

Szymon Zaręba

Institute of Law Studies, Polish Academy of Sciences

ORCID 0000-0003-3226-4441

<https://doi.org/10.21697/2025.14.2.02>

THE EVOLUTION OF THE INTERNATIONAL COURT OF JUSTICE'S APPROACH TO THE RIGHT OF ACTIO POPULARIS BEFORE IT, BASED ON RECENT CASE LAW

Abstract: The article analyses the jurisprudence of the International Court of Justice (ICJ) relating to the admissibility of *actio popularis* before it prior to 2020 and then, against this background, demonstrates the extent to which continuity and change can be observed in the Court's subsequent case law on this topic. The article argues that while the ICJ's line of jurisprudence on *action popularis* has generally remained consistent, there has been an important and qualitatively significant evolution in the ICJ's position over the past few years. This is primarily evident in the Court's recent acknowledgement of the possibility of bringing *actio popularis* claims before it based solely on *erga omnes* norms of customary international law. The text signals some potential challenges this may present. It also highlights that the ICJ still does not seem willing to relax its expectations regarding procedural requirements, such as consent to jurisdiction, which significantly limits the potential impact of allowing *actio popularis* claims based on norms of customary international law.

Keywords: *actio popularis*, legal interest, International Court of Justice (ICJ), standing before the ICJ, international community

1. Introduction

The issue of the admissibility of a specific kind of group litigation, whereby an entity or an individual seeks relief in the interest of a larger community or, as some describe it, in the general interest, without having to demonstrate their own interest in pursuing the claim (so-called *actio popularis*),

has puzzled legal scholars since Roman times.¹ As international law developed, the question arose as to whether *actio popularis* was admissible before the international courts and tribunals, which began to be confronted with complaints and applications of this kind. Among them were the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea, the European Court of Human Rights and arbitration tribunals, all of which have had to address the issue to varying degrees. The manner in which they have done so has been largely determined by the norms under which they operate, including, in particular, the scope of competence granted to these courts and tribunals and the standing requirements for applicants. Consequently, there have been significant variations in their approaches to the issue. This makes it impossible to affirm a general right of *actio popularis* under customary international law and requires an assessment that takes into account the particular characteristics of the body in question.²

Even a brief analysis of the case law reveals that the most significant changes in the approach to *actio popularis* have occurred in the recent jurisprudence of the ICJ. This is partly due to the increased complexity of issues presented to the court, but mainly due to an increase in cases based on different legal grounds, enabling ICJ judges to rule on the admissibility of public interest actions relating to new areas and problems. Furthermore, as the principal judicial body of the UN with the broadest competence in terms of areas of international law and potential participants, particularly when it comes to resolving disputes between states,³ the ICJ has a well-established authority, meaning that its interpretation of many issues is generally followed by other international and national courts.⁴ This makes it legitimate to examine how the ICJ's approach to *actio popularis* has evolved and to draw lessons from this development.

For the purposes of this article, it should be noted that the term *actio popularis* will be used in a narrower sense than its most common meaning indicated at the beginning of this text. Instead, it will refer to a legal claim brought by a state against another before an international court regarding

¹ As for a general definition of *actio popularis*, see e.g. Aceves, "Actio Popularis – The Class Action in International Law", 356 and 398; Gould, *The Legacy of Punishment in International Law*, 9-10; Ragazzi, *The Concept of International Obligations Erga Omnes*, 210; the definition presented here refers directly to the main elements of their definition, which are very similar.

² Gattini, "Actio Popularis", para. 69.

³ Donoghue, "The Role of the World Court Today", 182, 184-186. This has led to it sometimes being referred to as "the World Court", such as in the article just cited.

⁴ Donoghue, "The Role of the World Court Today", 198-199.

violations of international law norms, when the state has not been directly injured but is acting in the public interest, i.e. on behalf of the international community and for the fulfilment of an obligation owed to the international community.⁵ This definition reflects a purely judicial approach, which refers to the right to bring a claim before the international courts and tribunals,⁶ and to proceedings before the ICJ in particular.

The 'direct injury', referred to in the definition, is a concept used by a number of scholars of international law to distinguish situations in which the legal interest of a particular state is directly infringed, from cases in which the connection is much less obvious, i.e. when a violation causes damage to the legal order as such or negatively affects the binding force of a certain norm of international law. Such scholars distinguish between states directly and indirectly (or not directly) injured or affected,⁷ sometimes also between objectively and subjectively injured.⁸ The author of this article is aware that this is not a commonly used term. For example, in its commentary on the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, the UN International Law Commission describes the terms direct and indirect, as well as objective and subjective, as possibly misleading in

5 This is a slightly modified definition of an *actio popularis* by Benzing, "Community Interests in the Procedure of International Courts and Tribunals", 395, which also includes some elements indicated in the definition put forward by Gould, *The Legacy of Punishment in International Law*, 10.

6 This is how Ahmadov, *The Right of Actio Popularis before International Courts and Tribunals*, 3 defines this approach. See, similarly, Tams, *Enforcing Obligations Erga Omnes in International Law*, 161, when he discusses the first of two different ways in which the notion of *actio popularis* is used in literature according to his research, i.e. the one restricted to questions of standing.

7 See e.g. Kawasaki, "The 'Injured State' in the International Law of State Responsibility", 22 and 28-31 but also authors cited by Ahmadov, *The Right of Actio Popularis before International Courts and Tribunals*, 40, 61, 132-133, such as a long-term ILC member N. Ushakov or long-standing ICJ judges R. Ago and S.M. Schwebel. See also a little bit different approach by Frowein, "Reactions by Not Directly Affected States to Breaches of Public International Law", 353-354 and Kwiecień, "A New Life for Actio Popularis in International Law? The Prevention and Punishment of Genocide as an Interest of 'the International Community as a Whole' before the International Court of Justice", 7-14, who use terms such as "directly affected" and "not directly affected" states or Bonafé, "La violation d'obligations envers la communauté internationale dans son ensemble et la compétence juridictionnelle de la Cour internationale de Justice", 148-163, who writes about "les Etats directement lésés" and "les Etats non directement lésés".

8 See e.g. Dupuy, "objectively" and "subjectively" injured states, cf. Dupuy, "Back to the Future of a Multilateral Dimension of the Law of State Responsibility for Breaches of 'Obligations Owed to the International Community as a Whole'", 1061.

the context in question,⁹ and deliberately refuses to use them. Instead, in Article 42 of the Draft itself, the ILC refers to states directly affected by a given violation as injured states,¹⁰ and in Article 48, which covers situations where the obligation breached is owed to the international community as a whole, it refers to other states interested in enforcing the responsibility of the state that has violated a given norm as states other than an injured state.¹¹ However, this distinction does not seem entirely correct from a systemic perspective. States may be directly affected or injured by a given violation when damage has been caused to their property, territory or nationals, but they may also be indirectly affected or injured when the violation weakens the binding force of a specific norm that protects an interest of all states (a norm valid *erga omnes*¹²), whose continued validity and respect is important to them as members of the international community.¹³ In such cases, states simply experience harm in a slightly different way. However, as the main purpose of this article is not to evaluate the accuracy of the solutions set out in the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, the aforementioned terminological differences have only been noted here and will not be analysed further or in greater detail.

The purpose of this article is to demonstrate that there has been an important and qualitatively significant evolution over the last few years

9 International Law Commission. “Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries”, 116 but the ILC does not provide any explanation why they are misleading in the commentary in question.

10 International Law Commission, “Draft Articles on Responsibility of States for Internationally Wrongful Acts”, Article 42.

11 See International Law Commission, “Draft Articles on Responsibility of States for Internationally Wrongful Acts”, Article 48. Some scholars, such as Thirlway, “Injured and Non-injured States before the International Court of Justice”, 311 refer to “non-injured states” instead of this lengthy term. However, this notion mistakenly suggests that states in question do not suffer any damage at all as a result of violations of various types of norms. From their perspective, indirect damage may be the e.g. the erosion of the legal order regulating a specific issue or field.

12 These are the ‘obligations of a state towards the international community as a whole’, which “by their very nature” are ‘the concern of all states’, and ‘all states can be held to have a legal interest in their protection’. See *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Second Phase, ICJ Judgment of 5 February 1970, I.C.J. Reports 1970, para. 33. This concept and the judgment will be discussed in more detail in the next chapter.

13 Interestingly, even the ILC itself recognised the moderate consistency of its draft with the ICJ’s case law on the issue in question, which will be discussed in more detail below. The ILC noted in its commentary e.g. that the ICJ referred to states with an interest in compliance with *erga omnes* norms as interested states. See International Law Commission, “Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries”, 126.

in the position of the ICJ regarding the concept of *actio popularis* and, in particular, in relation to the possibility of basing public interest claims on *erga omnes* norms of customary international law. The text assumes the ICJ's recent jurisprudence covers the period from the issuance of the first orders in *Gambia v. Myanmar* in 2020 to the most recent advisory opinion on states' obligations in relation to climate change issued in 2025, i.e. the last 5 years. To illustrate the evolutionary changes between the earlier body of jurisprudence and the most recent one, the article first analyses the ICJ's approach to the applications filed in public interest before 2020. It then discusses the evolution of the ICJ's position against this background. It concludes with a summary highlighting the key differences in case law from the two periods.

2. *Actio popularis* in the Jurisprudence of the ICJ before 2020

To assess how the ICJ's approach to the concept of *actio popularis* has evolved in recent years, it is first necessary to outline how the court has addressed it previously.¹⁴ The key case in which the possibility of public interest litigation before the ICJ arose, and the only one to date in which this term has been explicitly used by the Court in the reasoning of the judgment, was the joint *Southwest Africa* case (*Ethiopia and Liberia v. South Africa*). In this case, the applicant states attempted to enforce South Africa's compliance with its obligations under the former League of Nations' mandate over Southwest Africa. However, the controversy was over whether there were procedural grounds for that, specifically whether they had the right of standing before the Court to protect the interests they were arguing for. Ethiopia and Liberia maintained that the ICJ had to recognise their legal interest in the case and allow them to take action, as there was no real possibility for UN political bodies to enforce South Africa's obligations (the necessity argument).¹⁵ However, in its 1966 judgment, the ICJ demonstrated that the mandate system was administered by the organs of the League of Nations, particularly its Council, and that individual League members had no treaty authority to take

¹⁴ Due to the scope already outlined, this article deliberately does not analyse the case law of the Permanent Court of International Justice (PCIJ), in which, according to many scholars, the issue of *actio popularis* was treated differently. This is most notably seen in the judgments in *Wimbledon* (1923), *Certain Interests in Polish Upper Silesia* (1925), or *Interpretation of the Statute of the Memel Territory* (1932), cf. e.g. Gattini, "Actio Popularis", paras. 11 and 13.

¹⁵ *Southwest Africa cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Second Phase, ICJ Judgment of 18 July 1966, I.C.J. Reports 1966, para. 85.

legal action in this regard.¹⁶ Of course, the League of Nations had long ceased to exist by the time of the judgment, but the UN was its legal continuation, so it was the UN's organs that should have taken action, rather than the individual UN members, which at the time were Ethiopia and Liberia, argued the Court.¹⁷

It could be argued that in *Ethiopia and Liberia v. South Africa*, the ICJ developed its interpretation previously applied in its 1949 advisory opinion on *Reparation for Injuries Suffered in the Service of the United Nations*. In that opinion, the ICJ noted that 'only the party to whom an international obligation is due can bring a claim in respect of its breach'.¹⁸ By its logic, the suing states were not the ones to whom the international obligations in dispute existed, and therefore could not bring a claim in respect of its alleged violations by South Africa. The ICJ stated that accepting the necessity argument to grant standing to Ethiopia and Liberia due to the absence of other means of enforcing the mandate's obligations would be to accept precisely the existence of *actio popularis*.¹⁹ In doing so, the ICJ explicitly defined the concept in question as 'a right resident in any member of a community to take legal action in vindication of a public interest'.²⁰ This has been the only time so far that the ICJ has used this term and presented its own definition of it.

The Court then stated unequivocally that, while such a right may exist in certain national legal systems, 'it is not known to international law

¹⁶ Cf. *Southwest Africa cases*, paras. 80-87, and especially paras. 81 and 84.

¹⁷ Cf. *Southwest Africa cases*, para. 93 as regards the continuation of the League of Nations by the UN. There, the ICJ explicitly indicated that the role of the Council of the League of Nations should be performed out by the UN General Assembly, or by the Security Council in special cases.

¹⁸ *Reparation for Injuries Suffered in the Service of the United Nations*, ICJ Advisory Opinion of 11 April 1949, I.C.J. Reports 1949, pp. 181-182 (no paragraphs).

¹⁹ See *Southwest Africa cases*, para. 88. It is worth noting the opinion of Tams, *Enforcing Obligations Erga Omnes in International Law*, 68-69, that in fact, neither Ethiopia nor Liberia referred to the concept of *actio popularis* in the case; they simply interpreted Article 7(2) of the Mandate for Southwest Africa differently to South Africa. This article provided a mechanism for settling disputes between a mandatee and another member of the League of Nations concerning the interpretation or application of the mandate's provisions. The ICJ took the view that this provision served only to protect the "special interests" of the aggrieved states in the event of a direct violation by the mandated power, thus giving it a bilateral dimension, cf. *Southwest Africa cases*, paras. 66-71. Cf. also Chow, "On Obligations Erga Omnes Partes", 477 and especially 480, who argues 'At the very most, the majority in the 1966 judgment simply stated that the concept of *actio popularis* did not exist in general international law at that time'.

²⁰ *Southwest Africa cases*, para. 88. See also ICJ, *Statute of the International Court of Justice*, 26 June 1945, <https://www.icj-cij.org/statute>.

as it stands at present' and cannot be derived from the general principles of law set out in Article 38 of the ICJ Statute.²¹ Ultimately, therefore, neither applicant state had a legal interest in bringing an action against South Africa.²² In practice, this conclusion created a presumption against the existence of treaty-based enforcement rights irrespective of individual injury and formed the basis of a restrictive approach to standing before the ICJ.²³ However, it should be noted that the judgment in the case under review, which ultimately rejected Ethiopia's and Liberia's application due to their lack of legal standing, was one of the most contentious in the Court's history. It was decided by the casting vote of the ICJ President, as the other judges were evenly divided, with seven votes for and seven against.²⁴

Although the ICJ has not referred directly (explicitly) to the concept of *actio popularis* in any subsequent judgments, this does not mean that it has not confronted issues inextricably linked to it for almost 50 years. In an *obiter dictum* in the 1970 *Barcelona Traction* case judgment, the judges of the Court distinguished between 'the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State'.²⁵ They

21 *Southwest Africa cases*, para 88. Article 38 of the ICJ's Statute lists the sources of international law the Court uses to decide disputes submitted to it. Ahmadov, *The Right of Actio Popularis before International Courts and Tribunals*, 97 rightly states that, as it was literally included in the reasons for the judgment, this statement was 'factually mistaken', and he cites the correct view expressed in Judge Jessup's dissenting opinion that 'there is no generally established action popularis in international law'. A similar opinion had been expressed earlier in Judge Winiarski's dissenting opinion in the Preliminary Objections judgment in the same case (which was also critical of the existence of *actio popularis* before the ICJ), and it was most probably the first time the notion had been used in the Court's official documents. See Aceves, "Actio Popularis – The Class Action in International Law", 356.

22 *Southwest Africa cases*, para. 99. Cf. also Benzing, "Community Interests in the Procedure of International Courts and Tribunals", 396.

23 Tams, *Enforcing Obligations Erga Omnes in International Law*, 69; similarly De Wet, "Invoking obligations erga omnes in the twenty-first century: Progressive developments since Barcelona Traction", 13. As Alland, "Countermeasures of General Interest", 1235, observes in relation to this judgment, 'the allegation of a breach of an obligation erga omnes remains an allegation, and is no 'open sesame' to universal judicial action'. Benzing, "Community Interests in the Procedure of International Courts and Tribunals", 396 even argues that the judgment left in doubt the possibilities for judicial enforcement of common interests.

24 *Southwest Africa cases*, paras. 99-100. See also and Kwiecień, "A New Life for Actio Popularis in International Law? The Prevention and Punishment of Genocide as an Interest of 'the International Community as a Whole' before the International Court of Justice", 4-5. Ahmadov, *The Right of Actio Popularis before International Courts and Tribunals*, 79 fn. 10 actually references a lot of criticism of the judgment in the literature.

25 *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Second Phase, ICJ Judgment of 5 February 1970, I.C.J. Reports 1970, para. 33.

noted that obligations belonging to the former group are, by their very nature, ‘the concern of all states’, and, by virtue of their importance, ‘all states can be held to have a legal interest in their protection’. The Court termed these obligations *erga omnes*, citing the obligations to refrain from acts of aggression, genocide,²⁶ slavery and racial discrimination²⁷ as examples.²⁸ From the further course of its reasoning, it could be inferred that when a state has a legal interest in respecting such an obligation, it can bring a claim to the ICJ for its violation, even when it or its citizens are not harmed.²⁹ However, the Court did not make this entirely clear, and

²⁶ As regards genocide, the ICJ referred to its 1951 Advisory Opinion, in which it stated, nearly 20 years earlier, that the Genocide Convention had special characteristics, and that ‘in such a convention, the contracting states do not have any interests of their own; they merely have a common interest in accomplishing the high purposes for which the convention was established’, see *Reservations to the Convention on Genocide*, ICJ Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, p. 23 (no paragraphs). However, there was no mention of the *erga omnes* status of its norms at the time. This link was established much later, in the 1990s in the *Bosnia and Herzegovina v. Yugoslavia* case, which has just been cited.

²⁷ These norms were confirmed as *erga omnes* in subsequent judgments, with other *erga omnes* norms having also been identified prior to 2020, although without any mentions of *actio popularis*, see, among others, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Preliminary Objections, ICJ Judgment of 11 July 1996, I.C.J. Reports 1996, para. 31 (prohibition of genocide and Genocide Convention norms); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Advisory Opinion of 9 July 2004, I.C.J. Reports 2004, paras. 155-158 (right of peoples to self-determination, a number of norms of international humanitarian law); *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, ICJ Judgment of 20 July 2012, I.C.J. Reports 2012, paras. 68-69 (prohibition of torture and Torture Convention norms); *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, ICJ Advisory Opinion of 19 July 2024, I.C.J. Reports 2024, paras. 96 and 232 (great many of the rules of the Fourth Geneva Convention, the right to self-determination, the obligation arising from the prohibition of the use of force to acquire territory, certain obligations under international humanitarian law and international human rights law).

²⁸ *Barcelona Traction, Light and Power Company*, para. 34.

²⁹ Inferring a *contrario* from its further observations in *Barcelona Traction, Light and Power Company*, para 35. This is also the conclusion drawn from this judgment by Tams, *Enforcing Obligations Erga Omnes in International Law*, 162-165. According to Benzing, ‘Community Interests in the Procedure of International Courts and Tribunals’, 396 in *Barcelona Traction* the ICJ reversed the rule established in the *Southwest Africa* judgment (likewise, Gattini, ‘Actio Popularis’, para. 14), but this seems like a step too far. The author of this article’s approach is closer to the view expressed by Couvreur, ‘The International Court of Justice and the Effectiveness of International Law’, 258 that the Court nuanced its position by ‘confirming that a State must have a legal interest, but at the same time suggesting that this would automatically be the case in the event of a violation of an *erga omnes* obligation’. Just how much interpretation this judgment allows can be seen also in the opinion of Villalpando, ‘The Legal Dimension of the International Community: How Community Interests Are Protected in International Law’, 410-411, who notes that in the *Barcelona*

further on in the judgment's reasoning, it mentioned that the specific nature of obligations concerning fundamental human rights did not give all states legitimacy to bring a claim on this basis. This led some authors to reach a different conclusion as to the effects of the *erga omnes* norms and their impact on the standing before the Court.³⁰

Since the Barcelona Traction judgment, references to *erga omnes* norms have appeared in ICJ rulings on a number of occasions, but only in some cases in the contexts on which this text focuses.³¹ One such case was the *East Timor* case (*Portugal v. Australia*). Portugal sought to assert Australia's responsibility in relation to the Timor Gap Treaty signed with Indonesia in 1989. It claimed that Australia's actions violated the right to self-determination of the people of East Timor. Portugal was the formal administering power of East Timor, which was then under the armed control of Indonesia. It argued that the right to self-determination was *erga omnes*, and that as a result of Australia's violation of this right, Portugal was entitled to demand that Australia respect it, regardless of whether another state (in this case, Indonesia³²) had also acted inconsistently with it or not.³³ This was an attempt to circumvent the rule established by it in the *Monetary Gold* judgment of 1954, which stated that the Court could not decide on an issue if doing so would legally and logically require it to rule on the rights and obligations of a third state not involved in the proceedings, without its consent.³⁴

Traction case the ICJ applied 'the very same test which had led it to reject the applications in the controversial *South West Africa* cases' and absolutely did not contradict the 1966 judgment.

30 See e.g. Czapliński and Wyzomska, *Prawo międzynarodowe publiczne. Zagadnienia systemowe*, 766; cf. specifically *Barcelona Traction, Light and Power Company*, para. 91.

31 The ICJ has also sometimes used the notion of *erga omnes* not so much to denote norms, but rather the legal effects of certain actions, e.g. in *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, ICJ Judgment of 20 February 1969, I.C.J. Reports 1969, paras. 14 and 35 the Court ruled on the *erga omnes* effectiveness of the delimitation of maritime zones.

32 Portugal indicated its own and Australia's declaration under Article 36 of the ICJ Statute as a basis for the ICJ's jurisdiction over Australia but found no procedural avenue to sue Indonesia because the latter had not made an analogous declaration. Cf. *East Timor (Portugal v. Australia)*, ICJ Judgment of 30 June 1995, I.C.J. Reports 1995, para 1.

33 *East Timor (Portugal v. Australia)*, para. 29.

34 d'Argent, "The Monetary Gold Principle: A Matter of Submissions", 149-150. See also *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America)*, ICJ Judgment of 15 June 1954, I.C.J. Reports 1954, 33 (no paragraphs).

The ICJ agreed that the right of peoples to self-determination was already one of the essential principles of contemporary international law and *erga omnes* in nature but made it clear that state consent to jurisdiction was a separate issue that could not be ignored. It stated that, regardless of the nature of the obligations raised, it could not rule on the lawfulness of a state's conduct if doing so would imply an assessment of the lawfulness of the actions of another state, particularly if that state was not a party to the case. Therefore, it can be concluded that the ICJ neither confirmed nor explicitly questioned the possibility of bringing a state before the Court based on a customary *erga omnes* norm, nor the existence of a legal interest of an applicant state in such a case.³⁵ It merely ruled out the possibility of circumventing the procedural requirement to bring a case against all states involved in a given violation of international law by invoking such a norm.³⁶ It can therefore be concluded from the Timor-Leste judgment that actions to enforce, through the ICJ, compliance with the *erga omnes* norms cannot be taken against a state condoning a particular violation without bringing before the Court also the state committing it³⁷ and in the absence of the consent of such a state to the jurisdiction of the Court in a particular case.³⁸

The first clear confirmation of the admissibility of proceedings against a state before the ICJ based on *actio popularis* came in the *Belgium v. Senegal* case, which was decided in 2012. In this case, Belgium accused Senegal of failing to extradite or try former Chadian president Hissène Habré, who resided in Senegal,³⁹ in contravention of the latter's obligations under

35 Contrary to what Gattini, "Actio Popularis", para. 15 argues, the ICJ did not explicitly recognise the legal interest of Portugal to sue Australia for the alleged violation of the right of self-determination being an obligation *erga omnes*, the Court did not resolve this issue in the reasons for its judgment. One could try to argue that it indirectly acknowledged this by stating the existence of a legal dispute (cf. *East Timor (Portugal v. Australia)*, paras. 21-22), given that the ICJ addressed the legal allegations raised by Portugal in general terms. These allegations concerned not only the right to self-determination, but also the violation of Portugal's rights and obligations as the administering State of East Timor, as well as of the UN Security Council resolutions.

36 *East Timor (Portugal v. Australia)*, para. 29.

37 So, rightly, Tams, *Enforcing Obligations Erga Omnes in International Law*, 184. However, the ICJ did not explicitly consider the standing of Portugal, see Kawasaki, "The 'Injured State' in the International Law of State Responsibility", 30.

38 Ahmadov, *The Right of Actio Popularis before International Courts and Tribunals*, 138 and 143.

39 However, it should be noted that several criminal proceedings were brought against Hissène Habré in the Belgian courts. One of these proceedings was initiated by a Belgian citizen

the 1984 UN Torture Convention (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). Having analysed the object and purpose of the 1984 Convention, the Court concluded that its parties share a common interest in ensuring that perpetrators of torture were brought to justice and did not go unpunished. This common interest implies that each state party to the Convention has obligations towards every other state party, and that protecting the relevant rights justifies a state's legal interest in seeking compliance. The ICJ emphasised that the obligations under the Convention are independent of the nationality of the perpetrators or victims, and of the place where the alleged crimes were committed. It explicitly noted that these obligations are applicable *erga omnes partes*,⁴⁰ so that they constitute obligations arising from treaty norms, which, in view of the circumstances discussed by the Court, are *erga omnes* in nature. This was an important, precedential statement at the time.⁴¹ The Court also emphasised that, in the event of a violation of such norms, the existence of a common interest entitles one to make a claim concerning the cessation of an alleged breach⁴² and that, on this account, a state party to the Convention has standing to invoke the responsibility of another state party for the alleged breaches.⁴³ It should be noted that the ICJ's jurisdiction over the case was made possible by both parties being bound by the 1984 Torture Convention, which contains a compromissory

of Chadian origin, while the other two were initiated by individuals with dual Belgian and Chadian nationality. In these cases, one could argue that diplomatic protection of nationals was in place, as indicated by the ICJ in the *Barcelona Traction* case as being the opposite of *actio popularis*. Conversely, 18 other criminal proceedings were initiated at the request of Chadian nationals. In this case, Belgium's application to the ICJ was indeed in the nature of a pure public interest complaint. See *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, ICJ Judgment of 20 July 2012, I.C.J. Reports 2012, para. 19. Furthermore, the ICJ allowed this complaint despite the fact that, at the time the crimes were committed against all 21 victims for which Hissène Habré was held responsible, none of them had Belgian nationality (the three aforementioned individuals acquired it later). This would also support the qualification of the Belgian complaint as an *actio popularis*. Furthermore, the ICJ itself emphasised that it only examined the effectiveness of the Convention *erga omnes*, not the existence of a special interest arising from Belgium's need to protect its citizens. Cf. *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, paras. 64-65 and 70.

⁴⁰ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, para. 68.

⁴¹ Hachem, Hathaway and Cole, "A New Tool for Enforcing Human Rights: Erga Omnes Partes Standing", 279.

⁴² *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, para. 69.

⁴³ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, para. 70.

clause⁴⁴ signifying their consent to accept jurisdiction of the ICJ in disputes concerning the interpretation and application of this treaty. The judgment in *Belgium v. Senegal* was landmark in that, for the first time, the Court explicitly and unambiguously affirmed the right of standing of states to enforce the collective interests that *erga omnes* norms serve to protect.⁴⁵ However, it should be emphasised that at that time, this possibility was confirmed by the ICJ only in relation to *erga omnes partes* norms and not to *erga omnes* norms arising from general international law (e.g. customary law or general principles of law). As will be demonstrated below, for a long time thereafter, in the context of *actio popularis*, the ICJ only ruled on norms belonging to the former group.

The last of the pre-2020 cases that definitely require a brief mention, or, more accurately, the last group of cases, were the proceedings initiated in 2014 by the Marshall Islands against the following nine nuclear-weapon states: China, France, India, Israel, North Korea, Pakistan, Russia, the UK and the US. The Marshall Islands alleged that these states had failed to comply with their obligations with regard to the cessation of the nuclear arms race and nuclear disarmament under the Non-Proliferation Treaty (NPT) of 1968 and customary international law.⁴⁶ The manner in which the ICJ proceeded with the allegations brought by the Marshall Islands also provides partial insight into its approach to public interest litigation. Regarding most of these cases, against China, France, Israel, North Korea, Russia and the US, the Court did not include them in the General List of all its cases, merely notifying the respondent states that applications had been filed, in the absence of their consent to proceed with the cases, it took no action.⁴⁷

44 For more about such clauses, see e.g. Ostrihansky, “Kompetencja Międzynarodowego Trybunału Sprawiedliwości do rozpoznawania sporów międzypaństwowych”, 79.

45 Urs, “Obligations erga omnes and the question of standing before the International Court of Justice”, 529; likewise, Bonafé, “La violation d’obligations envers la communauté internationale dans son ensemble et la compétence juridictionnelle de la Cour internationale de Justice”, 150. Czapliński and Wyrozumski, *Prawo międzynarodowe publiczne. Zagadnienia systemowe*, 49 even claim that the Court changed its approach to enforcing violations of *erga omnes* norms in this judgment, although they express scepticism as to whether this change was permanent.

46 For example, in the case against the UK, the Marshall Islands alleged that not only was it not negotiating in good faith to end the arms race and achieve nuclear disarmament, but that it was even taking steps to strengthen its nuclear capabilities, cf. *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, ICJ Judgment of 5 October 2016, I.C.J. Reports 2016, paras. 1-12.

47 *Marshall Islands v. United Kingdom*, para. 22.

The ICJ thus generally acted in accordance with Rule 38(5) of the 1978 Rules of Court, which implies that the ICJ acts in this way when an applicant makes its jurisdiction conditional on the consent of the state against which the application is brought.⁴⁸ In this case, the ICJ assumed the will of the Marshall Islands on the basis of their invitation to the respondent states to consent to jurisdiction, which the states did not do. This makes it clear that acting in the public interest does not allow the ICJ to evade the formal requirement of finding an unambiguous legal basis for its jurisdiction.

The three remaining applications, which were filed against India, Pakistan and the United Kingdom, were included in the ICJ's General List because they indicated that these three countries had made declarations consenting to the Court's jurisdiction under the optional clause in Article 36(2) of the Statute of the ICJ.⁴⁹ Ultimately, however, the Court rejected all three applications on procedural grounds, finding that, at the time they were filed, there was neither a justiciable dispute⁵⁰ nor a legal dispute between the Marshall Islands and the respondents concerning the subject matter of the applications.⁵¹ The ICJ pointed out that the Marshall Islands had not presented its claim regarding the violations to either respondent bilaterally and that the statements made by its representatives in international forums were not sufficiently unequivocal to suggest the existence of a legal dispute; neither their content nor the circumstances indicated this, in the ICJ's view.⁵² It emphasised that, in accordance with its previous case law, verification of the existence of such a dispute is based on an analysis of the facts and

48 ICJ, *Rules of Court (1978) adopted on 14 April 1978 and entered into force on 1 July 1978*, <https://www.icj-cij.org/index.php/rules>.

49 ICJ, *Statute of the International Court of Justice*.

50 *Marshall Islands v. United Kingdom*, para. 23.

51 *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, ICJ Judgment of 5 October 2016, I.C.J. Reports 2016, para. 22; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)*, Jurisdiction and Admissibility, ICJ Judgment of 5 October 2016, I.C.J. Reports 2016, para. 22. It is worth pointing out that such a turn of events was not expected at least by some experts, such as De Wet, "Invoking obligations erga omnes in the twenty-first century: Progressive developments since Barcelona Traction", 16, who was more concerned with whether the ICJ would find that it had jurisdiction or whether it would affirm the customary nature of the obligation of nuclear disarmament.

52 *Marshall Islands v. United Kingdom*, para. 28.

evidence and requires the parties to have clearly opposing positions on the issue prior to filing an application with the ICJ.⁵³

It is also noteworthy that, in challenging the formal grounds of the application, India and the United Kingdom drew attention to Article 48(3) of the ILC Draft Articles on State Responsibility.⁵⁴ This provision requires a state other than an injured state that invokes responsibility to notify the allegedly responsible state of its claim. India and the United Kingdom thus considered the Marshall Islands to be a claimant state under *actio popularis*, although they did not explicitly use this term.⁵⁵ However, the Court declined to address this argument, noting that the ILC indicated in its commentary on the ILC Articles that its findings are not concerned with questions of the jurisdiction of international courts and tribunals, or in general with the conditions for the admissibility of cases. The ICJ also refused to analyse the question of the existence and scope of disarmament obligations under customary law, arguing that this was only relevant to the merits of the case,⁵⁶ ‘even though the Marshall Islands clearly derived their legal standing from the *erga omnes* nature of the customary international law obligation to negotiate a comprehensive nuclear arms ban, as set out in Article VI of the 1968 Non-Proliferation Treaty’.⁵⁷ Conversely, the applicant also claimed to have a special interest in the case by virtue of the suffering endured by its people as a result of extensive nuclear testing programmes being conducted there, and thus to have special reasons for concern. However, the ICJ stressed that the existence of such special reasons would not allow it to remedy the procedural deficiencies of the application concerning the existence of a legal dispute.⁵⁸

53 Cf. e.g. *Marshall Islands v. United Kingdom*, paras. 39-43. The ICJ referred in this case in particular to the judgment in *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, ICJ Judgment of 17 March 2016, I.C.J. Reports 2016, para. 50 and 72-74. The requirement of the existence of a legal dispute as a procedural condition for the ICJ to deal with a case can be found, inter alia, in the wording of Articles 36(2) and 38(1) of the Court’s Statute, see International Court of Justice, *Statute of the International Court of Justice*.

54 International Law Commission. “Draft Articles on Responsibility of States for Internationally Wrongful Acts”, Article 48.

55 *Marshall Islands v. United Kingdom*, para. 45; *Marshall Islands v. India*, para. 42.

56 *Marshall Islands v. India*, para. 55; *Marshall Islands v. Pakistan*, para. 55.

57 Gattini, “Actio Popularis”, para. 21.

58 *Marshall Islands v. United Kingdom*, para. 44; *Marshall Islands v. India*, para. 41; *Marshall Islands v. Pakistan*, para. 41.

3. Evolution of the ICJ's Position after 2020

An analysis of the ICJ's rulings since 2020 suggests that the Court has sought to clarify any uncertainties regarding the scope and application of public interest actions in situations that have not yet been analysed. As will be demonstrated, it is clear from its recent case law that bringing an application on the basis of *actio popularis* does not require one to demonstrate any special interest, such as being directly affected by a given violation or proving damage to one's own citizens. The only exception may be if additional requirements arise from the treaty constituting the basis of the ICJ's jurisdiction over the case, e.g. as to the possibility of invoking responsibility or the admissibility of claims submitted to the Court.⁵⁹

The indicated approach is best exemplified in the 2020 provisional measures order and the 2022 preliminary objections judgment in the case *The Gambia v. Myanmar*, which was brought under the 1948 Genocide Convention (Convention on the Prevention and Punishment of the Crime of Genocide), a different treaty to the one which was the focus of the *Belgium v. Senegal* case. At the pre-order hearing, Myanmar argued that The Gambia, the applicant, should have been specifically affected by the alleged violations, a condition which it did not fulfil.⁶⁰ Myanmar argued along similar lines even later, before the judgment was delivered⁶¹ and also claimed that The Gambia had not acted in accordance with the 'rule concerning the nationality of claims', which is required for the responsibility of another state to be raised, regardless of whether the obligation claimed to be violated is *erga omnes* or *inter partes*.⁶² It attempted also to distinguish between the right to invoke responsibility and the right to institute proceedings before the Court,⁶³ challenging Gambia's possession of the latter right.

⁵⁹ Such a conclusion can be drawn from reading *a contrario* a passage from *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, ICJ Judgment of 22 July 2022, I.C.J. Reports 2022, para. 110.

⁶⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, ICJ order of 23 January 2020, I.C.J. Reports 2020, para. 39.

⁶¹ *The Gambia v. Myanmar*, Preliminary Objections, para. 99. The Gambia read this requirement as demanding from the state to be directly injured or specially injured, cf. *The Gambia v. Myanmar*, Preliminary Objections, paras. 101 and 106 but obviously contested such a view.

⁶² *The Gambia v. Myanmar*, Preliminary Objections, para. 98.

⁶³ *The Gambia v. Myanmar*, Preliminary Objections, para. 94. The theoretical possibility of such a distinction and its potential consequences was pointed out earlier in the literature by, for example, Tams, *Enforcing Obligations Erga Omnes in International Law*, 162, although he himself

The Court challenged Myanmar's arguments by referring extensively to its much older *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* advisory opinion of 1951 and to the *Belgium v. Senegal* judgment of 2012.⁶⁴ It indicated that states party to the Genocide Convention have a common interest in preventing acts of genocide in view of their shared values,⁶⁵ highlighting its similarity in this respect to the Torture Convention, which was the basis of its findings in *Belgium v. Senegal*. It also stated that states instituting proceedings before it based on the Convention do not have to prove that any persons harmed by alleged violations of *erga omnes* obligations are their nationals, as this entitlement is independent of diplomatic protection considerations. It unequivocally stated that no special interest needs to be demonstrated in order to bring such an application and any party to the Convention could do so, and that the distinction between the right to invoke responsibility and the right to pursue a claim before the Court had no legal basis.⁶⁶ It also rightly noted that genocide victims are often citizens of a state that breaches its obligations in this regard,⁶⁷ suggesting that a different approach would in many cases deprive such persons of Convention protection.⁶⁸ Consequently, the ICJ found that The Gambia had *prima facie* standing to bring its dispute with Myanmar regarding its breach of obligations under the Genocide Convention.⁶⁹ Therefore, it can be said that the ICJ has confirmed, albeit indirectly, that treaties other than the Convention Against Torture can also provide the basis for *actio popularis* claims before the court, which seemed

noted that such a distinction was unlikely to be made in practice and that the *Barcelona Traction* judgment would not support it either.

64 *The Gambia v. Myanmar*, Provisional Measures, paras. 40-41; *The Gambia v. Myanmar*, Preliminary Objections, paras. 106-108.

65 *The Gambia v. Myanmar*, Provisional Measures, para. 41, similarly, though without explicit mention of shared values, but instead with a mention that the common interest of states includes prevention, suppression and punishment of genocide, in *The Gambia v. Myanmar*, Preliminary Objections, para. 107.

66 This was stated by the Court in *The Gambia v. Myanmar*, Preliminary Objections, para. 108, citing *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, para. 69-70.

67 *The Gambia v. Myanmar*, Preliminary Objections, para. 109.

68 Couvreur, "The International Court of Justice and the Effectiveness of International Law", 260 clearly suggests that the ICJ was particularly guided by a purposive interpretation in this case.

69 First it affirmed The Gambia's *prima facie* standing to submit the dispute to the Court in *The Gambia v. Myanmar*, Provisional Measures, para. 42, and later it generally affirmed the applicant's standing to invoke the responsibility of Myanmar for the alleged breaches, *The Gambia v. Myanmar*, Preliminary Objections, para. 114.

obvious after the judgment in *Belgium v. Senegal* but had not happened until then. Furthermore, in this case, the applicant, unlike in *Belgium v. Senegal*, where the case partly concerned individuals who held Belgian citizenship at the time of the proceedings, in *The Gambia v. Myanmar* the applicant state did not demonstrate any direct harm suffered from Myanmar. In other words, it did not claim to be specially affected by a violation.⁷⁰

The ICJ unequivocally affirmed the findings regarding the *actio popularis* under the Genocide Convention in an order on provisional measures in another case, *South Africa v. Israel*,⁷¹ regarding alleged genocide in the conflict in Gaza Strip. Notably, the respondent, Israel, did not question the standing or legal interest of the applicant, South Africa,⁷² which suggests a growing awareness among legal professionals and state representatives of the futility of making such an argument. However, in line with the *Gambia v. Myanmar* preliminary objections judgment discussed earlier, the ICJ briefly but unequivocally emphasised that all parties to the Convention have an interest in ensuring compliance with its provisions by other states and can invoke responsibility for alleged breaches of their *erga omnes* obligations, including by bringing proceedings before the Court.⁷³

Even less attention was paid to the question of legal interest and standing in the order on provisional measures in *Nicaragua v. Germany*, a case brought under the same Convention, in which Nicaragua alleged that Germany had breached its obligation to prevent genocide in the Gaza Strip by providing support to Israel, including arms trade. As Nicaragua had successfully invoked two grounds for the ICJ's jurisdiction, the optional clause in Article 36(2) of the Court's Statute and Article IX of the Genocide Convention,⁷⁴ there was no reason to dismiss its application on the grounds of lack of jurisdiction, as the Court explicitly noted. At the same time, however, the ICJ did not raise the issue of Nicaragua's legal interest at all, as this was not disputed by Germany. However, it did note that it had found no manifest

70 Hachem, Hathaway and Cole, "A New Tool for Enforcing Human Rights: Erga Omnes Partes Standing", 280-281.

71 So, rightly, Lachowski, "Comments on the ICJ Provisional Measures Orders in the Case of South Africa v. Israel on 26 January 2024, 28 March 2024 and 24 May 2024", 243.

72 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, ICJ order of 26 January 2024, para. 33.

73 *South Africa v. Israel*, Provisional Measures, para. 33.

74 *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, Provisional Measures, ICJ order of 30 April 2024, para. 3.

lack of jurisdiction in the case,⁷⁵ which indirectly confirms that it had no objection to Nicaragua's legal interest, at least *prima facie*. Interestingly, it did not refer to the problem of the application and enforcement of *erga omnes* obligations even once during the proceedings.

The ICJ's post-2020 jurisprudence also allows us to confirm unequivocally that it is possible to take a legal action before it for violations of *erga omnes* norms under the Torture Convention. During the proceedings for the order on provisional measures in *Canada and Netherlands v. Syria*, the respondent attempted to argue that its obligations under the Convention were individual obligations of states and that the two states bringing the case were not entitled to hold it responsible under the Convention because they had failed to prove that they had suffered any damage.⁷⁶ Following the path set out in *Belgium v. Senegal*,⁷⁷ the ICJ indicated that all parties to the Torture Convention have a legal interest in preventing torture and that the obligations flowing from the Convention are *erga omnes*. The judges also reaffirmed that any party to the Convention could invoke the responsibility of another party for the Court to assess whether these obligations had been breached, and if it turns out to be true, expect the breaches to cease.⁷⁸ Consequently, the ICJ concluded that both states had at least a *prima facie* standing to initiate a case against Syria.⁷⁹

Among all the ICJ rulings after 2020, however, one seems to be a landmark, setting a new course or at least clarifying a long-standing doubt. This is the advisory opinion on *Obligations of States in Respect of Climate Change*, delivered in July 2025. For the first time, the Court resolved the question of the consequences of *erga omnes* norms of customary international law for its own standing. The fact that it raised this issue in the opinion was linked to its finding that certain international law norms relating to global common goods, such as the atmosphere and the high seas, as well as the climate system, may produce *erga omnes* obligations, given that states have a common

75 *Nicaragua v. Germany*, Provisional Measures, para. 21.

76 *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and Netherlands v. Syrian Arab Republic)*, Provisional Measures, ICJ order of 16 November 2023, I.C.J. Reports 2023, para. 49.

77 Lachowski, "Comments on the ICJ Provisional Measures Orders in the Case of South Africa v. Israel on 26 January 2024, 28 March 2024 and 24 May 2024", 234-5.

78 The Court stated that any State party to that Convention may apply to it to determine whether the state failed to comply with its obligations *erga omnes partes*, and to bring that failure to an end, *Canada and Netherlands v. Syrian Arab Republic*, Provisional Measures, para. 50.

79 *Canada and Netherlands v. Syrian Arab Republic*, Provisional Measures, para. 51.

interest in protecting them.⁸⁰ Accordingly, in the ICJ's view, obligations relating to the protection of the climate system and other elements of the environment from greenhouse gas emissions may have an *erga omnes* character, particularly if they are intended to protect against serious transboundary harm.⁸¹ It should be added that in the operative part of its opinion, the ICJ identified two main customary obligations incumbent on states: to use all means at their disposal to prevent activities carried out within their jurisdiction or control from causing significant harm to the climate system, and to cooperate with each other in good faith to prevent such harm.⁸² However, the reasoning of the opinion is ambiguous as to whether the court considered these obligations to be *erga omnes*, with one exception: of a duty to prevent significant transboundary harm, which was explicitly defined as such.⁸³ It is likely, however, that the ICJ would also consider e.g. the obligation to cooperate to prevent such harm to be *erga omnes*.

The Court first referred to climate obligations derived from treaties. It noted that both the United Nations Framework Convention on Climate Change and the Paris Agreement describe climate change as a common concern of humankind, necessitating a global response. Therefore, both treaties aim to safeguard the fundamental interests of all states and serve the entire international community, and, as a consequence, the obligations arising from them are *erga omnes partes*. A corollary of this finding was the view that all states have a legal interest in safeguarding the core mitigation obligations set out in the respective treaties and may invoke the responsibility of other states for failing to fulfil them.⁸⁴ This is the first ICJ ruling in which standards of this type have been identified as effective against all.

However, the next paragraph of the opinion contained a much more significant statement, as the Court observed that, under the norms of international state responsibility (here referring to Article 48 of the ILC Draft Articles on the Responsibility of States), any state may also raise the issue of another state's responsibility for violations of customary norms, including

80 *Obligations of States in Respect of Climate Change*, ICJ Advisory Opinion of 23 July 2025, para. 440.

81 *Obligations of States in Respect of Climate Change*, para. 440.

82 *Obligations of States in Respect of Climate Change*, para. 457.

83 *Obligations of States in Respect of Climate Change*, para. 440.

84 *Obligations of States in Respect of Climate Change*, para. 441. The possibility of such a conclusion by the ICJ in that case was envisaged, e.g. by Pezzano, "Obligaciones erga omnes y ius standi ante la Corte Internacional de Justicia ¿hacia una actio popularis en el derecho internacional?", 171.

those relating to climate change mitigation,⁸⁵ 'such as the failure of a State to regulate emissions of GHGs under its duty to exercise due diligence to prevent significant harm'.⁸⁶ Thus, the ICJ has explicitly permitted *actio popularis* for violations of customary international law norms that are *erga omnes*. This is the first such conclusion in the ICJ's 80-year history, although it is a logical consequence of its jurisprudence to date.⁸⁷ This opinion marks a breakthrough because, since the *Barcelona Traction* judgment at least, it has not been clear whether any state⁸⁸ could institute proceedings against another state for a breach of its *erga omnes* obligations, even in the absence of a special treaty-based clause, based solely on customary international law.⁸⁹ Indeed, in all previous cases where the ICJ has accepted the right of standing of states alleging breaches of such obligations, it was based on treaty norms, as for instance in *Belgium v. Senegal*,⁹⁰ or, as some would put it, these cases concerned only obligations *erga omnes partes* (towards all parties to a given treaty).⁹¹ For the sake of clarity, it should be noted that none

85 *Obligations of States in Respect of Climate Change*, para. 442. See also International Law Commission, "Draft Articles on Responsibility of States for Internationally Wrongful Acts".

86 *Obligations of States in Respect of Climate Change*, para. 444.

87 This is rightly noticed by Paddeu and Jackson, "State Responsibility in the ICJ's Advisory Opinion on Climate Change"; similarly, Bonafé, "La violation d'obligations envers la communauté internationale dans son ensemble et la compétence juridictionnelle de la Cour internationale de Justice", 151.

88 This article deliberately omits issues related to individuals bringing complaints against states for actions relating to climate change, as this is not directly related to the *actio popularis* issue as defined at the beginning of the text. As the ICJ pointed out, 'certain treaties enable actors other than states, such as individuals or other private actors, to bring claims against states on the international plane' (*Obligations of States in Respect of Climate Change*, para. 111). However, the ICJ Statute is not one such treaty, as only states can be parties to proceedings before the Court.

89 Tams, *Enforcing Obligations Erga Omnes in International Law*, 161; De Wet, "Invoking obligations erga omnes in the twenty-first century: Progressive developments since Barcelona Traction", 16.

90 Cf. Urs, "Obligations erga omnes and the question of standing before the International Court of Justice", 518; Couvreur, "The International Court of Justice and the Effectiveness of International Law", 261 with reference to *Belgium v. Senegal*; Czapliński, "Is There a Space for Jus Cogens in Present International Law? Remarks in the Context of a Ban on the Use of Force", 161 with reference to *Belgium v. Senegal* and *Gambia v. Myanmar*. Not surprisingly, there were opinions in the literature that the ICJ would not be eager to accept the pure *actio popularis* concept based on a breach of a customary norm, cf. e.g. Czapliński, "Is There a Space for Jus Cogens in Present International Law? Remarks in the Context of a Ban on the Use of Force", 161.

91 Such as, for example, Pezzano, "Obligaciones erga omnes y ius standi ante la Corte Internacional de Justicia ¿hacia una actio popularis en el derecho internacional?", 168-170; see also Urs, "Obligations erga omnes and the question of standing before the International Court of Justice", 518 and 525.

of the numerous declarations and separate opinions attached to the opinion mentions *actio popularis* or the right of standing. The only considerations concerning *erga omnes* norms, contained in the declaration of Judge Tladi, are also irrelevant to the current discussion.

Interestingly, in the advisory opinion in question, the ICJ also clarified the differences in the availability of remedies in case of *actio popularis*. It noted that states not directly injured by the infringement in question (the ICJ referred to them generally as non-injured states⁹²) can indeed bring claims against states violating collective obligations. However, they cannot ask for reparation for themselves; they can only demand the cessation of the unlawful act and guarantees of its non-repetition. Furthermore, if they claim reparation, it must be made in the interests of the injured state or the beneficiaries of the obligation breached.⁹³ It needs to be pointed out that such an application would be *in favorem tertii* and be quite non-standard, although would be formally fully in accordance with Article 48(2) of the ILC Draft Articles on Responsibility of States.⁹⁴ At the same time, the ICJ's position challenged the argument sometimes found in literature that since the international community is the beneficiary of *erga omnes* obligations, it is only entitled to respond to violations as a whole, through action in a universal forum such as the UN.⁹⁵

Thus, this position indirectly confirmed that the *erga omnes* obligations, although existing towards the international community, and thus at least all states, are owed to each of them individually and not together.⁹⁶ It should also be noted that, although the ICJ announced that it would clarify the legal

92 Article 48 of the International Law Commission. "Draft Articles on Responsibility of States for Internationally Wrongful Acts" defines such a state as "a state other than an injured state", although the term "non-injured" is sometimes used instead by scholars, cf. e.g. Thirlway, "Injured and Non-injured States before the International Court of Justice", 311.

93 *Obligations of States in Respect of Climate Change*, ICJ Advisory Opinion of 23 July 2025, para. 443.

94 International Law Commission. "Draft Articles on Responsibility of States for Internationally Wrongful Acts", Article 48. Similarly, Thirlway, "Injured and Non-injured States before the International Court of Justice", 314-316. However, this provision seems to be more of an expression of the ILC's progressive approach and desire to develop international law. Cf. Czapliński and Wyrozumska, *Prawo międzynarodowe publiczne. Zagadnienia systemowe*, 48, who emphasise that the provision in question, which permits third states (other than those directly injured by a breach of the law) to pursue claims, represents a departure from the principle that contemporary international law does not recognise the *actio popularis*.

95 Such a position has been represented, for example, by Roberto Ago, per Tams, *Enforcing Obligations Erga Omnes in International Law*, 174.

96 Tams, *Enforcing Obligations Erga Omnes in International Law*, 175.

implications regarding remedies later in the opinion, did it superficially. From its subsequent considerations, one may infer that through *actio popularis* an applicant may demand from the respondent at least to cease a wrongful act if it is continuing and to offer appropriate assurances and guarantees of non-repetition. Still, the question of possible reparations in the form of restitution, compensation and/or satisfaction⁹⁷ is less clear. The Court did not explicitly clarify how an indirectly injured state (a state other than the injured state, if one follows the ILC's terminology⁹⁸, or a non-injured state in the words of the ICJ itself⁹⁹) could claim fulfilment of these obligations for the benefit of the directly injured one (or an injured state, as called both by the ILC and the ICJ).

4. Conclusions

The period prior to 2020 was a time when the ICJ established the basic principles and rules for bringing *actio popularis* claims based on treaties (i.e. on norms *erga omnes partes*). Judgments and advisory opinions delivered by the ICJ before that year establish that a state may bring an *actio popularis* claim as long as it concerns an *erga omnes* obligation, that is, one that is of concern to all states, or the international community, at least if such a state can find legal grounds for its action in a relevant treaty. Neither the state itself nor its nationals need to be injured by the act of another state (*Barcelona Traction, Belgium v Senegal*). However, *actio popularis* does not exempt one from the necessity to fulfil various procedural requirements. Most importantly, it does not relieve the applicant state of the obligation to ensure there is adequate basis for the Court's jurisdiction over the case based on the respondent State's consent, acting in public interest cannot substitute it in any way (*East Timor, Marshall Islands*). Furthermore, the right of standing is interpreted restrictively, and it is presumed that a particular treaty does not permit to file applications of this type with the ICJ unless its content, object and purpose clearly suggest otherwise (*Southwest Africa*). Furthermore, for *actio popularis* proceedings to be allowed, the state that committed the breach in question cannot be left out contrary to the principle

97 *Obligations of States in Respect of Climate Change*, paras. 444-455.

98 This term appears in the advisory opinion only once, when the 2001 ILC Draft is quoted, see *Obligations of States in Respect of Climate Change*, para. 442.

99 The ICJ uses this term in the whole opinion only twice in one paragraph, see *Obligations of States in Respect of Climate Change*, para. 443.

established in the *Monetary Gold* case (*East Timor*), and there must be a justiciable dispute between the applicant and the respondent (*Marshall Islands*).

In this context, an analysis of the post-2020 jurisprudence of the ICJ allows to conclude that *actio popularis* applications based on treaty norms have proliferated in recent years. It is now clear that at least several international agreements permit complaints to be filed regarding violations of *erga omnes* obligations by states that are not directly injured by a violation, provided they can establish the ICJ's jurisdiction. This applies in particular to allegations of genocide (*Gambia v Myanmar*, *South Africa v Israel* and *Nicaragua v Germany*), torture (*Canada and the Netherlands v Syria*) and core climate change mitigation obligations under existing treaties (*Climate Change Obligations*). In this respect, there is no difference in the ability to invoke responsibility of a particular state and to bring proceedings against it before the Court, the former implies the latter (*Gambia v Myanmar*). However, the ICJ's findings in *Climate Change Obligations* regarding the possibility of bringing cases against states for violations of pure *erga omnes* norms of a customary nature, that is, norms of general international law that are not directly derived from any treaty, represent a significant development. While this possibility has never been explicitly ruled out, if we disregard the ICJ's vague statement on the existence of an *actio popularis* in international law in the *Barcelona Traction* case, it has also never been confirmed before. Thus, the Court's judges shared the International Law Commission's position on the invocation of responsibility by a state other than an injured state. Moreover, in light of the *Climate Change Obligations* advisory opinion, it seems reasonable to conclude that the ICJ considers *erga omnes* obligations to bind each state individually, rather than all states collectively. Lastly, the opinion suggests that a state that has not been directly injured may demand, on the basis of an *actio popularis*, at least the cessation of the wrongful act and guarantees of non-repetition.¹⁰⁰ It should be emphasised that "the development of substantive principles for the protection of common interests has not kept pace with the development of procedural rules".¹⁰¹ *Actio popularis* applications may still seem 'a powerful tool in the event of a breach of an obligation owed to the international community as a whole',¹⁰¹ but it is

100 Quote by Nollkaemper, "International Adjudication of Global Public Goods: The Intersection of Substance and Procedure", 791.

101 Villalpando, "The Legal Dimension of the International Community: How Community Interests Are Protected in International Law", 411-412.

more appearance than reality. Obligations *erga omnes* do not of themselves give the ICJ jurisdiction and have no automatic effect.¹⁰² Procedural constraints remain strong and have a significant impact on the possibility of judicial enforcement of collective interests. It only exists if jurisdiction is first established,¹⁰³ which requires first and foremost the consent of the state that allegedly committed a wrongful act. This consent may be given in a specific case, which is highly unlikely,¹⁰⁴ or it may result from a declaration made under the optional clause, i.e. in accordance with Article 36(2) of the ICJ Statute, or from compromissory clauses of treaties.¹⁰⁵ What is more, the real prospects of using *actio popularis* will also continue to be limited by, inter alia, reservations aiming to exclude the application of a treaty's compromissory clause.¹⁰⁶

The ICJ's explicit admission that legal action against states taken before it under *actio popularis* may be based on violations of *erga omnes* norms relating to global common goods raises questions regarding the legal implications of this view. For instance, if the Court were to adjudicate on a particular state's responsibility, or lack thereof, at the request of a state that is only indirectly injured, this would have potentially serious consequences for the state that is directly injured. The question then remains as to whether such an application will comply with the *Monetary Gold* principle.¹⁰⁷ The difference will be that it will be the injured state, rather than the state alleged to have committed an unlawful act, that will be absent from the proceedings. Nevertheless, the admissibility of hearing cases of this type seems questionable for the time being. It is also unclear how states will react to the development of ICJ jurisprudence, particularly with regard to cases in which the legal interest is based on alleged violations of *erga omnes* customary norms. The prospects for respecting possible far-reaching

102 De Wet, "Invoking obligations erga omnes in the twenty-first century: Progressive developments since Barcelona Traction", 16-17.

103 Tams, *Enforcing Obligations Erga Omnes in International Law*, 197, Thirlway, "Injured and Non-injured States before the International Court of Justice", 316.

104 Kawasaki, "The 'Injured State' in the International Law of State Responsibility", 28.

105 Ahmadov, *The Right of Actio Popularis before International Courts and Tribunals*, 76; Kwiecień, "A New Life for Actio Popularis in International Law? The Prevention and Punishment of Genocide as an Interest of 'the International Community as a Whole' before the International Court of Justice", 14; Paddeu and Jackson, "State Responsibility in the ICJ's Advisory Opinion on Climate Change".

106 Urs, "Obligations erga omnes and the question of standing before the International Court of Justice", 519.

107 Cf. more hypothetical reflections on similar problems by Thirlway, "Injured and Non-injured States before the International Court of Justice", 317.

judgments in cases brought in public interest are unclear, particularly given the ongoing lack of unanimity within the UN Security Council, which is responsible for the enforcement of the Court's judgments under Article 94(2) of the Statute of the ICJ.¹⁰⁸ Furthermore, it cannot be ruled out that states may, to some extent, start withdrawing their consent to the ICJ adjudication of disputes that could involve *erga omnes* obligations.¹⁰⁹

Bibliography

1. Aceves, William J. „Actio Popularis – The Class Action in International Law.” *University of Chicago Legal Forum* (2003), vol. 2003, article 9.
2. Ahmadvov, Farid. *The Right of Actio Popularis before International Courts and Tribunals*. Brill, 2018.
3. Alland, Denis. “Countermeasures of General Interest.” *European Journal of International Law* (2002), vol. 13, is. 5.
4. *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*. Provisional Measures. ICJ order of 30 April 2024.
5. *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections. ICJ judgment of 17 March 2016. ICJ Reports 2016.
6. *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and Netherlands v. Syrian Arab Republic)*. Provisional Measures. ICJ order of 16 November 2023. ICJ Reports 2023.
7. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*. Preliminary Objections. ICJ judgment of 22 July 2022. ICJ Reports 2022.
8. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*. Provisional Measures. ICJ order of 23 January 2020. ICJ Reports 2020.
9. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*. Provisional Measures. ICJ order of 26 January 2024.
10. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*. Preliminary Objections. ICJ judgment of 11 July 1996. ICJ Reports 1996.
11. *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Second Phase. ICJ judgment of 5 February 1970. ICJ Reports 1970.

108 Kuc, “Obligation to comply with ICJ decisions: the ‘Jurisdictional Immunities’ saga within the Italian legal order”, 112. See also ICJ, *Statute of the International Court of Justice*.

109 Urs, “Obligations *erga omnes* and the question of standing before the International Court of Justice”, 525.

12. Benzing, Markus. "Community Interests in the Procedure of International Courts and Tribunals." *The Law and Practice of International Courts and Tribunals* (2006), vol. 5, no. 3.
13. Bonafé, Béatrice I. "La violation d'obligations envers la communauté internationale dans son ensemble et la compétence juridictionnelle de la Cour internationale de Justice." In *The Present and Future of Jus Cogens*, ed. Enzo Cannizzaro. Sapienza Università Editrice, 2015.
14. Chow, Pok Yin S. "On Obligations Erga Omnes Partes." *Georgetown Journal of International Law* (2021), vol. 52, no. 2.
15. Couvreur, Philippe. "The International Court of Justice and the Effectiveness of International Law." *Collected Courses of the Xiamen Academy of International Law* (2017), vol. 9.
16. Czapliński, Władysław and Wyrozumska, Anna. *Prawo międzynarodowe publiczne. Zagadnienia systemowe*. CH Beck, 2014.
17. Czapliński, Władysław. "Is There a Space for Jus Cogens in Present International Law? Remarks in the Context of a Ban on the Use of Force." *Polish Review of International and European Law* (2022), vol. 11, iss. 2.
18. D'Argent, Pierre. "The Monetary Gold Principle: A Matter of Submissions." *AJIL Unbound* (2021), vol. 115.
19. De Wet, Erika. "Invoking obligations erga omnes in the twenty-first century: Progressive developments since Barcelona Traction." *South African Yearbook of International Law* (2013), vol. 38.
20. Donoghue, Joan E. "The Role of the World Court Today." *Georgia Law Review* (2012), vol. 47, no. 1.
21. Dupuy, Pierre-Marie. "Back to the Future of a Multilateral Dimension of the Law of State Responsibility for Breaches of 'Obligations Owed to the International Community as a Whole'." *The European Journal of International Law* (2012), vol. 23, no. 4.
22. *East Timor (Portugal v. Australia)*. ICJ judgment of 30 June 1995. ICJ Reports 1995.
23. Frowein, Jochen A. "Reactions by Not Directly Affected States to Breaches of Public International Law." *Recueil des Cours* (1994), vol. 248.
24. Gattini, Andrea. "Actio Popularis." In *Max Planck Encyclopedia of International Procedural Law*, ed. Hélène Ruiz Fabri and Rüdiger Wolfrum. Oxford University Press, 2019.
25. Gould, Harry D. *The Legacy of Punishment in International Law*. Palgrave Macmillan, 2010.
26. Hachem, Alaa, Hathaway, Oona A. and Cole, Justin. "A New Tool for Enforcing Human Rights: Erga Omnes Partes Standing." *Columbia Journal of Transnational Law* (2024), vol. 62, no. 2.
27. International Court of Justice. *Rules of Court (1978) adopted on 14 April 1978 and entered into force on 1 July 1978*. <https://www.icj-cij.org/index.php/rules>.
28. International Court of Justice. *Statute of the International Court of Justice*. 26 June 1945, <https://www.icj-cij.org/statute>.
29. International Law Commission. "Draft Articles on Responsibility of States for Internationally Wrongful Acts." *Yearbook of the International Law Commission* (2001) vol. 2.

30. International Law Commission. "Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries." *Yearbook of the International Law Commission* (2001) vol. 2, part 2.
31. Kawasaki, Kyoji. "The 'Injured State' in the International Law of State Responsibility." *Hitotsubashi Journal of Law and Politics* (2000), vol. 28.
32. Kuc, Oktawian. "Obligation to comply with ICJ decisions: the 'Jurisdictional Immunities' saga within the Italian legal order." *Studia Iuridica* 2024, vol. 102.
33. Kwiecień, Roman. "A New Life for Actio Popularis in International Law? The Prevention and Punishment of Genocide as an Interest of 'the International Community as a Whole' before the International Court of Justice." *Forum Prawnicze* (2024), vol. 84, no. 4.
34. Lachowski, Tomasz. "Comments on the ICJ Provisional Measures Orders in the Case of South Africa v. Israel on 26 January 2024, 28 March 2024 and 24 May 2024." *Polish Review of International and European Law* (2024), vol. 13, iss. 2.
35. *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. ICJ Advisory Opinion of 19 July 2024. ICJ Reports 2024.
36. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. ICJ Advisory Opinion of 9 July 2004. ICJ Reports 2004.
37. *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America)*. ICJ judgment of 15 June 1954. ICJ Reports 1954.
38. Nollkaemper, André. "International Adjudication of Global Public Goods: The Intersection of Substance and Procedure." *The European Journal of International Law* (2012), vol. 23, no. 3.
39. *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*. ICJ judgment of 20 February 1969. ICJ Reports 1969.
40. *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*. Preliminary Objections. ICJ judgment of 5 October 2016. ICJ Reports 2016.
41. *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*. Jurisdiction and Admissibility. ICJ judgment of 5 October 2016. ICJ Reports 2016.
42. *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)*. Jurisdiction and Admissibility. ICJ judgment of 5 October 2016. ICJ Reports 2016.
43. *Obligations of States in Respect of Climate Change*. ICJ Advisory Opinion of 23 July 2025.
44. Ostrihansky, Rudolf. „Kompetencja Międzynarodowego Trybunału Sprawiedliwości do rozpoznawania sporów międzypaństwowych." *Ruch Prawniczy, Ekonomiczny i Socjologiczny* (1988), no. 2.
45. Paddeu, Federica, and Jackson, Miles. "State Responsibility in the ICJ's Advisory Opinion on Climate Change." *EJIL: Talk!*, 25 July 2025. <https://www.ejiltalk.org/state-responsibility-in-the-icjs-advisory-opinion-on-climate-change/>.

46. Pezzano, Luciano. “Obligaciones erga omnes y ius standi ante la Corte Internacional de Justicia ¿hacia una actio popularis en el derecho internacional?” *Revista de la Facultad de Derecho de la Universidad Nacional de Cordoba* (2024), vol. 15, no. 2.
47. Ragazzi, Maurizio. *The Concept of International Obligations Erga Omnes*. Oxford University Press, 2000.
48. *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*. ICJ judgment of 20 July 2012. ICJ Reports 2012.
49. *Reparation for Injuries Suffered in the Service of the United Nations*. ICJ Advisory Opinion of 11 April 1949. ICJ Reports 1949.
50. *Reservations to the Convention on Genocide*. ICJ Advisory Opinion of 28 May 1951. ICJ Reports 1951.
51. *South West Africa cases (Ethiopia v. South Africa; Liberia v. South Africa)*. Second Phase. ICJ judgment of 18 July 1966. ICJ Reports 1966.
52. Tams, Christian J. *Enforcing Obligations Erga Omnes in International Law*. Cambridge University Press, 2005.
53. Thirlway, Hugh. “Injured and Non-injured States before the International Court of Justice.” In *International Responsibility Today. Essays in Memory of Oscar Schachter*, ed. Maurizio Ragazzi. Martinus Nijhoff Publishers, 2005.
54. Urs, Priya. “Obligations erga omnes and the question of standing before the International Court of Justice.” *Leiden Journal of International Law* (2021), vol. 34, iss. 2.
55. Villalpando, Santiago. “The Legal Dimension of the International Community: How Community Interests Are Protected in International Law.” *The European Journal of International Law* (2010), vol. 21, no. 2.