 and recognize that obligations *erga omnes* and *erga omnes partes* may satisfy the legal interest threshold of Article 62. The other would conserve resources by policing the scope of Article 63 more strictly and clarifying that obligations *erga omnes* and *erga omnes partes* alone do not meet the threshold of Article 62, paired with the introduction of *amicus curiae* submissions for states in contentious cases. Together, the analysis shows both greater recent willingness by states to intervene for community interests and the need to recalibrate procedures to that practice.

INTRODUCTION

In recent years, international courts and tribunals have witnessed a remarkable surge in third-party engagement in their proceedings.[1] The International Court of Justice (ICJ) is no

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[1] See eg Gian Maria Farnelli and Alessandra Sardu, 'Third-party participation in international adjudication: recent trends and ongoing issues' (QIL, 31 July 2023) <https://www.qil-qdi.org/third-party-participation-in-international-adjudication-recent-trends-and-ongoing-issues/> accessed 5 January 2025; regarding the European Court of Human Rights Justine Batura and Isabella Risini, 'Of Parties, Third Parties, and Treaty Interpretation: Ukraine v. Russia (X) before the European Court of Human Rights' (*EJIL:Talk!*, 26 September 2022) <https://www.ejiltalk.org/of-parties-third-parties-and-treaty-interpretation-ukraine-v-russia-x-before-the-european-court-of-human-rights/> accessed 5 January 2025; regarding the African Court of

exception, experiencing an unprecedented number of interventions and participations by states in contentious as well as advisory proceedings.[2] Not only have 32 states successfully intervened in the pending proceedings between Ukraine and the Russian Federation under the Genocide Convention[3] (*Allegations of Genocide*),[4] 15 in the proceedings between South Africa and Israel (*Crime of Genocide in the Gaza Strip*)[5] and 11 in *The Gambia v Myanmar (Application of the Genocide Convention)*,[6] but there has also been an increased participation in advisory proceedings, such as in the proceedings on Israel's continuing occupation of the Palestinian territories, which has seen 57 states and international organization filing written statements,[7] as well as the advisory proceedings on climate change with 91 participating states and international organizations.[8]

In recent scholarship, this pattern is often read as evidence of a broadening of focus, with community interest considerations complementing the traditional inter-state, bilateral paradigm in international law.[9] Accordingly, this development helps to explain not only increased third-party participation but also a growing number of cases concerning obligations *erga omnes* and *erga omnes partes*. This article tests that claim in the context of contentious proceedings by examining why states intervene under Articles 62 and 63 of the ICJ Statute and which avenue they choose, Article 62 rather than Article 63, and vice versa. While similar inquiries in relation to the European Court of Human Rights have shown that states mostly act in self-interest, not much attention has been paid to the ICJ in this regard, neither before, nor after the 'first wave' of 'mass interventions'.[10]

Human and Peoples' Rights Yuzuki Nagakoshi, 'The God in the Details: Non-State Actor Interventions at the African Court on Human and Peoples' Rights' (OpinioJuris, 24 December 2020) <https://opiniojuris.org/2020/12/24/the-god-in-the-details-non-state-actor-interventions-at-the-african-court-on-human-and-peoples-rights/> accessed 5 January 2025; for the International Tribunal for the Law of the Sea British Institute of International and Comparative Law, 'Reflections on the ITLOS Advisory Opinion' (30 May 2024) 5 ('Monica Feria-Tinta: Procedural highlights and treaty interpretation') <https://www.biicl.org/documents/184_reflections_on_the_itlos_advisory_opinion_final.pdf> accessed 6 August 2025.

[2] See eg Juliette McIntyre, 'Less a Wave Than a Tsunami Procedural Implications for the ICJ of the Article 63 Interventions in Ukraine v. Russia' (voelkerrechtsblog, 11 October 2022) <https://voelkerrechtsblog.org/less-a-wave-than-a-tsunami/> accessed 6 January 2025; Ton Nu Thanh Binh, 'Article 63 Intervention Before the International Court of Justice: New Developments and the Way Forward' (OpinioJuris, 26 July 2024) <https://opiniojuris.org/2024/07/26/article-63-intervention-before-the-international-court-of-justice-new-developments-and-the-way-forward/> accessed 6 January 2025.

[3] Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 (Genocide Convention).

[4] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)*, see <https://www.icj-cij.org/case/182> accessed 5 January 2025.

[5] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, see <https://www.icj-cij.org/case/192> accessed 21 July 2025; Nicaragua withdrew its Application for permission to intervene in that case, see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, Press Release No 2025/15, 3 April 2025.

[6] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar: 11 States intervening)*, see <https://www.icj-cij.org/case/178> accessed 7 September 2025.

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

[8] ICJ, 'Obligations of States in respect of Climate Change (Request for Advisory Opinion) – Filing of written statements' (Press Release No 2024/31, 12 April 2024) <https://www.icj-cij.org/case/187> accessed 6 August 2025.

[9] See eg Paula Wojcikiewicz Almeida and Miriam Cohen, 'Mapping the 'Public' in Public Interest Litigation: An Empirical Analysis of Participants before the International Court of Justice' in Justine Bendel and Yusra Suedi (eds), *Public Interest Litigation in International Law* (2024) 122; Craig Egget and Sarah Thin, 'Third-Party Intervention before the International Court of Justice' – A Tool for Litigation in the Public Interest?' in ibid, 94; Yusra Suedi and Justine Bendel, 'The Recent Genocide Cases and Public Interest Litigation: A Complicated Relationship' (EJIL:Talk!, 5 April 2024) <https://www.ejiltalk.org/the-recent-genocide-cases-and-public-interest-litigation-a-complicated-relationship/> accessed 6 January 2025; see with regard to the participation of international organizations, Sarah Thin, 'The Benefits of an Open-Door Policy—International Organisations and the Promotion of Common and Community Interests in ICJ Advisory Proceedings' (2025) 27 International Community Law Review 162; see also Heike Krieger, 'Mega-Political Cases before the ICJ: Transforming a Hegemonic into a Negotiated Order?' (CIL Dialogues, 16 October 2024) <https://cil.nus.edu.sg/blogs/mega-political-cases-before-the-icj-transforming-a-hegemonic-into-a-negotiated-order/> accessed 21 July 2025.

[10] See eg with regard to non-state actors: Paula Wojcikiewicz Almeida and Giulia Tavares Romay, 'Opening the World Court to the International Community: an Empirical Analysis of Non-party Participation in the International Court of Justice' (2023) 26 Max Planck Yearbook of United Nations Law Online 51; and with regard to the European Court of Human Rights: Kanstantsin Dzehtsiarou, 'Conversations with friends: 'friends of the Court' interventions of the state parties to the European

Through a comparative analysis of all interventions before the ICJ, the article first maps the subject matter and stated motivations and delineates differences between interventions under Articles 62 and 63. It then identifies which of the two avenues is more frequently used to advance community interests. On that basis, it asks whether contemporary practice reflects a turn towards community interests or remains centred on states' self-interest, and whether the existing procedural avenues are adequate for present practice or require reform. On that basis, the article proceeds as follows. First, it defines 'community interest interventions' in contrast to 'self-interest interventions' and sets out the coding employed in the analysis. Secondly, it introduces the legal regimes for intervention under the ICJ Statute and evaluates them through a 'costs and commitments' lens. Thirdly, acknowledging the constraints of the dichotomy between community and self-interest interventions, the article also analyses and categorizes the specific motivations for intervention under Articles 62 and 63 in order to identify differences in practice and to assess the extent to which states are prepared to act as 'guardians' of international law, particularly of 'collective obligations' (obligations *erga omnes* and *erga omnes partes*). Fourthly, it outlines future directions for third-state participation in contentious ICJ proceedings, followed by a conclusion.

COMMUNITY AND SELF-INTEREST INTERVENTIONS

In recent decades, the idea of community interests in international law has attracted increased and sustained attention in scholarship[11] as well as practice.[12] According to some, this development is recalibrating or complementing the traditional bilateral structures of international law, shifting them from a private or relative to a more public or absolute system of norms.[13] In the literature, this development is often linked to two related tendencies: the hierarchization of international norms, exemplified by the idea of peremptory (*jus cogens*) norms, and the collectivization of international accountability through the concept of obligations *erga omnes* and *erga omnes partes*.[14] Such collectivization presupposes that states are willing to enforce commonly agreed minimum standards in areas such as human rights, including by bringing cases or intervening before international courts, even where they have no direct, particularized interest of their own in the breach. In doctrinal terms, these minimum standards are operationalized through obligations *erga omnes* and, to some extent, obligations *erga omnes partes* which permit non-injured states to act, for example by invoking responsibility. Accordingly, states are increasingly seen as 'guardians' of international law, particularly of those minimum standards.[15]

Convention on Human Rights' (2023) 43 Legal Studies 381, 393; Nicole Bürli, *Third-Party Interventions before the European Court of Human Rights* (Intersentia 2017) 185.

[11] See eg Giorgio Gaja, 'The Protection of General Interests in the International Community' (2011) 364 Recueil des Cours 9-185; Wolfgang Benedek et al (eds), *The Common Interest in International Law* (Intersentia 2017); Eyal Benvenisti and Georg Nolte (eds), *Community Interests Across International Law* (OUP 2018); Rüdiger Wolfrum, 'Solidarity and Community Interests: Driving Forces for the Interpretation and Development of International Law' (2021) 416 Recueil des Cours 9-479.

[12] See eg the proceedings instituted before the ICJ by *The Gambia v Myanmar* (2019) and *South Africa v Israel* (2023) for alleged violations of the Genocide Convention, and *Canada and the Netherlands v Syria* (2023) for alleged violations of the Convention against Torture.

[13] See eg Sarah Thin, 'Community Interests and the International Public Legal Order' (2021) 68 Netherlands International Law Review 35, 56; Bruno Simma, 'From bilateralism to community interest in international law' (1994) 250 Recueil des Cours 217, 230.

[14] See eg Thin (n 13) 45; Simma (n 13) 285; Julia Lemke, *The Protection of Community Interests in the International Law of State Responsibility: Insights from Rational Choice Theory* (Springer 2025) 112; Santiago Villalpando, *L'émergence de la communauté internationale dans la responsabilité des Etats* (Graduate Institute Publications 2005) 84; Eric A Posner, 'Erga Omnes Norms, Institutionalization, and Constitutionalism in International Law' (2008) University of Chicago Public Law & Legal Theory Working Paper No 224, 13–14.

[15] See generally on this topic: Christian J Tams, 'Individual States as Guardians of Community Interests' in Ulrich Fastenrath and others (eds), *From Bilateralism to Community Interests: Essays in Honour of Bruno Simma* (2011) 379.

Yet, some caution that states inherently lack the capacity to serve this role. Dothan, for example, argues that this 'guardianship' model is fragile because it presupposes altruistic mobilization and that, in politicised networks, participation is dictated more by reputation and alliances than by 'truth-seeking', so mass interventions may propagate error and compromise the integrity of adjudication.[16] Without addressing this specific critique, which has also been raised by individual ICJ judges in *Allegations of Genocide*,[17] this article proceeds from a slightly different premise, namely that interventions are often mixed in motive, with community interests aims coexisting with security and strategic considerations. Accordingly, 'community interest interventions' need not be altruistic, but the two may coincide in practice. For example, the European interventions in *Allegations of Genocide* were motivated by, and aimed at, defending the prohibition on the use of force, yet they were not entirely altruistic, since shifts in the European security landscape and related security concerns also informed the decisions to intervene.[18] Accordingly, this article argues that the 'guardianship' model does not presuppose altruistic mobilization but that third-state participation may advance community interests even if partly motivated by self-interest.[19]

In any case, scholars often link the increase in cases invoking obligations *erga omnes* and *erga omnes partes*, and state participation before international courts, including recent 'mass interventions' in inter-state proceedings, to a growing emphasis on community interests.[20] In order to analyse whether the recent interventions in contentious proceedings before the ICJ can indeed be attributed to heightened concern for the protection of community interests, this article classifies each intervention before the ICJ into one of two categories: 'self-interest intervention' or 'community interest intervention'. In strict legal terms, the distinction between them is relatively straightforward: it turns on whether a state invokes an individual right (as an injured state) or a 'collective entitlement', such as the enforcement of obligations *erga omnes* or *erga omnes partes*.

With respect to interventions under Article 62 of the ICJ Statute, this categorization is comparatively straightforward, since the intervening state must demonstrate an 'interest of a legal nature which may be affected by the decision' and, in doing so, set out and substantiate the specific legal basis it invokes. Hence, the intervening state will clarify whether it is asserting an individual right or relying on obligations *erga omnes* or *erga omnes partes*. In contrast, Article 63 of the ICJ Statute permits a state party to the relevant convention to intervene on questions of treaty interpretation so as to promote consistent interpretation for all state parties. Thus, Article 63 establishes a (rebuttable) presumption of a legal interest in the construction of an instrument to which the intervening state is a party.[21] Hence, under Article 63, the 'right to intervene' constitutes the intervener's sole legal basis and no further demonstration of a legal interest is required. Whether the intervention is a 'community interest intervention' must therefore be assessed in other ways, for example by analysing the specific arguments and views advanced, or the political and overall context of the intervention.

[16] Shai Dothan, 'Staging an Intervention for Rogue States' (2024) 355 iCourts Working Paper 2–3, 15–19, 22–23.

[17] *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) [2023] ICJ Rep 354, Dissenting Opinion of Judge Xue, paras 28–29 and Declaration of Vice-President Gevorgian, paras 2–7, questioning the intervening states' motives and warning that such interventions may impair the equality of parties and the good administration of justice.

[18] See below 1.2 and 2.1.

[19] See in this regard also Samantha Besson, 'Community Interests in International Law: Whose Interests Are They and How Should We Best Identify Them?' in Benvenisti and Nolte (n 11) 37.

[20] See eg 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, 158; Wojcikiewicz Almeida and Romay (n 10); Suedi and Bendel (n 9).

[21] See *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) [2023] ICJ Rep 354, paras 95–96.

Accordingly, this article classifies interventions first on a legal basis: whether the intervening state relied on an individual right as an injured state, or instead invoked obligations protecting a collective interest, namely obligations *erga omnes* or *erga omnes partes*. Where this inquiry is not conclusive, the analysis turns to 'interest' beyond the strict legal framing taking into account the arguments advanced and the political and overall context of the intervention.

In this respect, 'interest' is taken to mean the 'benefit or advantage' that accrues to a person or group and represents a 'stake or involvement' in a particular endeavour. Hence, interests are always defined in relation to the entity that stands to gain from that benefit or advantage.[22] The Oxford Dictionary defines 'self-interest' as the 'preoccupation with, or pursuit of, one's own advantage or welfare, esp. to the exclusion of consideration for others'.[23] In this regard, 'self-interest' and rationality have often been used interchangeably in international relations theories when describing state behaviour.[24] Yet, the 'rationality' with which states presumably act can express itself in manifold behaviours. Within international relations theories, schools, such as constructivism and post-structuralism, highlight the importance of a state's internal dynamics, focusing on how states perceive their own identity and based on that perception, define their state interests.[25] Put differently, poststructuralists contend that '[f]oreign policy is concerned with the reproduction of an unstable identity at the level of the state, and the containment of challenge to that identity.'[26] Therefore, the identities of states, such as national identity, can help explain behaviours that might appear 'irrational' from a purely utilitarian perspective. For instance, the announcement of Germany's intention to intervene in the merits phase of the proceedings in *Crime of Genocide in the Gaza Strip*,[27] can be 'rationally' explained by its national identity which is essentially constructed around Germany's accountability for the Shoah and the democratic renewal of the state. Similarly, Ireland's vocal statements criticizing Israel's conduct, particularly in Gaza, and its intervention in *Crime of Genocide in the Gaza Strip* can also be explained by the self-interest of Ireland to affirm and reinforce its national identity, which is crucially shaped by its past fight against British domination, much as Palestinian nationalism is focused on the fight against Israeli occupation.[28] However, such factors that might explain specific interventions can only be understood within a particular context and through a detailed examination of a state's internal dynamics, including elements such as national identity, which often function at an unconscious level. As such, these factors are not appropriate for providing a generalized or overarching explanation of the reasons behind states' interventions and whether they can be explained by an increased concern for community interests.

Accordingly, for the purposes of this article, the term 'self-interest' will refer to more tangible, concrete interests. Similar studies in relation to intervention before the European Court of Human Rights have shown that states mostly intervene broadly in order to assert

[22] Thin (n 13) 44.

[23] Oxford English Dictionary 'self-interest' <https://www.oed.com/search/dictionary/?scope=Entries&q=self-interest> accessed 6 January 2025.

[24] 'Self-interest' in Garrett W Brown, Ian McLean and Alistair McMillan (eds), *A Concise Dictionary of Politics and International Relations* (4th ed., OUP 2018) 74.

[25] See eg Alexander Wendt, *Social Theory of International Politics* (CUP 1999) 82; Jonathan Mercer, 'Anarchy and Identity' (1995) 49 International Organization 229, 231.

[26] David Campbell, *Writing Security: United States Foreign Policy and the Politics of Identity* (Manchester University Press 1998) 71.

[27] See Federal Government of Germany, Press Release No 10 (12 January 2024).

[28] See eg Kenneth Dawson, 'Protestantism, Patriotism and National Identity in Eighteenth-Century Ireland' in Tony Claydon and Ian McBride (eds), *Protestantism and National Identity: Britain and Ireland, c.1650–c.1850* (CUP 1998) 219.

state's sovereignty,[29] or due to an 'interest of the state in the outcome of the case',[30] for the 'provision of relevant information on domestic law and practice'[31] and to 'request to clarify the case law'.[32] This perspective aligns with the expectations of a realist and utilitarian approach dominant in international relations, which contends that states act rationally to maximize their sovereignty and maintain autonomy.[33] According to realist theory, states prioritize their national interest and security, striving to preserve their freedom of action and enhance their power within an anarchic international system.[34] In contrast, Bruno Simma, for instance, defines the notion of 'community interest' as a 'consensus according to which respect for certain fundamental values is not to be left to the free disposition of States individually or *inter se* but is recognized and sanctioned by international law as a matter of concern to all States'.[35]

Therefore, to address the idea that community interests lie beyond the discretionary authority of individual states and thus place limitations on state sovereignty, this article will classify interventions based on their alignment with sovereignty. Interventions that, in their argumentation, seek to uphold or reinforce a higher degree of sovereignty will be considered acts of self-interest. For example, if a state informs the ICJ about its national practices concerning a legal instrument to influence the outcome in favour of preserving those practices, or, if an intervening state is part of a broader underlying dispute, such interventions are made in self-interest. Conversely, any intervention where a state presents arguments that limit its sovereignty or impose constraints on it will be regarded as an effort to advance community interests.

In some instances, neither the strict legal perspective, nor the analysis of the arguments may lead to a conclusive result, in which case the political and overall context, including geographical proximity, will be considered. Particularly in matters of individual and collective security, the two categories of self-interest and community interest interventions often overlap. As a result, interventions related to broader disputes involving armed conflicts will only be considered as serving community interests if they are made by states that do not share a maritime or territorial border with any party involved in the conflict. Similarly, an intervention in a case of environmental harm will be classified as advancing community interests only where the intervening state (i) has neither suffered nor reasonably expects to suffer environmental harm in the specific instance and (ii) is not geographically adjacent to the area where the harm has occurred or may occur. Where either condition is not met, the intervention is treated as advancing self-interests.

Finally, for the purposes of this article, 'community interest intervention' and 'self-interest intervention' will in principle be seen as opposing categories. However, in many instances the two categories may overlap, as interventions can simultaneously advance community interests and serve self-interests. The classification is necessarily case by case, and where the analysis of the specific rights asserted is not conclusive, turns on whether a discernible self-interest can be identified considering the arguments advanced and the political and overall context of the intervention. Where such self-interest can be identified, the intervention will be regarded as an expression of self-interest, given that self-interest is assumed to be the

[29] Bürli (n 10) 185.
[30] Dzehtsiarou (n 10) 393.
[31] ibid.
[32] ibid.
[33] See eg Lemke (n 14) 22; Richard J Harknett and Hasan Yalcin, 'The Struggle for Autonomy: A Realist Structural Theory of International Relations' (2012) 14 International Studies Review 499, 500.
[34] See eg Lemke (n 14) 26–27; Kenneth N Waltz, *Theory of International Politics* (Waveland Press 2010) 91–92; Kenneth N Waltz, 'Realist Thought and Neorealist Theory' (1990) 44 Journal of International Affairs 21, 29.
[35] Simma (n 13) 234.

dominant and 'traditional' motivation.[36] Where no discernible self-interest is apparent, and the criteria for community interests are met, the intervention will be treated as advancing community interests. The dichotomy between self-interest and community–interest interventions is necessarily reductive, yet it is useful for identifying trends in the intervention practice of states. In light of its limits, 'Intervention practice before the ICJ' examines selected interventions in detail to explain and justify particular classifications and to illustrate the nuances in states' motives when intervening in contentious cases.

THE LEGAL FRAMEWORK: ARTICLES 62 AND 63 OF THE ICJ STATUTE

The ICJ Statute provides two distinct mechanisms for intervening in contentious proceedings, as stipulated in Articles 62 and 63. Both instruments will be examined and compared, evaluating them in terms of their respective 'costs', both in respect to procedural requirements and the level of commitment they demand from states. It will be argued that interventions under Article 62 require more comprehensive preparation, involve greater procedural rights and obligations, a higher risk of failure, and, consequently, amount to a higher commitment and represent a higher-cost intervention. In contrast, Article 63 interventions impose fewer prerequisites, have been admissible in most instances, and entail a lower level of commitment to the proceedings. The analysis will further explore whether states' use of these two avenues differs based on their alignment with either self-interests or community interests.

Article 63 allows states to intervene in proceedings in order to present their views on the interpretation of a convention to which they are parties. It is rather a 'low cost' intervention, essentially because Article 63 speaks of a 'right to intervene'. Thus, being an intervention as of right, states only have to fulfil one basic requirement under the Statute: they need to be a party to a convention whose construction is at issue in a pending contentious case. A jurisdictional link between the intervening state and the parties of the respective case is not required.[37] Additionally, Article 82 of the Rules of Court enshrines more detailed formal requirements for the declaration of intervention. Such declarations thus need to contain, for instance, 'particulars of the basis on which the declarant state considers itself a party to the convention' and supporting documents.[38] If all these formalities are complied with, the ICJ, in principle, must admit the intervention and has little discretion over such a decision of admissibility.[39]

Yet, in its jurisprudence, the ICJ has specified other requirements implied in Article 63 of the ICJ Statute, and hence restricted access to this instrument. In *Haya de la Torre*, Cuba declared its intention to intervene concerning the interpretation of the Havana Convention on Asylum of 1928, and the ICJ admitted the intervention, although Peru objected. However, the ICJ did state that the right to intervene is confined to the point of interpretation at issue in the respective case, and that no intervention is possible on a question already decided with the authority of *res judicata* between the parties.[40] Recently, the ICJ also clarified that the intervening state must not have made a reservation that excludes the legal effects of the provision for the construction of which it seeks to intervene.[41]

[36] See also Dzehtsiarou (n 10) 391; Waltz 1990 (n 34) 29–31.

[37] See eg Alina Miron and Christine Chinkin, 'Article 63' in Andreas Zimmermann et al (eds), *The Statute of the International Court of Justice: A Commentary* (3rd ed., OUP 2019) para 22.

[38] Rules of Court, Article 82(5).

[39] See eg *Allegations of Genocide* (Order) (n 21) paras 33–40.

[40] *Haya de la Torre (Colombia v Peru)* (Judgment) [1951] ICJ Rep 71, 77.

[41] *Allegations of Genocide* (Order) (n 21) para 102.

Once a state successfully intervenes, it does not become a party to the case,[42] and it only acquires a limited number of procedural rights, for instance, to obtain pleadings and documents annexed,[43] but cannot, for example, appoint judges *ad hoc*.[44] The intervening state is entitled 'to submit its written observations on the subject-matter of the intervention' at the relevant stage of the proceedings.[45] However, the ICJ has also amended its Rules of Court, changing a previous provision that guaranteed the participation of intervening states in oral hearings to a new wording where such participation is now subject to the Court's discretion.[46] The subject-matter of the intervention is confined to the state's views on the correct interpretation of the convention, and does not extend to any other matters pertaining to, for instance, other legal issues under general international law, the existence of a dispute, evidence or the facts of the case.[47] Yet, the ICJ has so far refused to declare an intervention as inadmissible if it went beyond the mere interpretation of the respective convention, and merely stated that it would 'not consider' such other matters addressed in the declaration of intervention.[48]

Because paragraph 2 of Article 63 stipulates that the intervening state will be 'equally bound' by the judgment, scholars argue that interventions under this article entail significant 'sovereignty costs' and that this would explain the historical reluctance of states to intervene under Article 63 of the ICJ Statute.[49] While it is true that such interventions entail some 'sovereignty costs', and notably through the constraint of being bound by the Court's treaty interpretation, it is yet not wholly convincing to attribute a state's past reluctance primarily to this. In fact, closer analysis indicates that the binding effect of Article 63 is relatively narrow and would have only modest implications in practice.[50] More specifically, the ICJ has never clarified the legal effects that a judgment would have on intervening states under Article 63. However, arguably, the binding effect of Article 63(2) is limited by Article 59 of the ICJ Statute. Thus, *ratione materiae*, the construction of a convention is only binding upon the parties and the intervening state if it is contained in the operative part of the judgment or is an essential step towards the *dispositif*. Moreover, the intervening states and the parties would be bound between themselves and in respect of the particular case only.[51] While the binding effect of Article 63 has modest implications, the ICJ rarely departs from its jurisprudence, and hence effectively all of its judgments have legal implications *erga omnes*. Therefore, in practice, there is little difference between states that have intervened and

[42] *Whaling in the Antarctic (Australia v Japan)* (Declaration of Intervention, Order) [2013] ICJ Rep 3, para 18.

[43] Rules of Court, Article 86.

[44] *Whaling in the Antarctic* (n 42) para 21.

[45] Rules of Court, Article 86(1).

[46] Rules of Court, Article 86(2).

[47] *Allegations of Genocide* (Order) (n 21) para 84; but see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar: 7 States intervening)* (Admissibility of the Declarations of Intervention, Order) 25 July 2025, Declaration of Judge Cleveland <https://icj-cij.org/sites/default/files/case-related/178/178-20250725-ord-01-01-en.pdf> accessed 14 August 2025, which argues that the issue of the standard of proof for genocidal intent is linked to the interpretation of the substantive provisions of the Genocide Convention and hence forms part of the subject-matter of Article 63 interventions.

[48] ibid, see also *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) [2024] ICJ Rep 729, para 45; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar: 7 States intervening)* (Admissibility of the Declarations of Intervention, Order) 25 July 2025 <https://www.icj-cij.org/sites/default/files/case-related/178/178-20250725-ord-01-00-en.pdf> accessed 9 August 2025, para 60.

[49] See eg Forlati and Wojcikiewicz Almeida (n 20) 167.

[50] See 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, 432.

[51] ibid 436.

those that have not.[52] Additionally, the recent surge in particularly Article 63 interventions indicates that states do not see significant 'sovereignty costs' in Article 63 interventions.

While most procedural aspects of Article 63 interventions are either stipulated in the ICJ Statute or the Rules of Court and have been further clarified through jurisprudence of the ICJ, Article 62 involves various procedural uncertainties. In contrast to Article 63, Article 62 requires that a state seeking to intervene demonstrate 'an interest of a legal nature which may be affected by the decision in the case'. Consequently, the state must submit a request detailing its legal interest and explaining how this interest might be impacted by the court's decision. The ICJ has broad discretion in deciding whether to allow an intervention under Article 62. While several requests for intervention have invoked a legal interest based on obligations *erga omnes* and *erga omnes partes*, it remains unresolved whether such an interest is sufficient to meet the requirements of Article 62.[53] Moreover, an Article 62 intervention is broader in scope, permitting states to submit observations on any issue of law or fact arising in the case. It is correspondingly more demanding, both in the resources required to prepare the application and, as noted above, in satisfying the legal requirements for permission to intervene.

There is a further uncertainty regarding the 'cost of sovereignty' and potential legal effects of a judgment on the intervening state. While the ICJ clarified that a state may, if there is necessary consent of the parties, intervene under Article 62 as a party, which would then be bound by Article 59 of the ICJ Statute, it has not clarified the legal effect that a judgment might have on non-party interveners.[54] Thus, some scholars argue that both Articles 62 and 63 must be read together so that Article 62 interventions would entail *mutatis mutandis* the same legal effects, at least for non-party interveners: the judgment becomes binding to the extent of the intervention.[55] Be that as it may, this uncertainty means that the 'sovereignty costs' associated with Article 62 are even less determinate than those under Article 63 and might thus involve more risks than Article 63 interventions.

Therefore, interventions under Article 63 of the ICJ Statute are relatively 'low-cost' in terms of sovereignty, resources, and commitment. Their legal effect is minimal and largely subsumed by the Court's own normative authority. Procedurally, Article 63 is less demanding: intervening states need not show a particular legal interest or how they may be affected; they do not become parties, enjoy only limited procedural rights, and are not assured participation in oral hearings, all of which further reduces commitment. In contrast, Article 62 interventions entail significantly higher costs and commitments. If a state intervenes as a party, it is bound by the judgment under Article 59. Even as a non-party, the burden is higher: the state must demonstrate a legal interest that may be affected, provide more extensive argumentation, and face procedural uncertainties that risk wasted effort if admissibility is denied. Overall, Article 63 offers a low-risk, low-commitment avenue, whereas Article 62 involves greater procedural and sovereignty costs and a higher risk of failure. Using Articles 62 and 63 together constitutes the highest-cost and highest-commitment option.

[52] ibid 437.

[53] See eg *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, Application for permission to intervene of the Republic of Nicaragua, 23 January 2024 <https://icj-cij.org/case/192/intervention> accessed 7 January 2025 (withdrawn); *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)*, Application for permission to intervene of the Government of the Republic of Poland, 23 July 2024 <https://icj-cij.org/case/182/intervention> accessed 7 January 2025.

[54] See eg *Land, Island and Maritime Frontier Dispute (El* Salvador/*Honduras)* (Application to Intervene, Judgment) [1990] ICJ Rep 92, para 99; and *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* [1992] ICJ Rep 351, para 424, where the ICJ stated that the *res judicata* effect of a judgment does not cover non-party interveners under Article 62.

[55] Eg Santiago T Bernárdez, 'L'Intervention dans la Procédure de la Cour internationale de Justice' (1995) 256 Recueil des cours 426, 430; Robert Kolb, *The International Court of Justice* (Hart Publishing 2013) 728; Christine M Chinkin, 'Third-Party Intervention Before the International Court of Justice' (1986) 80 American Journal of International Law 495, 526.

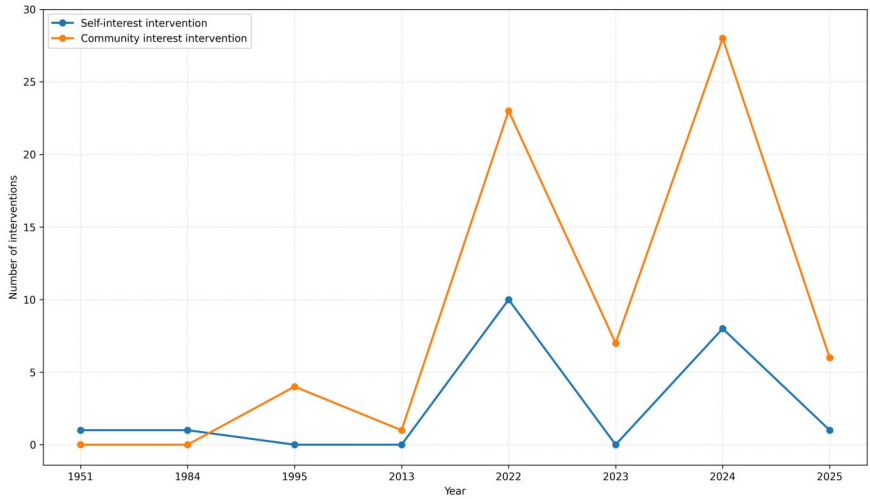

Figure 1. Article 63 interventions (1951–2025)

INTERVENTION PRACTICE BEFORE THE ICJ

Interventions under Article 63

In the pending case between Ukraine and the Russian Federation under the Genocide Convention, in total 33 declarations of interventions were submitted in the preliminary objection phase of the proceedings, while for the merits phase of the proceedings, 23 states have either submitted new declarations of intervention, adjusted their declaration of intervention, or informed the ICJ that they wish to maintain their original declaration for the merits phase of the proceedings.[56] Including these adjusted and maintained declarations of intervention, states have in total either tried or successfully intervened 90 times under Article 63 of ICJ Statute. Most of these declarations were submitted in the preliminary objections and merits phase of *Allegations of Genocide*, namely 56,[57] followed by fifteen interventions in *Crime of Genocide in the Gaza Strip*,[58] and eleven in *Application of the Genocide Convention*.[59] Four declarations of interventions were submitted in *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) (Request for Examination)*.[60] All other declarations of intervention were made singularly.[61] Of these 90 interventions, 69 interventions were made for the purpose of advancing 'community interests' as described in 'Community and self-interest interventions' section of this article (Figure 1).[62] These data

[56] ICJ, '*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).

[57] See <https://icj-cij.org/case/182/intervention> accessed 13 August 2025.

[58] See <https://icj-cij.org/case/192/intervention> accessed 13 August 2025.

[59] See <https://icj-cij.org/case/178/intervention> accessed 31 December 2025.

[60] See <https://icj-cij.org/case/97/intervention> accessed 13 August 2025.

[61] *Haya de la Torre (Colombia v Peru)*, Declaration of Intervention by Cuba, 13 March 1951; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Declaration of Intervention of the Republic of El Salvador, 15 August 1984; *Whaling in the Antarctic (Australia v Japan)*, Declaration of Intervention by New Zealand, 20 November 2012; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan (Sudan v United Arab Emirates)*, Intervention of the Republic of Serbia, 16 April 2025.

[62] *Request for Examination* (n 60), Solomon Islands, Micronesia, Samoa and the Marshall Islands; *Whaling in the Antarctic*, New Zealand (n 61); *Allegations of Genocide* (n 57), preliminary objections: Declarations of Intervention by Australia, Austria, Belgium, Bulgaria, Canada and the Netherlands (jointly), Croatia, Cyprus, Czechia, Denmark, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Malta, New Zealand, Portugal, Slovenia, Spain, United Kingdom; *Allegations of*

demonstrate that the first 'community-interest intervention' was made in 1995, that the number increased significantly in 2022 and has since remained at a high level, while there have been six 'community interest interventions' in 2025 (Figure 1).[63] Most declarations of intervention were submitted in 2022 and 2024, both in the *Allegations of Genocide* case (preliminary objections and merits phase of the proceedings).[64] Moreover, since 1995, the moment the first 'community-interest interventions' were made, the number of such interventions has been consistently higher than for 'self-interest interventions'. Figure 1 visualizes this trend.

More generally, the analysis of the various declarations of intervention also show that states have used Article 63 interventions in the following circumstances.

Interventions as a party to a broader dispute

The *'S.S.' Wimbledon* case has not been considered in the above explained categorization, as the case was not decided by the ICJ but by its predecessor, the Permanent Court of International Justice.[65] Yet, it is a prime example to demonstrate that states intervene in contentious cases if the respective proceedings are embedded in a broader dispute to which the intervening states forms part of. Germany denied passage through the Kiel Canal to a British vessel (chartered by a French company) that was bringing weaponry to Danzig, Poland during the Russo-Polish war. Initially, Poland sought to intervene under Article 62, but was subsequently admitted, after changing its submission, under Article 63 since the interpretation of certain clauses of the Treaty of Versailles was involved, to which Poland was a party, and arguably even an injured state.[66]

Another example is the *Military and Paramilitary Activities* case between Nicaragua and the United States, which involved a broader regional dispute with, among others, El Salvador. In this case, the USA alleged that Nicaragua had provided support to rebel forces in El Salvador and invoked this claim to justify its actions in Nicaragua as part of collective self-defence.[67] El Salvador intervened in the proceedings under Article 63 with the stated purpose to counter misstatements that Nicaragua had made in 'a malicious and improper fashion' and to convey to the ICJ that, contrary to Nicaragua's assertion, El Salvador 'considers itself under the pressure of an effective armed attack on the part of Nicaragua and feels threatened in its territorial integrity, and in its sovereignty and in its independence, along with the other Central American countries'.[68] These examples illustrate that states intervene under Article 63 in contentious cases when the proceedings are intertwined with broader regional or international disputes that directly affect their interests. The use of Article 63 interventions in these instances, instead of Article 62, seems to stem from the fact that Article 63 interventions are easier accessible if multilateral conventions are at play and

Genocide (n 57), merits: Australia, Austria, Czechia and Slovenia (jointly), Bulgaria, Canada and the Netherlands (jointly), Denmark, France, Germany, Italy, Luxembourg, New Zealand, Portugal, Spain, United Kingdom; *Application of the Genocide Convention (The Gambia v Myanmar)* (n 59): Declarations of Intervention by Canada, Denmark, France, Germany, Netherlands, United Kingdom (jointly); Maldives, Belgium, Slovenia, Ireland, Democratic Republic of the Congo; *Crime of Genocide in the Gaza Strip* (n 58): Declarations of Intervention by Spain, Türkiye, Mexico, Libya, Colombia, Bolivia, Ireland, Chile, Maldives, Cuba, Belize.

[63] *Crime of Genocide in the Gaza Strip* (n 58), Declaration of Intervention of Ireland, 6 January 2025; Declaration of Intervention of Cuba, 10 January 2025; Declaration of Intervention of Belize, 30 January 2025; Declaration of Intervention of Brazil, 19 September 2025; Declaration of Intervention of the Comoros, 31 October 2025; Declaration of Intervention of Belgium, 18 December 2025.

[64] 23 community interest interventions and 10 self-interest interventions in the preliminary objections phase and 16 community interest interventions and 7 self-interest interventions in the merits phase.

[65] *The S.S. 'Wimbledon' (United Kingdom, France, Italy, Japan v Germany)* (Judgment) [1923] PCIJ Series A, No. 1.

[66] ibid 12–13.

[67] *Military and Paramilitary Activities in und against Nicaragua (Nicaragua v United States of America)* (Judgment) [1986] ICJ Rep 14, paras 19, 35.

[68] *Military and Paramilitary Activities*, Declaration of Intervention of El Salvador (n 61) 2.

represent a comparatively low-risk and low-commitment option for states to assert their interests. In the above explained categorization, such interventions were considered 'self-interest interventions'.

Symbolic and political solidarity and support

The *Allegations of Genocide* case appears to have set a precedent for using Article 63 interventions as a means of signalling political solidarity and support for one of the parties in a contentious case. In this case, 33 states submitted declarations of intervention, which in their cores, were almost identical.[69] They supported Ukraine on the central legal issue of the case and argued that the ICJ had jurisdiction regarding the use of force when invoked on the basis of the Genocide Convention.[70] However, since the ICJ declared that it had not jurisdiction for that particular claim, the interventions seem to have had little effect.[71] The proceedings themselves are largely symbolic, as the pending case under the Genocide Convention does not constitute the central issue in the broader dispute between Ukraine and the Russian Federation and is unlikely to have a significant impact on it. Consequently, the intervening states appear to have limited interest in the legal outcome of the case and are primarily motivated by a desire to demonstrate support and solidarity with Ukraine. Notably, most intervening states lack a direct legal interest in the proceedings, which further emphasizes the political and symbolic nature of their participation. Most importantly, however, the intervening states publicly stated the purpose of their inventions is to support Ukraine in its legal proceedings.[72] More recently, for instance, Libya intervened in *Crime of Genocide in the Gaza Strip*, where it explained that it is intervening 'in support of the Palestinian people'.[73] Again, interventions under Article 63 seem to have been chosen because they represent a comparatively low-risk and low-commitment option for demonstrate symbolic and political solidarity and support. These interventions were considered as 'community-interest interventions' in the above explained categorization, as they argued for the wide interpretation of the Genocide Convention at the potential cost of their own sovereignty. Moreover, many intervening states explained their intervention also with a reference to the *erga omnes* and *erga omnes partes* character of the obligations stipulated in the Genocide Convention.[74]

However, the case instituted by Ukraine in the aftermath of the aggression of the Russian Federation forms part of a broader geopolitical conflict, often *inter alia* framed as a conflict of the Russian Federation against 'the West',[75] raising issues of individual and collective security, particularly for European States.[76] Hence, the above referenced 'community-interest intervention' involve a certain degree of self-interests. In fact, the blatant attempt of the

[69] See Kyra Wigard, Ori Pomsen and Juliette McIntyre, 'Keeping score: an empirical analysis of the interventions in Ukraine v Russia' (2023) 14 Journal of International Dispute Settlement 305, 321.

[70] See eg *Allegations of Genocide* (n 57), preliminary objections: Declaration of Intervention of Germany, 1 September 2022, 8.

[71] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)* (Preliminary Objections) [2024] ICJ Rep 360, para 151.

[72] See eg Federal Foreign Office (Germany), 'Joint statement by the Ministers for European Affairs of the Weimar Triangle' (16 September 2022) <https://www.auswaertiges-amt.de/en/newsroom/news/weimar-triangle-2552384> accessed 13 August 2025.

[73] *Crime of Genocide in the Gaza Strip* (n 58), Declaration of Intervention by Libya, 10 May 2024, 3.

[74] See eg *Allegations of Genocide* (n 57), preliminary objections: Declaration of Intervention by New Zealand, 28 July 2022, para 12.

[75] See eg Andrei P Tsygankov, 'Russia, Ukraine, and the West: from Mistrust to Conflict' (2024) 37 The Journal of Slavic Military Studies 287, 307.

[76] See eg 'Policy statement by Olaf Scholz, Chancellor of the Federal Republic of Germany and Member of the German Bundestag, 27 February 2022 in Berlin' <https://www.bundesregierung.de/breg-en/news/policy-statement-by-olaf-scholz-chancellor-of-the-federal-republic-of-germany-and-member-of-the-german-bundestag-27-february-2022-in-berlin-2008378> accessed 3 January 2025.

Russian Federation to acquire territory by force represents a profound assault on the post-World War II international legal order. In an era defined by the UN Charter and the prohibition of the threat or use of force, states have responded decisively, employing the full spectrum of peaceful instruments available to address such a significant conflict in geopolitical terms. The 'mass interventions' of exclusively 'Western' states form part of this struggle. It is indeed often in these cases 'where the international community has long since given up real hope of compliance' that adjudicative methods of 'identifying the law breaker [are] used'.[77] In any case, the categorization of interventions outlined above assumes that, in certain circumstances, considerations of self-interest are predominant. To apply objective criteria, this is presumed when intervening states share a maritime or territorial border with a party to the armed conflict, as is the case for, as examples, Poland, Finland, and the USA.[78]

Outcome interest

The final category of reasons that explain interventions by states under Article 63 is a broad one, encompassing diverse instances where states have a vested interest primarily in the legal outcome of the case, particularly in the interpretation of the multilateral treaty at issue. In some cases, states intervene to assert their sovereignty, in other words, to prevent a certain ruling of the ICJ which would lead to their own international or domestic practice being scrutinized. For instance, Cuba intervened in *Haya de la Torre* in order to present the Cuban practice in relation to political asylum and 'defend' it.[79] Recently, Serbia intervened in *Sudan v United Arab Emirates* (UAE) to support the view that the UAE's reservation to Article IX of the Genocide Convention precludes the ICJ's jurisdiction, noting that it likewise maintains a reservation excluding the legal effect of Article IX.[80] In other cases, states, while intervening in matters of community interests, might do so also because they are (potentially) affected by the outcome of the case. In *Request for Examination*, which concerned France's nuclear tests in the South Pacific, the Solomon Islands, Micronesia, the Marshall Islands, and Samoa intervened under *inter alia* Article 63, in order to support New Zealand's litigation against France.[81] While Australia and Samoa had recorded effects in the past from French nuclear testing, these were assessed as limited, and no material impacts were expected from the underground tests in the 1990s.[82] Rather, the case concerned important environmental matters and was centred in the broader South Pacific anti-nuclear movement. In this regard, the intervening states expressed in their declarations that they are intervening primarily to protect the 'common interest of the South Pacific Forum States in the environment of the Region […] specifically recognised in the Noumea Convention.'[83] Some intervening states noted that their interest also arose from geographical proximity to the testing sites.[84] Yet, none of the intervening States shares a maritime boundary with French Polynesia or with the immediate region of concern for the French nuclear tests

[77] Rosalyn Higgins, 'The Desirability of Third-Party Adjudication: Conventional Wisdom or Continuing Truth?', in Rosalyn Higgins and James Fawcett (eds), *International Organization: Law in Movement* (OUP 1974) 51.

[78] Estonia, Finland, Latvia, Lithuania, Norway, Poland, Romania, Slovakia, Sweden, United States.

[79] *Haya de la Torre*, Intervention of Cuba (n 61).

[80] *Sudan v United Arab Emirates*, Intervention of Serbia (n 61) 4.

[81] See eg *Request for Examination* (n 60), Declaration of Intervention by the Solomon Islands, 24 August 1995, para 1.

[82] See International Atomic Energy Agency, 'The Radiological Situation at the Atolls of Mururoa and Fangataufa' (Press Release 1998/09, 29 June 1998) <https://www.iaea.org/newscenter/pressreleases/radiological-situation-atolls-mururoa-and-fangataufa> accessed 17 August 2025; Vladimir Drozdovitch et al, 'Radiological Impact of Atmospheric Nuclear Weapons Tests at Mururoa and Fangataufa Atolls to Populations in Oceania, South America and Africa: Comparison with French Polynesia' (2021) 22 Asian Pacific Journal of Cancer Prevention 801.

[83] See eg Intervention of the Solomon Islands (n 81) para 16; *Request for Examination* (n 60), Declaration of Intervention by the Government of Samoa, 24 August 1995, para 16.

[84] See eg ibid.

(New Zealand, Cook Islands, Niue, Tokelau).[85] In these circumstances, and since the states themselves based their interventions primarily on community interests, those interventions were accordingly regarded as 'community interest interventions'.

Several states have intervened in the *Application of the Genocide Convention* and the *Crime of Genocide in the Gaza Strip* cases to advocate for lowering the standard of proof for genocidal intent, reflecting a shared objective among a number of states.[86] Ireland even intervened in both cases under Article 63 with almost identical declarations, perhaps also to counter any accusations of double standards.[87] Similarly, New Zealand intervened in the *Whaling* case to join Australia in a publicly stated common cause for the protection of whales.[88] In these cases, the interventions were also categorized as 'community interest interventions' since there were no direct vested interests that would sufficiently explain the effort of intervening and the potential 'sovereignty cost' because of them.

In conclusion, while outcome-interest interventions under Article 63 form a broad category, some patterns can be identified. States intervene either to avoid an interpretation that would expose their own practice to scrutiny or to advance broader policy positions associated with community interests, and the two may converge. In the *Nuclear Tests* context, the declarations by Pacific island states fall mainly in the latter category: while not free of self-interest, they were primarily expressions of community concern rather than claims grounded in geographical proximity or expected harm. More generally, these interventions were driven by regional solidarity and a shared concern for the environment, and, for some states, by past experience of US nuclear testing.[89]

Interventions under Article 62

Interventions under Article 62 have always been in the minority compared to interventions under Article 63 of the ICJ Statute. Since the first application for permission to intervene in 1981, there has been a rather consistent number of interventions over the years (Figure 2). In total, there have been 20 requests to intervene[90] (including one that later was

[85] See New Zealand, 'Request for the Indication of Interim Measures of Protection' in *Nuclear Tests (New Zealand v France)* (ICJ, Pleadings, Oral Arguments, Documents, vol II, 1973) 49 <https://www.icj-cij.org/node/104604> accessed 17 August 2025.

[86] See eg *Application of the Genocide Convention (The Gambia v Myanmar)* (n 59), Declaration of Intervention by Canada, Denmark, France, Germany, Netherlands, United Kingdom (jointly), 15 November 2023; *Crime of Genocide in the Gaza Strip* (n 58), Declaration of Intervention by Spain, 28 June 2024.

[87] *Application of the Genocide Convention (The Gambia v Myanmar)* (n 59), Declaration of Intervention by Ireland, 20 December 2024; *Crime of Genocide in the Gaza Strip* (n 58), Declaration of Intervention by Ireland, 6 January 2025, see particularly para 11 of the latter where Ireland explains that it 'is acutely sensitive to the context within which these proceedings have been initiated' and dedicates a paragraph for addressing the attacks of 7 October 2023 and the fate of the hostages, while supporting the legal arguments of South Africa.

[88] See eg *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)*, Written observations of Japan on New Zealand's written observations, para 3; Declaration of Intervention (n 61) para 8.

[89] See for the Marshall Islands eg Office of the United Nations High Commissioner for Human Rights, 'Addressing the challenges and barriers to the full realization and enjoyment of the human rights of the people of the Marshall Islands, stemming from the State's nuclear legacy' UN Doc A/HRC/57/77 (24 September 2024).

[90] *Nuclear Tests (Australia v France)*, Application for permission to intervene by the Government of Fiji, 16 May 1973; *Nuclear Tests (New Zealand v France)*, Application for permission to intervene by the Government of Fiji, 18 May 1973; *Continental Shelf (Tunisia v Libya)*, Application for permission to intervene by Malta, 30 January 1981; *Continental Shelf (Libya v Malta)*, Application for permission to intervene by Italy, 24 October 1983; *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, Application for permission to intervene by Nicaragua, 27 November 1989; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea intervening)*, Application for Permission to Intervene by Equatorial Guinea, 30 June 1999; *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)*, Application for Permission to Intervene by Australia, 23 August 1995; Application for Permission to Intervene by Solomon Islands, 24 August 1995; Application for Permission to Intervene by Micronesia, 24 August 1995; Application for Permission to Intervene by the Marshall Islands, 24 August 1995; Application for Permission to Intervene by the Government of Samoa, 24 August 1995; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Application for Permission to Intervene by the Philippines, 13 March 2001; *Territorial and Maritime Dispute (Nicaragua v Colombia)*, Application for Permission to Intervene by Costa Rica, 25 February 2010; Application for Permission to Intervene by Honduras, 10 June 2010; *Jurisdictional Immunities of the State (Germany v*

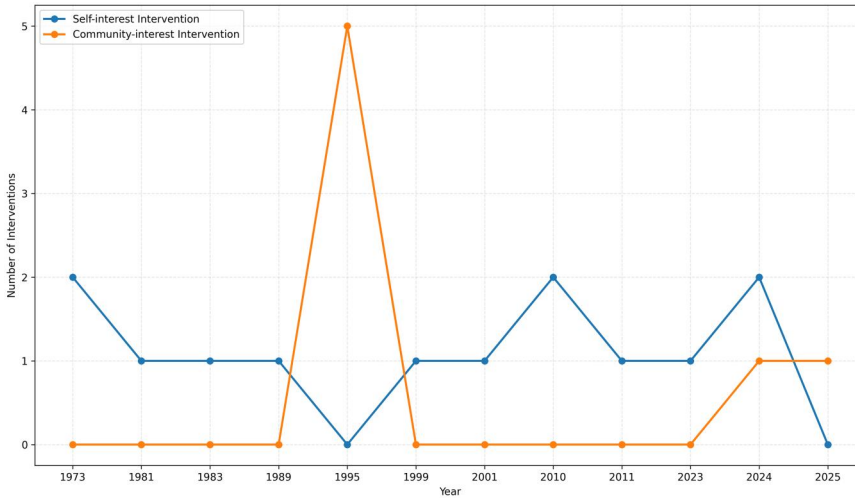

Figure 2. Article 62 interventions (1973–2025)

withdrawn),[91] while seven have been made in three different cases for the purpose of advancing 'community interests' as described in 'Community and self-interest interventions' section of this article (Figure 2).[92] While Article 62 has thus far played a modest part in advancing community interests, the first such interventions in 1995, followed by another in 2024 and 2025, may indicate a cautious shift towards the use of Article 62 for community concerns. There has been one community interest intervention and no self-interest intervention in 2025. Figure 2 shows these patterns.

More generally, the analysis of the various declarations of intervention also shows that states have used Article 62 interventions in the following circumstances.

Outcome interest

Most interventions under Article 62 concern matters of either maritime or territorial delimitation.[93] In these matters, state have a vested interest in a specific outcome of the respective case. For instance, in *Territorial and Maritime Dispute (Nicaragua v Colombia)*, both intervening states under Article 62, Costa Rica and Honduras, wished to protect their interests by supporting a specific outcome of the maritime delimitation between Nicaragua and Colombia, which was likely to impinge on areas claimed by them.[94] This was explicitly stated by both states in their declaration, for example, Costa Rica stated that the purpose of

Italy: Greece intervening), Application for Permission to Intervene by the Hellenic Republic, 13 January 2011; *Sovereignty over the Sapodilla Cayes/Cayos Zapotillos (Belize v Honduras)*, Application for Permission to Intervene by Guatemala, 1 December 2023; *Crime of Genocide in the Gaza Strip* (n 58), Application for Permission to Intervene by Nicaragua, 23 January 2024; Application for Permission to Intervene by Palestine, 3 June 2024; Application for Permission to Intervene by Belize, 30 January 2025; *Allegations of Genocide* (n 57), merits: Application for Permission to Intervene by Poland, 23 July 2024.

[91] *Crime of Genocide in the Gaza Strip* (n 58), Application by Nicaragua (n 90); see ICJ, 'Nicaragua withdraws its Application for permission to intervene in the proceedings (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*)' (4 March 2025) <https://icj-cij.org/sites/default/files/case-related/192/192-20250304-pre-01-00-en.pdf> accessed 13 August 2025.

[92] *Crime of Genocide in the Gaza Strip* (n 58), Application by Nicaragua (n 90); Application by Belize (n 90).

[93] See *Continental Shelf*, Application to intervene by Malta (n 90); *Continental Shelf*, Application to intervene by Italy (n 90); *Land, Island and Maritime Frontier Dispute*, Application to intervene by Nicaragua, (n 90); *Land and Maritime Boundary between Cameroon and Nigeria*, Application to Intervene by Equatorial Guinea, (n 90); *Pulau Ligitan and Pulau Sipadan*, Application to Intervene by the Philippines, (n 90); *Territorial and Maritime Dispute*, Application to Intervene by Costa Rica (n 90); Application to Intervene by Honduras (n 90).

[94] See eg ibid.

the intervention was 'to inform the Court of Costa Rica's legal rights and interests so that these may remain unaffected as the Court delimits the maritime boundary between Nicaragua and Colombia [...]'.[95] Similarly, in *Land, Island and Maritime Frontier Dispute*, Nicaragua stated that it wishes to 'protect the legal rights of the Republic of Nicaragua in the Gulf of Fonseca and the adjacent maritime areas by all legal means available'.[96] Recently, Guatemala intervened in *Sovereignty over the Sapodilla Cayes* to equally 'protect the rights and interests of Guatemala over the Sapodilla Cays'.[97]

In other cases, the interest in a specific outcome of the case relate to existing disputes, direct injuries and the protection of asserted bilateral rights. For instance, in both *Nuclear Tests* cases, Fiji sought to intervene under Article 62 on the basis of its own legal interest, citing past deposition of radioactive fallout on its territory and waters, measurable radionuclide concentrations in foodstuffs and among its population with similar harm anticipated if French nuclear testing continued.[98] It also recalled formal protests to France and sustained démarches in UN and regional fora, which shows the existence of a dispute with France rather than a purely community-interest claim.[99] These examples show that states, in pursuit of its vested interests of importance, such as territorial and maritime boundaries or protection of environment, are willing to take the 'high cost' avenue of Article 62 interventions.

Similarly, states also intervene under Article 62 to assert their sovereignty, in other words, to prevent a certain ruling of the ICJ which would lead to their own national practice being scrutinized. For instance, in *Jurisdictional Immunities*, Greece intervened in order to protect the legal position of its courts and the interest of its nationals by supporting Italy's arguments concerning *jus cogens* norms and jurisdictional immunities.[100] In this particular case, an intervention under Article 63 was not available. Moreover, Poland's application to intervene in *Allegations of Genocide* states that its extensive support for Ukraine, including military assistance, establishes an interest of a legal nature under Article 62. It submits that the Russian Federation's allegation that Ukraine is committing genocide against the Russian-speaking population bears on Poland's own obligations under the Genocide Convention, since an adverse finding could engage duties to prevent genocide and to refrain from aiding or assisting it.[101] This does not, by itself, explain choosing Article 62 rather than only Article 63, since Article 63 would have allowed Poland to present its views on the Convention's interpretation, which it identifies as its primary concern.[102] Given that there is, as Poland itself acknowledges, no indication that Ukraine is committing genocide, an adverse finding is unlikely at present.[103] Poland nevertheless proceeded under Article 62 presumably because it permits a wider range of submissions, including on evidence and the application of law to the facts. Read in this light, the intervention reflects Poland's strong support for Ukraine, informed by current security concerns and historical experience of Soviet occupation.[104] Since Poland borders both Ukraine and the Russian Federation, this study classifies the intervention as one of self-interest.

[95] ibid para 10; Application to Intervene by Honduras (n 90) para 9.

[96] *Land, Island and Maritime Frontier Dispute*, Application to intervene by Nicaragua (n 90) para 5; see also *Land and Maritime Boundary between Cameroon and Nigeria*, Application to Intervene by Equatorial Guinea, (n 90) para 41; *Pulau Ligitan and Pulau Sipadan*, Application to Intervene by the Philippines (n 90) para 14.

[97] *Sovereignty over the Sapodilla Cayes*, Application to Intervene by Guatemala (n 90) para 10.

[98] *Nuclear Tests (New Zealand v France)*, Application to Intervene by Fiji (n 90) 89.

[99] ibid 90.

[100] *Jurisdictional Immunities*, Application to Intervene by Greece (n 90).

[101] *Allegations of Genocide*, Application to Intervene by Poland (n 90) para 38.

[102] ibid para 39.

[103] ibid paras 22–24.

[104] See eg Irena Kalhousová et al, 'Historical analogies, traumatic past and responses to the war in Ukraine' (2024) 100 International Affairs 2501, 2508, 2522.

In contrast, there have been two recent 'community interest interventions' in *Crime of Genocide in the Gaza Strip*. Belize, for instance, intervened as a non-party to give effect to its obligation to prevent under the Genocide Convention.[105] It based its intervention on obligations *erga omnes partes* under the Convention and stated that it sought to ensure accountability so that 'the authors of genocide do not enjoy impunity'.[106] In fact, most community interest interventions, under both Articles 62 and 63, have arisen in relation to the Genocide Convention, which underscores that allegations of genocide engage 'elementary considerations of humanity'[107] and are treated with particular gravity by states; such charges tend to prompt diplomatic and procedural responses, such as provisional measures requests and interventions before the ICJ.[108]

To sum up, the practice shows that Article 62 interventions are used primarily to protect concrete outcome interests, most often in territorial or maritime delimitation and in disputes over asserted bilateral rights, with states willing to bear the higher costs where core interests are engaged. In contrast, community interest interventions cluster around the Genocide Convention, reflecting the particular gravity of the crime of genocide.

Interventions to join the proceedings

Interventions under Article 62 can in some circumstances effectively function as a joinder of proceedings, particularly if states request to intervene as a party. For instance, Nicaragua sought to intervene as a party in *Crime of Genocide in the Gaza Strip*, while basing its standing on violations of obligations *erga omnes partes*.[109] In this regard, Nicaragua, similar to Belize, stated in its declaration that it is intervening in order to comply 'with its obligation to help prevent and punish genocidal acts presently underway in the Gaza Strip'.[110] This makes it particularly puzzling why Nicaragua chose to withdraw its request to intervene, while developments on the ground in Gaza have worsened to catastrophic levels, adding utmost urgency to states' duty to prevent genocide.[111] Similarly, although framed as a non-party intervention, Palestine's request could in substance be qualified as a joinder of proceedings, as it is directly implicated in the case and may be better placed to assist the ICJ with evidence.[112]

Simultaneous interventions under Articles 62 and 63

In seven instances, states have simultaneously intervened under Articles 62 and 63.[113] This avenue involves the 'highest costs' regarding the resources for preparing and conducting

[105] *Crime of Genocide in the Gaza Strip*, Application to Intervene by Belize (n 90) para 29.

[106] ibid paras 35, 42.

[107] *Corfu Channel (United Kingdom v Albania)* (Merits) [1949] ICJ Rep 4, 22.

[108] See, however, A Dirk Moses, *The Problems of Genocide: Permanent Security and the Language of Transgression* (CUP 2021) 19 (arguing that elevating genocide as the 'crime of crimes' creates a hierarchy that obscures other forms of civilian destruction).

[109] *Crime of Genocide in the Gaza Strip*, Application to Intervene by Nicaragua (n 90).

[110] ibid para 12.

[111] See eg UNRWA, 'UNRWA Situation Report #183 on the Humanitarian Crisis in the Gaza Strip and the West Bank, including East Jerusalem' (8 August 2025) <https://www.unrwa.org/resources/reports/unrwa-situation-report-183-situation-gaza-strip-and-west-bank-including-east-jerusalem> accessed 15 August 2025; Oxfam International, 'More than 100 organizations are sounding the alarm to allow lifesaving aid into Gaza' (Oxfam International, 23 July 2025) <https://www.oxfam.org/en/press-releases/more-100-organizations-are-sounding-alarm-allow-lifesaving-aid-gaza> accessed 16 August 2025; Advisory Committee on Public International Law, 'The Obligation of Third States to Prevent Genocide' (Advisory Report no 50, 4 August 2025) (English translation of background and conclusion; full Dutch version published 4 August 2025; English translation to follow in October 2025) <https://www.advisorycommitteeinternationallaw.nl/publications/advisory-reports/2025/08/04/the-obligation-of-third-states-to-prevent-genocide> accessed 16 August 2025; see also International Association of Genocide Scholars, 'IAGS Resolution on the Situation in Gaza' (31 August 2025) <https://genocidescholars.org/wp-content/uploads/2025/08/IAGS-Resolution-on-Gaza-FINAL.pdf> accessed 2 September 2025.

[112] *Crime of Genocide in the Gaza Strip*, Application to Intervene by Palestine (n 90) paras 27–28.

[113] *Allegations of Genocide*, Application to Intervene by Poland (n 90); *Allegations of Genocide* (n 57), Declaration of Intervention by Poland, 23 July 2024; *Crime of Genocide in the Gaza Strip*, Application to Intervene by Palestine (n 90); *Crime*

these interventions before the ICJ. Therefore, states will sometimes intervene under both Articles where the issues at stake are a priority policy concern, such as in relation to national security or other core interests. For instance, the Solomon Islands, Micronesia, the Marshall Islands, and Samoa intervened under both Articles as part of the longstanding Pacific anti-nuclear stance, and the important role they assigned to the proceedings for achieving their interests.[114] This is similarly the case with Palestine's simultaneous interventions in *Crime of Genocide in the Gaza Strip*, given its direct implication in the respective proceedings.[115] The dual intervention by Belize, while advancing community interests, also reflects its 'longstanding solidarity with the Palestinian people'.[116] Moreover, Poland's simultaneous interventions in *Allegations of Genocide* can be seen as an expression of its particular political commitment to supporting Ukraine, given its own concerns for security in relation to the Russian Federation's aggression.[117] Thus, the interventions discussed indicate that simultaneous invocation of Articles 62 and 63 is rare and used mostly when proceedings implicate priority policy concerns or other core interests. They tend to align with one or more of the following: pursuit of region-wide policy agendas, participation by directly implicated actors, solidarity-driven community interest claims, and security-oriented alignments.

FUTURE DIRECTIONS FOR THIRD-STATE PARTICIPATION

This study has identified changes in intervention practice before the ICJ over recent decades. Since the first interventions in 1951 (for Article 63) and in 1973 (for Article 62), Article 62 interventions have remained relatively limited, whereas those under Article 63 expanded in 2022 in *Allegations of Genocide* and have since stayed at a comparatively high level. Figure 1 shows that 69 of 90 Article 63 interventions (76.7%) advance community interests, while Figure 2 shows that 7 of 20 Article 62 interventions (35%) do so. Accordingly, Article 63 has emerged as the primary avenue for community-interest interventions. Viewed through a 'costs and commitments' lens, this suggests that states advance community interests by choosing the least costly and least committing avenue available, namely intervention under Article 63. Yet, the example of the interventions in *Application of the Genocide Convention* shows the limitations of Article 63. Its scope of intervention is limited to the construction of multilateral conventions, such as the Genocide Convention and does not extend to questions of facts or evidence, including the standard of proof for genocidal intent. The ICJ stated that it will not consider matters it regards as outside the scope of Article 63, so the primary purpose of states' interventions in this case, namely, to advocate a lower standard of proof for genocidal intent, will most likely have no effect in the proceedings.[118] Thus, Article 63 interventions are not an appropriate means of advancing community interests particularly if the contentious issues in the pending proceedings go beyond mere treaty interpretation. Thus, although states may present their views in advisory proceedings, and

of Genocide in the Gaza Strip (n 58), Declaration of Intervention by Palestine, 3 June 2024; Application to Intervene by Belize (n 90); Declaration of Intervention of Belize (n 63); *Request for an Examination*, Application to Intervene by the Solomon Islands (n 90); Application to Intervene by Micronesia (n 90); Application to Intervene by the Marshall Islands (n 90); Application to Intervene by Samoa (n 90); Declaration of Intervention by the Solomon Islands (n 81); Declaration of Intervention by Micronesia, 24 August 1995; Declaration of Intervention by the Marshall Islands, 24 August 1995; Declaration of Intervention by Samoa (n 84).

[114] See eg Application to Intervene by Samoa (n 90) paras 18–20.

[115] *Crime of Genocide in the Gaza Strip*, Application to Intervene by Palestine (n 90); Declaration of Intervention by Palestine (n 113).

[116] *Crime of Genocide in the Gaza Strip*, Application to Intervene by Belize (n 90) para 32; see also Declaration of Intervention by Belize (n 63).

[117] *Allegations of Genocide*, Application to Intervene by Poland (n 90), see also eg 'Poland identifies Russian group that aims to sway elections, deputy PM says' (Reuters, 10 January 2024) <https://www.reuters.com/world/europe/poland-identifies-russian-group-allegedly-aiming-sway-elections-deputy-pm-says-2025-01-10/> accessed 12 January 2025.

[118] See *Application of the Genocide Convention* (Order 2025) (n 48) para 60.

international organizations may do so in both advisory and contentious proceedings, states lack a suitable avenue in contentious cases.[119]

This issue has been consistently raised by scholars who have argued that the 'ICJ procedural law remains outdated and disconnected from the contemporary developments characterizing the international community nowadays'[120] and hence '[a] tension therefore arises when the ICJ is asked to adjudicate "public interest norms"'.[121] In this regard, the present study indicates that states have started to use Article 63 interventions as *de facto amicus curiae* submissions, evidenced by a surge in recent years, their predominant use to advance community interests, and the frequent inclusion of arguments beyond the interpretive scope of Article 63.[122] Yet, in contrast to the avenue available to states in advisory proceedings, Article 63 interventions constitute a 'higher cost' instrument, requiring substantially more work from both states and the ICJ and carry the additional risk that elements of the submissions fall outside the interpretative scope of Article 63 and are not considered. After all, Article 63 interventions require a declaration of intervention and written observations (often on admissibility and additionally on the subject-matter of the intervention),[123] the appointment of an Agent, the submission of a declaration with a wet-ink and authenticated signature in person at a pre-arranged meeting with the Registry, and the filing of both hard copies and a USB device, reflecting the Court's more traditional working practices.[124] Admissibility is decided by Orders of the full bench (at least 15 judges).[125]

Thus, this article joins the efforts of many scholars and argues that the ICJ should introduce the instrument of *amicus curiae* for states in contentious proceedings as a 'more flexible and less time consuming form of participation of third states to the proceedings'.[126] The specific design of such an avenue has been discussed by scholars and will not be elaborated in detail here, and the same applies to the extent to which the ICJ Statute permits the ICJ to introduce such an instrument for contentious proceedings.[127]

Instead, this article would like to briefly stress the point that the often-proclaimed shift from a bilateral, state centred order towards community interests must carry procedural corollaries, namely fairness, transparency and participation.[128] More specifically, the minimum standards and values often associated with community interests do not operate as self-executing absolutes, but their concrete meaning and application are provisionally specified through legal argument conducted under fair, open and transparent procedures.[129] In this

[119] See ICJ Statute, arts 34 and 66.

[120] Paula W Almeida, 'Other participants in judicial proceedings (*amicus curiae* and other forms of participation)' in Joanna Gomula and Stephan Wittich (eds), *Research Handbook on International Procedural Law* (Elgar 2024) 472.

[121] Jane A Hofbauer, 'Not Just a Participation Trophy? Advancing Public Interests through Advisory Opinions at the International Court of Justice' (2023) 22 The Law and Practice of International Courts and Tribunals 234, 234.

[122] A diagnosis already made decades ago by scholars, see eg Paolo Palchetti, 'Opening the International Court of Justice to Third States: Intervention and Beyond' (2002) 6 Max Planck Yearbook of United Nations Law 139, 142.

[123] Rules of Court, Articles 82, 83 and 86; see also eg *Allegations of Genocide* (n 57), Written Observations of Poland on the admissibility of its Declaration of Intervention, 13 February 2023 and Written observations of Poland on the subject-matter of its intervention, 5 July 2023.

[124] See ICJ Statute, Articles 42(1) and 52; Rules of Court, Article 82; see also *Allegations of Genocide*, Written Observations of Poland, Admissibility of Intervention (n 123) attaching '30 paper copies […] and the USB pen drive'; see also *Application of the Genocide Convention* (Order 2025) (n 48) para 35.

[125] See eg *Allegations of Genocide* (Order) (n 21).

[126] Palchetti (n 122) 165; see also Gaja (n 11) 121–22, 179.

[127] See eg Paula W Almeida, 'International Procedural Regulation in the Common Interest: The Role of Third-Party Intervention and *Amicus Curiae* before the ICJ' (2019) 18 The Law and Practice of International Courts and Tribunals 163–188; Anna Dolidze, 'Bridging Comparative and International Law: *Amicus Curiae* in the WTO and ICJ' (2015) 26 EJIL 851.

[128] See eg Armin von Bogdandy and Ingo Venzke, 'In Whose Name? An Investigation of International Courts' Public Authority and its Democratic Justification' (2012) 23 EJIL 7, 8–9; Benedict Kingsbury, Nico Krisch and Richard B Stewart, 'The Emergence of Global Administrative Law' (2005) 68 Law & Contemporary Problems 15, 29, 61.

[129] Cf Lon L Fuller, *The Morality of Law* (rev edn, Yale University Press 1969) 39; cf Thomas M Franck, *The Power of Legitimacy among Nations* (OUP 1990) 19–27.

regard, Habermas' discourse principle reminds us that '[o]nly those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse.'[130] On this analogy, inclusive and transparent procedure, though not sufficient on its own,[131] is a condition of legitimacy, especially for 'collective obligations', and hence participation should therefore be maximized.

Turning to doctrine, whenever a dispute before the ICJ concerns obligations *erga omnes* or *erga omnes partes*—which embody such commonly agreed minimum standards, and at times fundamental values meant to be defined, upheld, and enforced collectively—the Court should admit states as *amicus curiae* in contentious proceedings. Broad participation by states and (where appropriate, non-state actors) is then not merely desirable but essential to legitimacy. A 'low cost and commitment' avenue of *amicus curiae* submissions would serve this function by further incentivising third-state participation and allowing a broader scope of submissions. Overall, this would help 'introduce public interest considerations into the decision—and, indirectly, to impact on the development of international law'.[132] It would also do so with greater economy of resources for all actors involved, a salient consideration as litigation over 'collective obligations' expands while the Court and international organizations face resource and capacity constraints. Without such a channel, the practical gains promised by concepts such as obligations *erga omnes* and *erga omnes partes* risk becoming largely Pyrrhic.

In this regard, it is argued here that the ICJ has two broad choices. First, it may continue on the present path of relatively generous admission under Article 63 and, in order to give effect to the community-interest rationale, treat an interest based on obligations *erga omnes* or *erga omnes partes* as sufficient for the purposes of Article 62. Alternatively, it may adopt a more resource-conserving approach: tighten the admissibility requirements for Article 63 declarations[133] and declare inadmissible interventions that significantly exceed the interpretive scope of Article 63. Under this second approach, a legal interest resting solely on obligations *erga omnes* or *erga omnes partes* would be insufficient for Article 62 at least where the intervening state's interest would not be affected by the decision.[134] This stricter approach should, however, be contingent on the simultaneous introduction of *amicus curiae* submissions for states in contentious proceedings.

CONCLUSION

In conclusion, the study of interventions under Articles 62 and 63 of the ICJ Statute shows a pronounced turn toward 'community interest intervention' before the ICJ, driven above all by Article 63. Of the 90 Article 63 interventions analysed, 69 (about 77%) advance community interests; in contrast, only 7 of 20 Article 62 applications (35%) do so (Figures 1 and 2). Read through a 'costs and commitments' lens, the pattern is coherent: Article 63 is a comparatively low-cost, low-commitment avenue and has been used as a *de facto* vehicle for advancing community interests; Article 62 is higher-cost, demands a particularized legal

[130] Jürgen Habermas, *Moral Consciousness and Communicative Action* (MIT Press 1990) 66.

[131] Cf Franck (n 129) 19–27.

[132] Yaël Ronen and Yael Naggan, 'Third Parties' in Cesare P R Romano, Karen Alter and Yuval Shany (eds), *The Oxford Handbook of International Adjudication* (OUP 2013) 821.

[133] See eg *Application of the Genocide Convention* (Order 2025) (n 48) para 35, where the ICJ stated that a defect in form 'may be remedied after the expiry of the time-limit for filing a declaration of intervention, provided that the remedial action is taken within a reasonable period of time' instead of declaring interventions inadmissible.

[134] See eg Brian McGarry, 'Obligations *Erga Omnes* (*Partes*) and the Participation of Third States in Inter-State Litigation' (2023) 22 The Law and Practice of International Courts and Tribunals 273, 279; Béatrice I Bonafé, 'Interests of a Legal Nature Justifying Intervention before the ICJ' (2012) 25 Leiden Journal of International Law 739, 750; see for a more detailed discussion Jane A Hofbauer, 'Intervention: Expanding the Bilateral Dispute Settlement Model of International Proceedings' in Joanna Gomula and Stephan Wittich (eds), *Research Handbook on International Procedural Law* (Elgar 2024) 426–447.

stake, and remains largely a tool for outcome-driven, self-interest interventions. Taken together, the evidence indicates that, in recent years, states have been more willing to intervene to advance community interests—mainly through Article 63—whereas recourse to Article 62 remains concentrated in cases asserting a particularized legal interest. The choice between the two avenues thus correlates with the nature of the interest pursued and the procedural costs and commitments a state is prepared to assume, and it provides the basis for the ensuing assessment of the adequacy of existing avenues and the case for targeted reform.

However, the utility of Article 63 is limited by its interpretive scope, since states cannot address questions that lie outside treaty construction, such as facts, evidence, standards of proof, or the application of law to facts. Therefore, Article 63 submissions have limited practical effect, and states presently lack a suitable channel for advancing community interests in contentious proceedings before the Court. In order to align procedure with contemporary practice and to use resources more economically, the Court should allow *amicus curiae* submissions by states in contentious proceedings, particularly when obligations *erga omnes* and *erga omnes partes* are at issue. Properly designed, such a 'low-cost' channel would widen participation, bring community interest considerations to bear in a disciplined format, and assist the Court without disturbing party equality.

Looking ahead, it is argued that two policy paths are available. The Court could maintain generous admissibility under Article 63 and, to foster increased participation and give effect to the idea of community interests, accept that obligations *erga omnes* and *erga omnes partes* may satisfy the legal-interest threshold of Article 62. Alternatively, it could conserve resources by policing the scope of Article 63 more strictly and declaring inadmissible interventions that significantly go beyond treaty interpretation or suffer from formal defects and by making clear that a legal interest resting solely on obligations *erga omnes* and *erga omnes partes* is insufficient under Article 62. Yet, the second path is convincing only if coupled with the introduction of *amicus curiae* mechanism for states in contentious proceedings, particularly when obligations *erga omnes* and *erga omnes partes* are at issue. Such a channel would provide a 'low-cost' means for states to advance community interests, would secure broader participation when collective obligations are at stake, and would do so with greater economy of judicial and party resources.

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