CHAPTER 14

Intervention under Article 62 of the Statute

The judicial settlement of international disputes in general, and litigation before the ICJ in particular, have always been considered to involve two States. Save for a few exceptional cases, the immense majority of disputes submitted to arbitration or to the ICJ are strictly bilateral disputes in which third-party States have no role to play. However, it is unavoidable that in certain circumstances a third State may become involved in a dispute between two States and it may feel that it is entitled to some kind of participation in the process of resolving the dispute by application of the rules of international law. It is in these circumstances that the legal institution or “procedural faculty” of intervention plays a role.

Third-party intervention is a procedural device known to most legal systems. As judge Sette-Camara recalled in 1984:

When the founding fathers of the Statute of the old Court decided to find a place in the draft prepared by the Hague Advisory Committee of Jurists for the institution of intervention, they were not innovating in any way. They did nothing but introduce in the basic document of the Court a procedural remedy known and recognized by all the legal systems of the world as a legitimate means by which third parties, extraneous to a legal dispute, have the right to come into the proceedings to defend their legal rights or interests which might be impaired or threatened by the course of the contentious proceedings. (…)

2 The procedure of third-party intervention appears to be confined to contentious proceedings. In the Acquisition of Polish Nationality advisory proceedings, Romania requested a hearing citing Articles 62 and 63 of the Statute and the Court promptly replied that “Articles 62 and 63 of the Statute and the corresponding articles of the Rules only related to contentious procedure.” All the same, the Court was willing to give Romania a hearing under the terms of Article 73 of the Rules then in force (the direct ancestor of Article 66 of the current Statute) (PCIJ E 3, pp. 225, 220).
3 The expression was used by the Court (Malta/Libya Continental Shelf, Application to Intervene, Judgment of 21 March 1984, ICJ Rep. 1984, p. 28, para. 46). It was rendered into French as “faculté procedural.”
The Advisory Committee of Jurists of 1920 could not ignore a procedural institution which is present in all systems of law. As an indispensable instrument for the defence of the legal interests and rights of third parties in contentious proceedings it constitutes an important stage of procedural law in internal legal orders and it could not be set aside in the procedural structure which was being constructed as the first experiment of a permanent judicial body in international law.

(Malta/Libya Continental Shelf, Application to Intervene, Dissenting Opinion of Vice-President Sette-Camara, ICJ Rep. 1984, p. 71)

The Statute of the Court foresees two different modalities of intervention of third States in contentious proceedings: the frequently-labeled “discretionary intervention” or “intervention by leave of the Court,” under Article 62, and intervention “as of right,” under Article 63. The Court has clarified that there are important differences between these two modalities, beginning with the fact that only Article 63 may be said to confer a right exercisable by third States:

In any case, Article 62 and Article 63 have in common that they refer to the active aspect of intervention, i.e. when third States takes step in order to take part in a case that is already before the Court. The Court has also had occasion

4 Per contra, see the dissenting opinion of judge Abraham in the same case, ICJ Rep. 2011, pp. 447–451, paras. 5–14.