The Conditions of Interest and Capacity to File a Lawsuit before the International Court of Justice

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Abstract

Jurisprudence agrees on the necessity of having an interest for the person filing his lawsuit so that it can be accepted, as it is considered the guarantee of the seriousness of the lawsuit and that it does not deviate from the purpose set by the law. The interest is the benefit that the plaintiff gains from resorting to the judiciary. The basic principle is that if a person's right is violated, he has an interest in resorting to the judiciary. Obtaining a ruling, and the condition of interest, is one of the most important objective conditions for accepting a lawsuit. Some jurists even considered interest not a condition for accepting a lawsuit, but rather its basis, meaning the basis of its existence. If interest is a necessary condition for the lawsuit to be accepted before the judiciary, then the plaintiff must have standing to file the lawsuit, as standing is the basis that justifies the existence of a person's right to sue, whether in its positive form (for the person with the right to sue) or in its negative form (for the person who has the right to sue). In confronting him), the characteristic in this sense is a distinction of the personal aspect of the right in the lawsuit. Capacity must also be proven by both parties, the plaintiff and defendant, otherwise the right to file a lawsuit is considered non-existent. In order for the judge to be able to consider the allegations submitted to him, the necessary conditions must be met, including capacity.

Keywords: Lawsuit Interest, Legal Standing, Capacity in Litigation.

1. Introduction

The judicial facility and the right to resort to it are guaranteed internationally and domestically, and this is what international agreements and domestic constitutions have approved, but this right is restricted by conditions, and these restrictions or conditions are in fact a guarantee to limit the arbitrariness in the use of this right (litigation), such as the restriction represented by the necessity of the availability of interest, as the relationship of interest to the lawsuit is a conditional relationship, so the absence of the condition of interest entails the absence of the lawsuit, and vice versa.

The capacity is the document that justifies the existence of the right to sue for a person, whether in its positive or negative form. In this sense, the capacity is a distinction of the personal aspect of the right to sue. In this sense, it must be present whether the request submitted to the judiciary is a substantive or urgent request, whether it is a request or an appeal against a ruling or a

grievance, and whether it is an original or incidental request. The capacity must also be proven for both parties, the plaintiff and the defendant, otherwise the right to file a lawsuit is considered non-existent. In order for the judge to be able to consider the claims submitted to him, the necessary conditions must be met, including the capacity. What is meant by capacity, and is there confusion and overlap between the conditions of capacity and interest? We will show this in this research, as we will dedicate it to explaining the meaning of interest and capacity in the international legal system, then after that we will differentiate between the two conditions, with a statement of the position of the International Court of Justice on that, then after that we come to the other question, which is, is it permissible to say that states have a capacity to protect international legitimacy, i.e. is it possible for a state to file a lawsuit before the international judiciary with the aim of protecting an interest related to the international community as a whole and not protecting its own personal interest? We will detail all of the above while standing on the opinion of international jurisprudence and the applications of the International Court of Justice in this regard, as an analysis of the position of international jurisprudence and judiciary will reveal and clarify that.

The First Topic

Interest Condition

There is a need to limit the use of lawsuits so that the right to resort to the judiciary is not abused, and the number of malicious lawsuits increases, which increases the burden of the judicial function, and the settlement of lawsuits is delayed. Therefore, it is necessary to have the condition of interest in the lawsuit, and this condition, as we will see, is a condition related to the plaintiff, as he is the opponent who files the lawsuit. The plaintiff who has the interest is the one who makes the request. The interest must be available to the one who makes the request, whether it is an original, incidental or temporary request. What is meant by the necessity of the interest being absent in the lawsuit is that the plaintiff obtains an advantage or benefit from it, i.e. he benefits from the ruling in his favor in the lawsuit. It has been said that the right of interest is the need for legal protection. .

Some jurists have defined interest as “the need for legal protection of the right that has been violated or threatened with violation, and the benefit that the plaintiff obtains by achieving protection.” .

Accordingly, we will divide the topic as follows:

The first requirement: The concept of interest condition in international law

The second requirement: The position of the International Court of Justice on the interest and the public interest of protecting international legitimacy

The first requirement

The concept of interest condition in international law

International law scholars have agreed on the necessity of the existence of interest as a condition that must be met by anyone who files a lawsuit before the international judiciary in order for it

to be accepted. It is not an exaggeration to say that interest is the basis on which the court relies to ensure the integrity of the claim after it has verified the establishment of its jurisdiction as well as the existence of a dispute between the disputing parties, and thus ensures avoiding malicious lawsuits that have no valid basis. This interest is present whenever there is a legal interest recognized and protected by the law, i.e. the emergence of a real need to initiate a lawsuit whose goal is to protect a right or legal position. Harm is also linked to the condition of interest, as it represents an infringement of a right or legitimate interest of one of the persons of international law. In order for international responsibility to be realized for any person of international law, it must be proven that the act attributed to him has caused harm to another international person and has affected his interests with this act, and it is the same whether the harm befalls the state itself or one of its subjects. We will address all of the above in this section, as follows:

Section One: Definition of Interest in International Law

Section Two: Harm is a condition for the availability of interest

The first branch

Definition of interest in international law

The first thing that should be noted and mentioned before addressing the definition of interest is that the Statute of the International Court of Justice does not mention interest except in the case of intervention in the case, and that is in Article (63) of the Statute of the Court.

The lawsuit is linked to the right that it was created to protect, and it exists because of its existence as a legal means that achieves this purpose. However, it is not, however, of absolute use, as there is a rule for its application, which is that the person who resorts to it has an interest in the possibility of fulfilling his right, and the aforementioned meaning represents the content of the legal rule that says that interest is the basis of the lawsuit ( ).

The interest, as we mentioned previously, is the practical or real benefit that accrues to the plaintiff from the ruling in his favor with his requests. Or it is the need for legal protection of the right that has been violated or threatened with violation, and the benefit that the plaintiff obtains by achieving this protection ( )Meaning, it is an evaluative judgment that the person in need bestows on the means that guarantee its satisfaction in a legitimate manner.

This means that in order for the claim to be accepted, it is required to prove the elements of the claimed right. This matter represents the subject of the claim, and it is sufficient for the practical benefit of filing the claim to appear achievable. On this basis, the International Court of Justice accepted the request for intervention submitted by Italy in the continental shelf case (Libya v. Malta), saying, “As long as it fulfills the three conditions stipulated in the second paragraph of Article (81)( )From the rules of court Among them was the condition of legal interest. The interest must be legal in order for the lawsuit to be accepted. This does not mean that the lawsuit must be stipulated in the law, as was the case in Roman law, as the law at that time took over the confinement of lawsuits, their organization, and the giving of specific names to them. Rather, there is a legal interest whenever there is an interest that the law recognizes and protects, without

requiring that it be inferred from the relevant legal system. This interest of a legal nature requires that it be a case, i.e. that the need arises to initiate the lawsuit to protect the right or legal position through judicial intervention. In more precise terms, there must be a real dispute, not a supposed dispute over rights and obligations that requires judicial intervention to resolve it.)Until 1963, the comparison between the idea of a conflict in international law and the conditions for accepting a claim according to national laws indicated that it was consistent with the idea of an existing interest and status, but it was not consistent with the idea of a legitimate interest. As for the International Court of Justice, it has been particularly interested since 1962 in the conditions of interest and status in the claim according to the provisions of international law.)As we mentioned earlier, the Statute of the International Court of Justice was devoid of any definition or mention of the interest condition except in the case of intervention in the lawsuit. Moreover, the opportunity was not available to international courts to express their position regarding the interest condition until 1962, with the exception of one case, which was the Wimbledon case, which was presented to the Permanent Court of International Justice in 1923.

In the Wimbledon case, the court held that the basis for its compulsory jurisdiction required that the element of interest be present on the part of the plaintiff. In order to confirm the existence of this element, it went on to say that the plaintiff parties in the case undoubtedly had an interest in bringing it, given that each of them had a fleet of commercial ships that used the Cable Channel. The element of interest was present in the court's view even if there was no financial interest that had been harmed. .

In this case, the court considered the interest to be the benefit that the plaintiff seeks from his lawsuit, whether it is a practical or realistic benefit, as long as it exists and is recognized and protected by law.

The burden of proving the existence of an interest in the lawsuit falls on the plaintiff or affected state. The International Court of Justice confirmed this in the nuclear testing case between Australia and France in 1973, when it decided that it was the responsibility of the Australian government to prove that it had a legal interest in filing the lawsuit. Therefore, the memorandum issued by the Australian side was concerned with highlighting Australia's legal interest in the lawsuit ( )Accordingly, the International Court of Justice cannot continue to consider the case brought before it unless it is certain that there is a legal interest for the parties to the case. It is also worth noting that the legal interest must be a condition, i.e. that there is a need to initiate the case to protect the right or legal position that has been violated, through judicial intervention. It is the same whether this interest is material or moral, i.e. it is sufficient for evidence to appear that there is an interest for the parties or one of them in filing the case.)This matter in fact may make the condition of interest linked to the existence of the dispute, as there must be a real dispute between the parties to the lawsuit, each of whom claims that he has a legal interest in the case of filing the lawsuit or in his requests in it, and the ruling issued by the international court is what determines which of the two parties has a real and just interest, and which of the two has the opposite interest, and therefore we find that a part of international jurisprudence went to the possibility of claiming the existence of an interest without there being a right, and therefore a distinction was made between two hypotheses, the first is that the interest is just and this is

included within the rights, the second is that the interest is unjust, and this is nothing but power in its conflict with the right, which is the matter that the court decides by deciding the dispute between the parties. .

The second Topic

Harm is a condition for the availability of interest

Harm in international law is the infringement of a right or legitimate interest of one of the subjects of international law. The mere loss of the possibility of obtaining a profit is not considered harm, as it is necessary for the harm to occur that the act has infringed a right or interest protected under international law. .

The definition of damage was also included in the 1972 Convention on International Liability for Damage Caused by Space Objects, as Article 1 of the Convention included a general definition of damage, which is "loss of life, personal injury or other damage to health, or loss of or damage to the property of the State or of natural or legal persons, or of international governmental organizations." This definition clearly shows its limitations, as it is limited to material damage, not moral damage. Although international jurisprudence is almost unanimous in arranging international responsibility based on moral damage resulting from infringement on the sovereignty of the state, moral damage in the field of international relations may be much more serious than material damage, for example, the fear that peoples suffer as a result of the results of nuclear tests carried out by some countries, which is also considered damage that gives rise to responsibility. .

Accordingly, the condition for the realization of international responsibility for any person of international law is that it is proven that the act has caused harm to another international person, and it is the same whether the harm befalls the state itself or one of its nationals, since the harm befalling a citizen of the state is considered the same as the harm befalling the state itself, and thus it has the right to file a lawsuit on behalf of one of its nationals, thereby exercising its right to protect them. The International Court of Justice confirmed this in the Mavrommatis case between Greece and Britain in 1924, when it decided that although this dispute was initially between a natural person and a state, it entered the scope of international law after Greece took over the Mavrommatis case considering him one of its nationals and it became a dispute between two states. One of the basic principles of international law is that a state has the right to protect its nationals when they are harmed by acts that violate international law committed by another state, in the event that they are unable to obtain satisfaction through normal channels, and it is the same in this regard whether the state resorts to diplomatic action or to international justice, as in all cases it confirms its right to protect its nationals and ensure respect for the rules of international law.

Here the question arises about the type of interest that constitutes harm that gives rise to liability? Is there any importance to the fact that creates the harm? Finally, does the harm achieve an interest for the state that would allow its claim to be accepted before international courts?

Regarding the first question, which is the type of interest that is considered to be harm that gives rise to liability, here it can be said that the harm that gives rise to liability is the harm that affects an interest protected by law, and therefore harm to a simple interest is not taken into account.), and when the damage is not serious or grave in terms of its extent, it has not reached the minimum level to be considered damage that requires liability, but will only constitute harassment, nothing more. For example, modern technologies involve some waste that is considered harassment that everyone must bear, and the entire world has become a victim of this harassment, in which everyone is a participant. .

However, distinguishing between serious harm resulting from the infringement of a legal interest protected by international law, and ordinary harm resulting from the infringement of a simple interest, is not an easy matter, since the content and basis of this distinction raises confusion and lacks clarity. The question also arises about the law that determines the controls of this distinction: is it domestic or international law?

Here, international judiciary, represented by the International Court of Justice, settled on the fact that international law is the one that undertakes this task, in the Barcelona Turks case (Belgium v. Spain) in 1964. Spain, as the defendant, denied Belgium's interest in the case, and confirmed that the actions in question did not relate to a natural or legal person, but rather to a company, a legal entity registered in Canada, and the Belgian interests concerned take the form of shares in that company, and international law does not recognize any diplomatic protection with regard to the damage caused by a state to the company.)The Court concluded that the question of the right of any government to claim an interest in order to protect the interests of shareholders raises a question of precedent as to what the legal position was in relation to the interests of shareholders as recognised in international law. Thus, the applicant invoked rights which, it said, were given to it in relation to its nationals under the rules of international law relating to the treatment of aliens. Therefore, the Court's finding that it had no right to claim an interest was tantamount to finding that those rights did not exist and that the claim had no sound substantive basis.)Here, it distinguished between simple interest and that which is protected by law on the basis of a principle recognized by civilized nations, i.e. it established the distinction on the basis of general principles of law as a source of international public law. .

Now we come to the second question, which is related to the importance of the fact that created the harm. Here it must be noted that if it is accepted that the basis of international responsibility is the occurrence of the harm, then there is no great importance in examining the issue of the origin of the harm, as long as the occurrence of the harm has an interest in filing a lawsuit before the international judiciary to compensate for his harm. .

The Second Requirement

The position of the International Court of Justice on the interest and public interest of protecting international legitimacy

Here we review the position of the International Court of Justice on the idea of legal interest as a condition for accepting the lawsuit, through studying the case of North Cameroon, and then

after that we review the interest of the third state to intervene in the lawsuit, as we will divide the requirement as follows:

Section One: The position of the International Court of Justice on the interest condition

Section Two: The State's Interest in the Third Case to Intervene in the Case

The first branch

The position of the International Court of Justice on the interest condition

First: The facts of the case

Following World War I, Germany relinquished its overseas possessions, including Cameroon, to be placed under Article 119 of the Peace Treaty concluded in Versailles in 1919 under the mandate system stipulated by the League of Nations. The Cameroon region was then divided into two parts, one of which was subject to the French mandate, and the other to the British mandate. When the United Nations was established, the trusteeship system replaced the mandate system, so that these regions became subject to trusteeship under the supervision of the United Nations. In 1960, French Cameroon gained its independence, while the General Assembly recommended, in its 1959 recommendation numbered (1350), at its thirteenth session, to hold a referendum to determine the fate of this region in its two parts.)On February 11, 1961, a referendum was held among the people of the southern Cameroon region, and the result was their desire to join the independent state of Cameroon. As for northern Cameroon, the referendum held on February 11 and 12, 1961, revealed the people's desire to join Nigeria, which had previously gained its independence in 1960. .

Cameroon protested the result of the referendum and submitted a memorandum to the members of the United Nations in which it called on the General Assembly to cancel this referendum and not to recognize it and its effects, considering that the failure to separate the administration of the Northern Cameroon region from the administration of the Nigerian region, which was also under British administration, constituted a gross injustice. However, the General Assembly, by virtue of its Resolution No. (1608) in its fifteenth session in 1961, adopted the result of the referendum and decided to terminate the British trusteeship agreement over the aforementioned region. After that, attempts began by the State of Cameroon to conclude an agreement with Britain to refer the matter to the International Court of Justice to decide the dispute related to the application of the trusteeship agreement over British Cameroon. However, this request was rejected based on Article (19) of the trusteeship agreement concluded between this state and the United Nations, which stipulates that any dispute related to trusteeship that arises between the state that administers the region covered by the trusteeship and any member state of the United Nations shall be referred to the International Court of Justice. .

Second: The most important points of the Cameroonian petition

Below we will review the most important and prominent points contained in the petition submitted by Cameroon to the International Court of Justice:

1- Cameroon did not ask the International Court of Justice to annul the referendum that annexed the northern Cameroon region to Nigeria, but rather asked the United Nations General Assembly to do so;

2- Cameroon did not request the cancellation or modification of the General Assembly resolution approving the result of the referendum, and thus its claims and allegations of British breach of its obligations arising from the Trusteeship Agreement were rejected;

3- She did not claim any damage as a result, and therefore did not seek compensation of any kind;

4- All that I have asked of the Court is that, since the trusteeship has finally exhausted its purpose, Cameroon as the claimant State has no choice but to ask the Court to rule that the trusteeship agreement has not been respected by the State that has assumed the administration of the territory of Northern Cameroon, by virtue of a judgment having the force of res judicata ( ).

Third: The parties' views on the legal interest

Here, the court has been presented with two points of view revolving around the idea of legal interest in the lawsuit. The first, which was defended by the United Kingdom, is that there must be an element of interest among the opponents so that there can be a dispute as a condition for accepting the lawsuit. Such a dispute must have a specific subject so that there is a link of interest between him and the plaintiff in the lawsuit, as it is not reasonable, as British lawyer Sir John Hobson said, for a dispute to be built from a vacuum and on a vacuum.)Since Cameroon will not achieve any real interest from the settlement of the case, it follows that there is no real dispute, and therefore the case will not be accepted before the International Court of Justice. .

The second point of view, which represents the opinion of the State of Cameroon, is that Cameroon's interest lies in achieving moral satisfaction, by the court issuing a declaratory ruling revealing Britain's violation of its obligations arising from the trusteeship agreement over the northern Cameroon region, in other words, the court issuing a ruling declaring Britain's violation of the provisions of international law, and it is clear that Cameroon's interest, which it sought to achieve through filing this lawsuit, is primarily a political interest. .

Fourth: The position of the International Court of Justice on the dispute

In this case, the court essentially adopted the British viewpoint, but it did not make the existence of interest synonymous with the existence of a dispute. The court distinguished between the establishment of its jurisdiction to consider the case and the availability of the interest condition as a condition independent of the condition of the existence of the dispute, which it also considers one of the conditions for accepting the case. The court was very clear in distinguishing between the establishment of its jurisdiction to consider the dispute, on the one hand, and the availability of the conditions for accepting the case, on the other hand. Each of the two matters has its conditions that must be met. .

The court confirmed its jurisdiction to consider the dispute, and with regard to the argument advanced by England that there was no dispute between it and Cameroon, the court saw that

there was a dispute between the two countries at the time the suit was filed, and that the dispute revolved around the interpretation and application of the trusteeship agreement, but that does not necessarily mean that a ruling will be issued on the subject as long as there was no real dispute at the time of its issuance that included a conflict of legal interests between the parties.

The International Court of Justice distinguished between the date of filing the lawsuit and the date of its ruling. It requires additional conditions for ruling on the dispute, not just the mere existence of the dispute.)There must be a real difference in the legal interests of the disputing parties in order for the court to be able to exercise its judicial function of resolving the dispute before it. Perhaps this means that the element of the existing interest and the situation represented by the dispute does not match the element of the legal interest represented by the issuance of the ruling on the subject in a way that may affect the rights and obligations of the opponents.

The court concluded in this case that Cameroon has no legal interest in issuing such a ruling, because the function of such a ruling is to reveal a customary rule or interpret a treaty rule with the intention of applying it now and in the future, and this is not achieved in the case presented, because the agreement in dispute cannot be applied in the future due to its expiration due to the exhaustion of its purpose, and therefore there will be no legal interest for the claimant state in resolving the dispute in a way that affects its rights and obligations, and therefore the case must be rejected.

The second branch

The state's interest in the third to intervene in the lawsuit

The possibility of a third state intervening in cases before the International Court of Justice is determined by the existence of an “interest of a legal nature” that may be affected by the judgment in the case before it. Here, the meaning given by the International Court of Justice to this concept and the way in which the International Court of Justice uses it in its judicial decisions must be analyzed, in addition to examining the difference between the common civil term “legal interest” and the “interest of a legal nature” of the International Court of Justice and whether the International Court of Justice uses these two terms synonymously, and if the Court does not do so, what meaning the Court attributes to each of them.

Intervention in a case before the International Court of Justice is a legal means or procedure that only states are allowed to intervene in.The International Court of Justice has two legal entities that are not parties to the case, to intervene in the case before the court, to defend their legal rights and interests, especially if the judgment issued by the court would affect their legal interests. The Statute of the International Court of Justice has allowed intervention in two cases, the first according to the provisions of Article 62 of its Statute, as it has permitted every state that has a legal interest that could be affected by the judgment issued in a particular case to submit a request to do so. As for the second case, its provisions came in Article 63 of its Statute, as it allowed the states parties to a multilateral agreement to intervene in the case whose subject is the interpretation of this agreement.

Although intervention before the ICJ seems to be under-exploited, it is interesting to analyze its requirements and the ICJ's practice in this regard, paying particular attention to the notion of "state interest", which determines the entire procedure. Knowing how the Court understands the meaning of this concept can help in understanding the reasons why the Court examines a particular case and rejects others.

First: Definition of intervention in the lawsuit

Intervention before the International Court of Justice has a special concept that distinguishes it from other types of intervention, whether in the domestic or international judicial system. Intervention before the International Court of Justice is defined as an incidental procedure that is recognized by various legal systems in the world as a means or tool that grants third parties who are not parties to the case before the court the right to participate in the case to defend their interests and legal rights that may be affected, changed or affected by the ruling issued on the subject.

It is also known as a counterclaim to the original lawsuit through which a third country attempts to become a party to the lawsuit, based on the fact that it has a legitimate legal interest that aims to protect it by intervening in the lawsuit, or that it is a party to an agreement, the interpretation of which is the subject of the original lawsuit.

From the above, intervention before the International Court of Justice can be defined as an incidental measure submitted during the course of the original lawsuit and before the end of the written procedures stage and before the opening of the oral pleadings by a state that is not a party to the dispute, either:€In order to protect its legal interests and rights that may be affected or affected by the ruling in this case, or in order to intervene in the case whose subject is the interpretation of an agreement to which it is a party.

Second: Requirements for intervention in the lawsuit

There are two types of requirements, the first is legal, and the second is customary, and this is what we will discuss in detail in this section:

1- Legal requirements for intervention

The International Court of Justice represents a unique point of interest and tension in the UN Charter, which mandates it to adjudicate cases brought before the Court, to serve the stability of an increasingly interconnected community of nations. This tension arises when two states seek to resolve a dispute with multilateral implications. The clearest way in which the Court's founding texts address this possibility is by providing for intervention.

The term intervention may encompass different forms of participation within different dispute settlement frameworks, and scholarly definitions of intervention reveal the descriptive challenge of encompassing this range of mechanisms, even in the area of dispute settlement between states. In the proceedings of the International Court of Justice, the term generally refers to the voluntary participation of a third state in a dispute already pending between other states. This mechanism was established in Articles 62 and 63 of the Statute of the Permanent Court of International

Justice and its successor, the International Court of Justice. Article 62 of the Statute of the Court ( )It refers to the intervention of a third State on the basis of "an interest of a legal nature which may be affected by the decision in the case", and the International Court of Justice has interpreted two different forms of intervention under this provision, where a third State may intervene either as a party or as a non-party to the proceedings, and Article 63 of the Statute ( )A third State has the right to intervene if it is a contracting party to a treaty that the court is required to interpret.

Articles 62 and 63 of the ICJ Statute are terse provisions that leave much ambiguity in the requirements, processes and effects of intervention. Throughout its history, the Court has attempted to define these lines interactively – by revising the provisions of its supplementary rules, and developing its jurisprudence through its judgments and orders – in response to attempts at intervention. This case law has led to significant and unresolved disagreements among the Court's members on the fundamental character of intervention and its procedural aspects. A common theme among the Court's jurisprudence is that its jurisprudence in this area has been contradictory and suffers from an outdated tendency to view international dispute settlement from an overly dualistic perspective. This criticism would not have surprised early commentators on the intervention before the Permanent Court of International Justice, who described its perceived form as "an almost indefinable monster."a monstre presque indéfinissable))( ).

Since the essential requirement of Article 63 of the ICJ Statute is the membership of the third State in the treaty that the Court is called upon to interpret, the State's motives or interest in intervening under Article 63 are legally irrelevant to the Court's analysis of whether it has met this requirement. The requirement is fairly clear from the text of the Statute and has been implicitly confirmed in the Court's current practice. Several of the Article 63 declarations made in the recent case, Ukraine v. Russian Federation, referred at length to the interests of those States in fulfilling their obligations erga omnes. The complete absence of reference to this concept in the Court's June 2023 order authorising such interventions makes it clear that the nature of the State's interest is irrelevant to the question of whether its intervention under Article 63 is admissible. However, in practice there is a relationship between intervention and obligations erga omnes, and this relationship is reflected in the proceedings of the International Court of Justice in the more ambiguous requirements of intervention under Article 62. The jurisprudence of the Court may be said to indicate that a general phrase such as "interest of a legal nature" can be read to imply an evolutionary intention.), which calls for a relatively broad interpretation of Article 62 in the light of the increasing development of international law, and insofar as this maturity and development derives from treaties concluded and resolutions adopted under the auspices of the United Nations, the recourse to "subsequent agreement" and "subsequent practice" under Article 31(3)(a) and (b) of the Vienna Convention on the Law of Treaties( ), respectively, could also support an expansive interpretation of Article 62 of the Statute. In this light, it could be argued that the Court's tendency to reject requests for intervention under Article 62 risks damaging the "ordinary meaning" of its terms by expanding or leaving unresolved disputes with multilateral dimensions. For example, on 23 January 2024, Nicaragua applied for permission to intervene in the case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel). Intervention in genocide cases has become a trend recently, with 32 states intervening pursuant

to Article 63 of the Statute in Ukraine v. Russia and 7 states in Gambia v. Myanmar. However, Nicaragua's intervention is surprising because it did not invoke Article 63 but rather the Court's alternative intervention mechanism, Article 62. As noted, this Article of the Statute states that a third state may request intervention in a case when it has an interest of a legal nature in it that may be affected by the Court's judgment. Since 1945, there have been ten cases in which requests for intervention have been made pursuant to Article 62, and of these, only three have been successful. The Court has discretion to decide whether the conditions of Article 62 have been met, including whether the third party has It has established an "interest of a legal nature", and furthermore, Nicaragua seeks to intervene as a party to the proceedings, which is theoretically possible, according to the Court's case law, but has never happened ( ).

This is a very new procedural area. Nicaragua's argument is based on the nature of the obligations erga omnes imposes on all States Parties under the Genocide Convention. Nicaragua states that it "has interests of a legal nature which flow from the rights and obligations imposed by the Genocide Convention on all States Parties" and from "the universal character of the condemnation of genocide and the cooperation required to free humanity from such a horrendous scourge." In other words, if South Africa can have a position on the basis of an obligation erga omnes, other States should be able to intervene as parties because they have a similar legal interest. There is certainly a logic here, and scholars such as Ors and Jaya have called on the Court to adopt such an approach. But the Court has never yet accepted an argument of this kind. While the Court has noted that Article 62 "does not give it any general discretion to accept or decline a request for permission to intervene for reasons of policy alone," no interest of a legal nature has been established "simply on the grounds that all States have an interest in law." In the case of law, the Court has previously adopted a conservative position on intervention under Article 62 even when The legal interests of the State are successfully demonstrated. For example, the Court rejected two separate requests for intervention under Article 62 by Honduras and Costa Rica in the territorial and maritime dispute ( ).

However, this broad line of inquiry does not in itself support the claim that Article 62 should be interpreted as specifically covering obligations erga omnes.

Article 63 gives states the right to intervene in a controversial case when they are parties to a multilateral treaty that will be interpreted in the court's ruling, but this right is subject to the court's authority to declare the intervention inadmissible.

Second: Customary requirements for intervention

Over more than half a century, the International Court of Justice has developed a series of case law recognizing the right of States to bring international proceedings for violations of obligations relating to genocide, aggression, slavery, racial discrimination, and fundamental rights. In East Timor, the Court confirmed that this list included violations of the right to self-determination, and that the rights and obligations set forth in the Genocide Convention were absolute rights and obligations. The International Law Commission has noted that:ILC) later in its Commentary on the Articles on the Responsibility of States for Internationally Wrongful Acts (Arsiwa) states

that such “collective obligations may also relate to the environment or security of a region, or to a regional system for the protection of human rights.” .

While Article 42 of the( )(Arsiwa) Largely as a codification of the traditional requirement of direct interest, such as that arising from unique harm, Article 42(b)(2) refers instead to a breach of obligation, radically changing the position of “all other States” to which it owes a debt. The failure to require the status of “particularly affected” to invoke violations of international obligations under Article 42(b)(2) seems to find its closest basis in Article (48) of (Arsiwa).)Paragraph (1) of this article refers to “any State other than the injured State”, the term “any State” is intended to avoid any suggestion that such States must act together or in concert. Under subparagraph (1)(b), States other than the injured State may invoke responsibility if the obligation in question is owed “to the international community as a whole”. This provision is intended to give effect to the statement of the International Court in the Barcelona Traction case, where the Court established a “fundamental distinction” between obligations owed to particular States and those owed “to the international community as a whole”. On the latter issue, the Court noted that “given the importance of the rights in question, all States may be regarded as having a legal interest in their protection, i.e. obligations erga omnes.” The Court itself has provided useful guidance, referring, for example, in its 1970 judgment to “the prohibition of acts of aggression and genocide” and to “the principles and rules concerning fundamental human rights,” including protection against slavery and racial discrimination.)Thus, this article, which deals with obligations whose “primary purpose is to promote a common objective,” namely the interest, above any interests of the individual states concerned, such as the protection of a group of persons, seeks to achieve universality with regard to the invocation of responsibility, as it seems that(Arsiwa) The repetition between Articles 42(b)(2) and 48, which are virtually indistinguishable in all respects other than the nominal “injured” and “affected,” establishes the “uninjured” status of the State, and as will be shown below, this distinction is irrelevant to the intervention of non-States before the ICJ, which need not prove injury per se and which cannot in any case seek substantive remedies. .

Article 42(b)(2) recalls in particular the development of the principle by the International Court of Justice in the twenty-first century.erga omnes Partes, given the origins of this provision in the law of treaties( )In particular, while the ILC Commentary sets out Article 42 as theoretically including non-treaty obligations, the only examples of Article 42(b)(2) therein are drawn from treaty regimes, a disarmament treaty, a nuclear zone treaty, or any other treaty in which the performance of each party is effectively conditional and requires the performance of each party by the other parties.)The Commentary refers specifically to the Antarctic Treaty in this light as well, and in each of these cases the obligation is “integral” or interdependent, meaning that its performance by the responsible State is a necessary condition for its performance by all other States Parties. .

Despite the description(Arsiwa) for nuclear treaties as leading to collective interests, it is worth noting that the first request for intervention under Article 62 of the ICJ Statute - made in the nuclear testing cases - was based on a "state interest of a legal nature" only on direct injuries, such as "radioactive fallout deposited on its territory"( )While both the Article 62 request and the

requests for initiation in these cases referred to the special interest of each State (i.e. direct harm and other interests unique to the State), the parties also relied solely on community or public interests in interpreting the rules of the treaty.

Some members of the Court have held that the interests of States may have a purely political, rather than a "legal", character. In the case Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judge Oda held that "issues arising from the unstable conditions of a disintegrating State cannot constitute legal disputes before this Court, whose main function is to deal with the rights and obligations of States.")However, the Court found that the threshold of Article 62(1) is not met by the mere curiosity or intellectual interest of a third State in the development of international law, nor by interests of the same kind as those of other States in the region.

The second topic

Condition of the attribute

The capacity is one of the important topics in the Code of Civil Procedure, as it means the authority to initiate the lawsuit, which the plaintiff derives from being the owner of the right or from being the representative of the owner of the right, and it is a means by which the judiciary can know who has the right and give him his right, and who has the right and obliges him to return it to its owner, and it contributes to reducing the waste of time, effort and money of the judiciary and litigants alike, and working to move to a fair judiciary in the event of its application, and the idea of capacity in general has received special importance in the jurisprudence of law, and capacity has not received sufficient attention in international law, as it was not referred to in the Statute of the International Court of Justice, in addition to the confusion and mixing between it and the condition of interest, so we will divide this topic into two requirements as follows:

The first requirement: the nature of the capacity in international law.

The second requirement: the status of states in protecting international legitimacy.

The first requirement

What is the status in international law?

Before the judge begins to investigate whether the plaintiff's claim is well-founded or not, he begins by examining an important procedural issue, which is the availability of the conditions for the right to file a lawsuit, and among these conditions is the condition of standing. If it becomes clear to the judge that these conditions are available, he will move to the stage of examining the subject matter of the lawsuit, to decide whether the request is well-founded or not. If it becomes clear to the judge that the conditions specific to the lawsuit are not available, he stops at this point.)This condition means that the lawsuit must be filed by someone with standing against someone with standing, as the plaintiff is the owner of the right or legal position claimed or required to be protected, and the defendant is the negative party in this right or legal position. , in addition to the existence of a very important issue, which is the confusion and ambiguity

between the two conditions of interest and capacity, and for this reason we will address this issue after defining capacity in international law.

Accordingly, we will divide the requirement as follows:

Section One: Definition of the capacity in international law

The second section: The relationship between the two conditions of interest and quality

The first branch

Definition of the attribute in international law

If interest is a basic and necessary condition for accepting a lawsuit before international courts, the plaintiff must also have the capacity to file the lawsuit, and capacity means direct personal interest.).

Accordingly, the capacity has two aspects. The first is positive, in which the person who files the lawsuit is considered. In order for him to have capacity, he must be the owner of the right, and he has filed this lawsuit to establish the right or to protect it. The second aspect is negative, in which the other party is considered, who must be in the legal position of the one who has violated the right that is to be protected.

For example, the Barcelona Traction, Lighting and Energy Ltd. case, which Belgium brought against Spain with the aim of obtaining compensation from the latter for the damages that Belgium claims have been caused to one of its Belgian nationals who holds shares in the Canadian Barcelona Company as a result of a different course of action taken by the Spanish state apparatus. For its part, Spain has raised four preliminary objections, the third of which states that Belgium has no standing to bring the case, since the actions complained of were not related to any Belgian person, whether natural or legal, but rather related to the Barcelona Traction Company, which is originally a Canadian company ( ) .

The Court responded to this objection raised by Spain and confirmed that the traditional rule in international law authorizes only the State of nationality of the company to exercise diplomatic protection, and there is no rule in international law that gives such a right to the State of nationality of the shareholders.

Since the company is Canadian, Belgium has no standing to bring the case, and therefore the court cannot issue a ruling on any aspect of the case. Accordingly, the court rejected Belgium's case by a majority of 15 votes to one ( ).

Judge Jessop gave an independent opinion in this case, and the gist of this opinion was that states have the right in certain circumstances to bring a diplomatic claim on behalf of shareholders who are their nationals, because this is consistent with the continuous development of international law, and because the court must take into account a wide range of legal considerations before making any judgment, such as considerations of international justice, as well as the development of international law. However, Belgium was in fact unable to prove that the persons on whose behalf the claim was brought were of Belgian nationality.

The second branch

The relationship between the interest and quality conditions

There may be confusion and overlap between the conditions of interest and capacity in the international lawsuit, but the ruling of the International Court of Justice in the South West Africa case played a major role in removing this confusion. We will discuss this issue in detail later. In the aftermath of World War II, South Africa refused to convert the mandate system it was practicing in the South West Africa region from a mandate instrument to the trusteeship system provided for by the United Nations Charter of 1945. In 1960, both (Ethiopia and Liberia), as countries concerned by the mandate system, filed a lawsuit against South Africa due to the policy of racial discrimination it was practicing in the region. For its part, South Africa argued that both countries lacked the capacity to file the lawsuit, and therefore demanded that it be rejected. Here, the court found that the plaintiffs in the case (Ethiopia and Liberia) had the capacity to file the lawsuit, as they were members of the League of Nations, and that this capacity stemmed from the text of Article 7 in the Mandate Instrument, which stated: "Any dispute whatsoever between the mandated states and any member of the League of Nations.")Here, the status of the states was correct as members of the League of Nations, as stated in the aforementioned article. As for the subject of the lawsuit, they had no existing interest, as neither of them nor their nationals had suffered any harm from South Africa. Based on that, the court concluded to reject the lawsuit filed by the two states (Ethiopia and Liberia) which had been filed against South Africa, because neither of them could prove that it had an interest in filing this lawsuit before the court.

While some international jurisprudence denied the existence of the condition of capacity as a condition for accepting a lawsuit before international courts, on the pretext that the plaintiff and the defendant appear before the judiciary by prior agreement, the ruling in the South West Africa case issued in 1966 is considered one of the most prominent international judicial precedents regarding the application of this condition ( ).

The attribute expresses the person's relationship to the right that is the subject of the lawsuit, i.e. the person must have a document that justifies his appearance in the lawsuit, such as being the owner of a right or the legal status ( )The purpose is that the plaintiff in the lawsuit is the owner of the right or legal position that is required to be protected, and that the defendant is the aggressor against this right or legal position. The capacity in the lawsuit is only proven for the parties to the lawsuit to whom the rights and duties arising from it are attributed, and the judicial ruling issued in it is evidence for them and against them. .

To clarify further, the confusion between the two conditions is not only in international law, but also in domestic laws. There is a group of jurists who believe that the condition of direct personal interest is the same as the condition of capacity in the lawsuit, when the one filing the lawsuit is the right holder himself. In this case, capacity is mixed with direct personal interest, but a distinction is made between direct interest and capacity in it when the one filing the lawsuit is someone other than the right holder, but he files it as a representative of the right holder.

Since the legislator did not specify the capacity in the lawsuit, but rather did not include it among the conditions for accepting the lawsuit, therefore jurisprudence differed in defining it, and the

reason is that the legislator did not define it, but rather limited it to a condition of the conditions for accepting the lawsuit. Some have gone so far as to say that it is a description of the interest, since the interest is the only condition for accepting the lawsuit, and the capacity is a description or condition of the conditions of the interest. The prevailing opinion holds that the capacity is a condition in the lawsuit, and it is a condition independent of the interest, because the interest means the benefit that returns to the person from his lawsuit.

As for the capacity, it means the authority to directly file the lawsuit that is granted to the person who has the right that has been violated or threatened, and it is the personal aspect of the lawsuit, i.e. it is brought by the person with the positive capacity against the person with the negative capacity, the defendant. The person may have the interest but not the capacity.

Therefore, the capacity in the lawsuit is completely independent of the interest, as the latter seeks the benefit and advantage of the lawsuit, while the condition of capacity is the authority to directly file the lawsuit granted to the owner of the right that is being attacked or threatened with attack. The importance of capacity in the lawsuit comes from the need of the legal system to organize and determine who can access the court and who can file a legal lawsuit. It also ensures that cases are filed by authorized parties only, and thus contributes to avoiding the exploitation of the judiciary for illegal purposes or in a way that is not useful and effective.

The second requirement

The status of states in protecting international legitimacy

In principle, there is no problem regarding the right to file an international lawsuit as long as the harm resulting from the violation of international law has been inflicted on the state filing the lawsuit or one of its subjects. However, the real problem arises if the plaintiff state or one of its subjects has not been harmed as a result of the violation of international law. Will the state have the right to file its lawsuit before the international judiciary?

Is there a right for states to resort to international courts to ensure respect for international law? In other words, is it permissible for states to resort to courts to protect international legitimacy? Recognizing this role for states is very close to the idea of public prosecution known in national legal systems, and is also close to some systems that recognize the exercise of a role in protecting legitimacy whenever they see an attack on it, such as the Hisbah lawsuit known in Islamic law, and the popular lawsuit known in the Roman legal system.

To know the answer, we must look at the opinion of international jurisprudence and judiciary on this matter, as their positions on this matter did not agree, but rather they were divided between those who denied it and those who supported it. Accordingly, we will divide the topic as follows:

The first section: the position of international jurisprudence

Section Two: The Position of the International Court of Justice

The first branch

The position of international jurisprudence

International schools of jurisprudence have attempted to answer this question, which is the extent to which states can be recognized as having the capacity to protect international legitimacy. They base this on their view of the formation of the international community itself, and the extent of integration and development that this structure has reached. From here, we will review these different opinions and trends, as follows:

The first trend: completely denies the existence of such a characteristic.

The proponents of this trend argue that there is no general obligation on states to respect the rules of international law, so a state cannot claim that legal harm has occurred as a result of a violation of international law, and therefore it has a status that is the basis for accepting its claim before international courts. Saying that the harm resulting from a violation of international law is sufficient to accept a claim before international courts for compensation for what is called legal harm, without that violation affecting a personal and direct interest, is an unacceptable settlement.

In this regard, too, Verdrus says that in the event of a violation of the rules of customary law or an international treaty, intervention is only permissible, in principle, for states that are victims of the harm caused by the violation of international rules. What exists in other states with a purely ideal interest in the international legal system does not constitute a sufficient reason to submit claims.

This trend also emphasizes the need not to confuse the interest of a state in filing a lawsuit to defend its right against aggression, or to raise the responsibility of a state that has caused it harm, with what a state may claim of legal harm that has befallen it as a result of aggression against international legitimacy. The harm that triggers responsibility is the harm that befalls one of the subjects of international law in his relationship with the one who caused it, and it may be material or moral harm. As for the mere harm that one of the subjects of international law claims merely for violating the rules of international law, it does not necessitate raising the responsibility of the one who caused it.

The gist of this opinion is that there must be a violation of a personal and direct legal interest of the person filing his lawsuit before the international judiciary, in other words, the person filing the lawsuit must have the capacity to claim in order for his lawsuit to be accepted. Therefore, a lawsuit cannot be accepted if the plaintiff's demands are merely to restore the violated legal system to its proper place.

The second trend: Recognizing the attribute within certain limits

According to this approach, states have a personal and direct legal interest in seeing certain rules of international law respected, and the criterion to be referred to in determining these rules is based on their nature, content or source, as will be explained below:

First: The criterion of the nature of some rules of international law

There is a certain group of rules that are essential to the construction of the international legal system, as it cannot exist without them, and the violation of them results in harm to every member

of the international community, and therefore it has the right to raise the responsibility of those who violate these rules, and it has the capacity to file a lawsuit in this regard before the international judiciary, and an example of this is the rules related to maintaining international peace and security, such as the use of force or the threat of force as a means of resolving international problems. Tonkin believes that the rules related to peaceful coexistence create a right for every state, and therefore the responsibility of the state that will violate these rules includes all forms of responsibility, starting from compensation and reaching the application of deterrent penalties stipulated by international law.

According to Tonkin's logic, it can be said that states that are directly harmed by a violation of an international legal rule have the right to raise the responsibility of the aggressor state, but other states also have the right to take all necessary measures to refute this aggression and restore things to their proper place, all of this on condition that the international rule violated is of the type that concerns the international community in general.

Second: The criterion of the source of some rules of international law

When the International Law Commission of the United Nations drafted a draft codification of the rules of responsibility, the problem was raised regarding the extent of the responsibility of the States parties to an international treaty if its provisions were violated. The Dutch delegate wondered who has the right to raise the responsibility of the State that violated the provisions of the treaty? Is it the State that suffered direct harm as a result of this violation? Or is there a collective interest for all the parties to the treaty to ensure respect for its provisions? And thus, does any party have the right to address this violation?

Here some jurisprudential trends have emerged which see that there are some rules which, due to their source, generate a legal interest for states in ensuring their respect, and raise the responsibility of states that violate them, even if they do not suffer direct harm from that, and it is the same in that regard whether their source is custom or a legal treaty.

However, some jurisprudence gives the right only to the parties to the contractual treaty, believing in the traditional distinction between legislative and contractual treaties, and according to their approach, the parties to the contractual treaties alone have the capacity to guarantee respect for the provisions of this treaty.

Third: The criterion of respect for international law itself

This standard or trend is considered the most faithful to the sanctity and importance of international law, and the necessity of respecting its rules and ensuring their respect, to the extent that it is said that any violation of any international rule by any state is a legal harm, which allows all other states the possibility of raising the responsibility of the state that caused it. The supporters of this trend also separate between the establishment of responsibility in itself and the possibility of compensation for the harm, and they believe that the impossibility of compensation does not necessarily mean that the state is not held accountable for its violation of international law, since restoring things to their proper place is in itself sufficient compensation for the harm resulting from the violation of the provisions of international law.

The second branch

Position of the International Court of Justice

The International Court of Justice has considered a number of cases in which questions were raised about the extent to which states have the capacity to ensure international legitimacy and file a case before the international judiciary to hold accountable a state that violates it, regardless of the occurrence of personal and direct harm to the state or to the plaintiff states. An examination of the court's position in the precedents presented to it reveals to us the extent of the development that has occurred in its jurisprudence in this regard.

The most important precedent that has significance in this regard is the Barcelona Traction Company case (1970). In fact, the development that has occurred in the jurisprudence of the International Court in this regard has opened the way for numerous jurisprudential efforts to recognize the capacity of different countries to monitor respect for legitimacy, and justifies the acceptance of the lawsuit filed before the international judiciary against any other country that violates it.

Barcelona Tractor Case 1970

The facts of this case can be summarized as follows: On February 13, 1948, a judge in the Catalonia region of Spain, at the request of three bondholders of a company, issued a bankruptcy ruling.Barcelona Traction Light and Power Company Lit. and the removal of its Belgian director from this company and the seizure of all its properties in its various branches, and the dissolution of its board of directors, and since the shares of this company were owned by 75% by Belgian citizens, the Belgian government sought the Spanish government to secure protection for its citizens and negotiations were conducted in this regard for ten years without reaching anything, as a result of which Belgium filed a lawsuit on September 23, 1958 before the International Court of Justice demanding that Spain compensate for the damages incurred by its citizens as a result of the violation of international law by many Spanish state agencies against them. However, on March 33, 1961, the plaintiff state submitted to the court's registry a request to dismiss the lawsuit as a result of the start of another phase of negotiations between the two states regarding this dispute, but the second negotiations did not bear fruit in settling the differences between them, which prompted Belgium to file the lawsuit again on June 19, 1962 against Spain before the International Court of Justice, specifying the request that it had previously requested from the court in its first petition, which was to rule on compensation for the damages incurred With its citizens who are shareholders in this company as a result of the actions that are contrary to international law that many Spanish state agencies have taken against the company.).

What concerns us is the position taken by the ruling issued therein regarding the idea of the social interest in respecting international legitimacy, and thus the extent to which members of the international community have the capacity to resort to the judiciary to demand respect for the rules of international law.

The Court has taken a major step forward in recognizing this type of interest. In the Court's view, there are international rules that impose mutual obligations on those addressed by their

provisions, as is the case with the rules contained in bilateral treaties. Naturally, violating these rules does not allow non-parties to resort to the judiciary in defense of their rights and interests affected by this violation. Meanwhile, the Court has recognized the existence of another group of rules that concern the international community in general, and all members of that community have a legal interest in ensuring their respect, because they belong to the group of legal rules that are considered binding on all.erga omnes, a Latin term used with different meanings and connotations, including the legal interests of states.)The Court appears to have been influenced by the opposing opinions attached to the judgment in the South West Africa case - which we discussed earlier - in its mention of a list that includes some rules that are considered binding on all, as it mentions among them all the rules that these people mentioned in the aforementioned opinions. In this, the Court says that these obligations arise not only from contemporary international rules that prohibit acts of aggression and extermination (genocide).Ginocide( )But also from the principles and rules related to basic human rights, including the protection of racial discrimination, some of these rights have become part of the general international rules, and some of them have been approved by universal international documents. It also plays an important role in providing protection to humans as human beings.

However, the Court returns again in another part of its ruling to decide that at the international level, the legal means available to ensure respect for human rights do not recognize the capacity of states to promote the protection of victims of human rights violations, regardless of the nationality of these persons. After the Court began its judgment by taking a position from which it could be understood that there is a legal interest for states in ensuring respect for international legitimacy, it returned in its weak judgment to decide that part of these rules, which are agreed upon as binding on all, can only be demanded to be respected by states whose nationality the victims of the attack have. The Court tried to clarify that position by bringing an application derived from the treaty establishing the Council of Europe in its section on the protection of human rights, and decided that, within the framework of the Council of Europe, the problem of accepting the case (i.e. the case related to the protection of human rights) has been resolved by the European Convention on Human Rights, which has transferred to each State party to the treaty the right to complain to the Court about the violation of human rights by another State party to the same treaty, regardless of the nationality of the victim.

In his individual opinion appended to the aforementioned judgment, Judge Morelli attempted to dispel what might seem to be a contradiction in the various parts of the judgment, deciding that although international rules guaranteeing a certain treatment of foreigners are considered to be general rules of international law, and therefore obligate each State vis-à-vis other States, they are only applied by establishing a set of bilateral relations, in such a way that the State concerned is obliged to guarantee this treatment determined by those rules vis-à-vis other States, each with regard to its own nationals.

In fact, although the Court has moved forward with this judgment on the path of recognizing that States have a legal interest in ensuring respect for international law, and has thereby gone beyond its position in the critical judgment issued in the South West Africa case with the reactions it provoked, it has not gone so far as to recognize a claim of reckoning brought by any State to

ensure respect for any legal rule, but rather has limited its recognition of this legal interest of States in bringing a claim before the international judiciary to cases where the rule required to be respected is part of the general rules of international law, as has been rightly said - a peremptory international rule as defined by Article 53 of the Vienna Convention issued in 1969, which states that it is a rule that has been accepted and recognized by the international community as a whole.)Perhaps this is what prompted the court to call for the necessity of distinguishing between two types of legal rules, each of which produces a distinct group of international obligations: those obligations that states bear in the face of the international community as a whole, and those that arise within the framework of bilateral relations between different states. In fact, this ruling does not represent a single position of the court in a problem that jurisprudence and the judiciary have discussed regarding the extent to which there is a public interest for the international community that can be protected by a lawsuit, or in other words, the extent to which it is possible to resort to international justice to protect international legitimacy. Rather, this ruling represents a link in a chain of efforts aimed at recognizing the existence of such an interest, efforts that were crystallized in the work of the International Law Commission on establishing an integrated system of international responsibility, where a group of texts were created that were included in the draft law on international responsibility, in which it distinguished between what it called international violations, which include traditional forms of error that are considered an element of international responsibility and that are characterized by a personal nature, meaning that they arise in the mutual relationship between two or more states, and international crimes, in which the state commits an act directed against the international community as a whole.

2. Conclusion

Thus, after completing the study of the subject of the conditions of interest and standing to file a lawsuit before the International Court of Justice, and as Judge Lauterpacht sees it, the basic purpose of the court lies in its function as one of the tools for ensuring peace to the extent possible and through the law, and the court must also tend to be an important factor in maintaining the rule of law.

Accordingly, and since the role of the International Court of Justice is extremely important, as it represents the best and most secure means of resolving disputes, in addition to preserving international peace, and therefore, filing a lawsuit before this court must be in the correct manner to ensure the effectiveness of the rulings, in addition to the fact that the availability of the conditions represents a shield that protects the judiciary from any undermining of its legitimacy.

After completing the study of the conditions for filing a lawsuit before the International Court of Justice, we reached the following results:

1. International jurisprudence has agreed on the necessity of the interest of the person filing his lawsuit, so that it can be accepted, as it is the guarantor of the seriousness of the lawsuit and its not deviating from the goal sought by the law. However, the Statute of the International Court of Justice did not mention the interest except in the case of intervention, as the lawsuit is linked to the right that arose to protect it, and this means that it is required to prove the elements

of the right claimed, and it is sufficient for the practical benefit to appear behind filing the lawsuit, and the harm is a condition for the availability of the interest, and the harm either arises from an unlawful act, or from an unlawful act, or from an error, and in reality there is no great importance in searching for the origin of the harm, as long as its realization gives the harmed person an interest in filing the lawsuit before the international judiciary to compensate him.

2. The possibility of third parties intervening in cases before the court is determined by the existence of a legal interest, which may be affected by the judgment that will be issued in the case. Intervention is a legal means and procedure that allows states that are not parties to the case to intervene to defend their rights and legal interests, when the judgment affects them. Intervention has legal and customary requirements, and the question is raised about the extent of the international community's confidence in accepting requests for intervention according to Article (62) and on the basis of the interests of the international community as a whole. It seems that there is little desire among states to choose this position on the part of the court as well.

3. Like interest, capacity is a basic condition for accepting a lawsuit before the judiciary, and capacity is the justifying document for the existence of the right. It represents the personal aspect of the right in the lawsuit, and it has two aspects: positive, which means that the person filing the lawsuit has capacity, i.e. he is the owner of the right, and the other aspect is negative, i.e. the availability of capacity in the other party.

4. The conditions of interest and capacity are among the most overlapping and controversial conditions in international jurisprudence, so they may be viewed as one condition. However, the International Court of Justice in the South West Africa case removed this ambiguity and went on to say that capacity is the possibility of appearing before the judiciary as a plaintiff or defendant, while interest is the infringement of the legal status in the lawsuit, or an attack on it.

5. One of the topics that has raised wide controversy in the jurisprudence of international law is the capacity of states to protect international legitimacy. The opinion of jurisprudence differs. One side completely denies the existence of such a capacity, due to the lack of a general obligation on states to respect the rules of international law, and the second trend recognizes it but within certain limits. As for the International Court of Justice, its jurisprudence has undergone development in this regard, and these efforts have played a role in recognizing the capacity of states to monitor international legitimacy.

3. Recommendations

1- Given that the conditions for accepting a case before the International Court of Justice are not explicitly named, and that they have been derived from the practice of the court and the practices of international judiciary in general, we therefore propose to reconsider and define these conditions clearly and explicitly in the statute of the court or in its internal regulations, as defining these conditions is a matter of great importance that cannot be overlooked.

2- The necessity of explicitly recognizing the capacity of states to defend and protect international legitimacy, since providing the opportunity to states is a matter related to the international community as a whole, and therefore there must be a legal claim to defend it, and this necessity must take a positive legal form.

3- The necessity of establishing a law for international procedures, to keep pace with the new developments that have occurred in the function of international justice, in addition to keeping pace with renewed international problems.

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