




The Role of General Principles of Procedure in Commercial Disputes in Iran and the International Court of Justice

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Received: 2025-12-23

Revised: 2026-04-18

Accepted: 2026-04-25

Initial Publish: 2026-04-29

Final Publish: 2027-01-01

No legal system can be conceived without general principles. These principles hold a special position not only in domestic law but also in international law. Procedural principles constitute the structure and foundation governing adjudication. In explanation, the nature of human beings has always been and continues to be in pursuit of truth and justice; adjudication is regarded as the most evident and tangible manifestation of the realization of truth and justice within any legal system. The ultimate aim and ideal of procedural principles is precisely this, and adherence to these principles promises the realization of a judicial system based on truth and justice. Principles such as the adversarial principle, the independence of the court, judicial impartiality, the public nature of proceedings, the right to a fair trial, and other related principles have all emerged and evolved in pursuit of the realization of truth and justice. At the International Court of Justice, even if general principles of law had not been explicitly recognized as a source of international law in the Statute of the Court, they would still possess the capacity to be invoked. These principles, irrespective of customary and treaty-based international rules, are themselves considered an independent source of international law. The analysis of the role and implementation of general procedural principles in commercial disputes in Iran, as well as in the contentious and advisory opinions of the Court, constitutes the subject of this article.

Keywords: Role, General Principles of Procedure, Iranian Disputes, International Court of Justice

How to cite this article:

Rezaeimofrad, M., Ghaumzadeh, M., & Delshad Maaref, E. (2027). The Role of General Principles of Procedure in Commercial Disputes in Iran and the International Court of Justice. *Interdisciplinary Studies in Society, Law, and Politics*, 6(1), 1-13. <https://doi.org/10.61838/kman.isslp.477>

1. Introduction

One of the main characteristics of adjudication in the contemporary era is its movement toward “procedural principles”; the adherence of courts to these concepts is among the essential requirements for the realization of a system of adjudication based on justice and equity. The mandatory character of some of these principles is so strong that they tolerate no exception and constitute governing and binding principles in all proceedings. These include principles such as the independence of the court, the impartiality of the court,

the right to a fair trial, and similar principles. Independent and impartial adjudication is an inseparable component of judicial proceedings. For this reason, courts must always hear disputes independently and impartially, and no exception can be recognized in this regard. By contrast, some principles are accompanied by exceptions. One example is the principle of public hearings, which, under Article 165 of the Constitution, may be restricted where the court determines that publicity would be contrary to morality or public order, or where, in private disputes, the parties request that the hearing be held in camera. Therefore,



this study seeks, through a detailed examination of the concept of “procedural principles” in Iranian commercial disputes, to achieve a more precise understanding of these principles. In addition, the study identifies the most important instances of these principles and explains the sanctions arising from their violation in the adjudicatory process. In the practice of the International Court of Justice, general principles of law have been considered as a source of international law in the cases brought before the Court. The Permanent Court of International Justice expressly referred to general principles of law in the Oscar Chinn case in 1934, and in the Chorzow Factory case in 1928 it regarded the obligation to make reparation for the breach of an international obligation as a general principle of law. The International Court of Justice, in its first contentious judgment in the Corfu Channel case in 1949, also relied on recognized general principles of international law. In the advisory opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide in 1951, after referring to the conscience of humankind, the Court considered the principles embodied in the Convention to be binding on all states even in the absence of any treaty obligation. General principles of law reflect the conscience of the international community. The Statute of the Court has not defined the general principles of law referred to in Article 38(1)(c), and various interpretations have therefore been offered regarding these principles. In a narrow definition, these principles include only principles of private law or principles that relate solely to formal rules and procedure. The Court has relied on general principles of law both in procedural matters and in substantive matters, but this article is confined to the substantive instances in which the Court has invoked them. Among procedural and adjudicatory issues, one may briefly refer to the principle of consent to the jurisdiction of the Court, the principle prohibiting departure from the jurisdiction of the court, the principle of equality of the parties, the principle prohibiting denial after admission, the principle of the binding effect of a finally adjudicated matter, the principle of interpretation according to ordinary meaning, the principle of good faith, and the principle of performance of obligations.

2. The Concept and Characteristics of Procedural Principles:

In the preparation of legal works and writings, the customary method is to take the first step by explaining the main concepts and titles of the subject. In this writing, following the same method, the concept of “procedural principles” will first be explained. Then, the attributes and characteristics attached to every procedural principle will be discussed so that, through a relative understanding of the nature of the subject, the ground may be prepared for examining the role and position of these principles in the civil procedure system.

2.1. *The Concept of Procedural Principles:*

Procedural principles are closely connected with the very foundation of justice in the adjudicatory system. According to some views, procedural principles, by providing highly general and overarching rules, establish the criteria of fair adjudication and represent the general concepts of justice and equity in the resolution of civil and commercial disputes; in modern legal systems, these are known as “fundamental principles.” In the field of adjudication, a large part of these principles is recognized under the title of “fundamental principles of procedure.” Fundamental procedural principles protect and guarantee the basic and essential rights of the parties during the process of adjudication. The judicial system, as the sole authority for hearing grievances, must take these fundamental principles into account, and the conformity of the judiciary’s performance with them must always be evaluated so that it does not deviate from the path of justice and equity. Accordingly, procedural principles may be described as a set of general, fundamental, and guiding standards that realize justice and equity in proceedings and give proper direction to adjudication, its subject matter, and its elements.

2.1.1. *Characteristics of Procedural Principles:*

In legal science, the understanding of a concept generally depends on familiarity with its attributes and characteristics. In other words, identifying the characteristics of a concept forms part of the process of acquiring knowledge about that concept. In addition to the generality and continuity of procedural principles, the following characteristics may be mentioned:

3. The Constructive and Mental Nature of Procedural Principles:

The constructive nature of procedural principles means that these principles are conceivable in the realm of the mind. The foundation of these principles is derived from beliefs and ideas accepted by legal scholars. Therefore, the emergence of these principles, without being based on objective and tangible instruments, rests on thought and will. Although the practical manifestations of procedural principles clearly appear in judicial proceedings and their basis is applied in the judicial system and at the stage of vindicating rights, these principles themselves are regarded as constructive and mental phenomena. Principles such as the right of access to justice, the right to a fair trial, adversarial proceedings, respect for defense rights, public hearings, and adjudication within a reasonable time are established procedural principles by which the performance of the entire judicial system and the parties to the dispute is evaluated. Although the foundations of these principles are applied and implemented in practice in litigation, the principles themselves are not objectified in the judicial system; therefore, they are constructive and mental in nature.

4. The Value-Based and Intrinsic Nature of Procedural Principles:

Procedural principles are concepts with a high value-based content that, in every legal system, are in some way intertwined with the values existing within that system. According to some views, these principles carry value-based dimensions and are in some way connected with the legitimate and accepted meanings of society. They take shape in the mind of the legislator and cause legal rules to be formed around the axis of these values. These values are generally common to all legal systems. Values such as equality of individuals before the law, the right of access to justice, adjudication accompanied by justice and equity, and judicial impartiality are among the desirable standards that are organized in the form of principles and govern the course of adjudication. Therefore, procedural principles have an inseparable connection with the category of values in the adjudicatory system, and it is precisely this value-based character that gives them a kind of normative superiority

and special binding force in comparison with other rules and regulations.

5. The Mandatory and Non-Derogable Nature of Procedural Principles:

Procedural principles are considered essential pillars of fair adjudication in civil disputes, without which adjudication cannot be realized. In fact, the establishment of proceedings based on justice and equity is possible only when all persons involved in adjudication, from the judge to the parties and their lawyers, consider themselves bound to observe these principles. It is evident that achieving this objective is possible only by treating these principles as mandatory and non-derogable and by providing legal sanctions for their violation. On this basis, the process of adjudication must begin, continue, and end with respect for principles such as the fairness of the proceedings, adversarial hearings, respect for defense rights, and the independence and impartiality of the court and the judge hearing the dispute. Therefore, for example, if the evidence relied upon by the claimant is submitted at a time when the defendant has no opportunity or possibility to defend against it, or if the hearing is held without summoning the parties and without their presence, or if the judge proceeds to hear the dispute despite the existence of grounds for recusal and the principle of judicial impartiality is not observed, the acts performed and, ultimately, the judgment issued will not acquire legal validity because of the violation of fundamental and mandatory procedural principles.

5.1. The Position and Role of Procedural Principles in the Iranian Civil Procedure System:

5.1.1. The Role of Procedural Principles in the Enactment of Civil Procedure Rules:

Procedural principles, as a guiding source, serve as a guide for the legislator, who is required, in the process of enacting and drafting procedural rules, to take these principles into account above all else and to enact rules that are consistent and compatible with them. In other words, procedural principles are the source from which law is created, and it is the law that must be subordinate to principles. According to some views, legal principles, and more specifically procedural principles, are the common spirit that connects legal provisions to one

another. Therefore, a legislator who, without regard to this spirit, proceeds to remove some rules and amend others, and who assumes that he is dealing only with a single rule, is unaware of the fact that a legal system is a set of interconnected rules linked to one another by legal principles. Thus, legislation in any society requires the acceptance of a series of principles that the legislative authority accepts as presuppositions; this fundamental role has made principles the criterion for evaluating the soundness or unsoundness of laws and distinguishing valid rules from defective ones. The role and effect of procedural principles in properly directing laws enacted in the field of procedure, as well as in evaluating the fairness of the adjudicatory process, are undeniable. The absence of express reference to these principles in statutory texts and the unwritten nature of most of them have not reduced their effect on making the adjudicatory system dynamic and more flexible.

5.2. The Role of Procedural Principles in the Interpretation of Civil Procedure Rules:

In addition to the significant role and effect of procedural principles in the process of enacting and drafting procedural rules and regulations, these principles also have a major function in interpreting rules and regulations when any ambiguity arises in those rules. The legislator always seeks, when enacting law, to express his intent through clear and explicit language so that, in addition to ensuring that regulations are free from ambiguity, vagueness, and conflict, improper and conflicting interpretations are also prevented. Nevertheless, in some legal expressions, instances may be found in which the content of the wording is not clear or the legislator's intent from the enacted text is not evident. In such cases, resorting to interpretation of legal provisions and discovering the legislator's intent through that interpretation will be useful. In the field of interpreting procedural rules, various tools are available, such as prevailing custom, explaining the relationship between legal provisions, and considering the apparent meaning of the words used in the law. Alongside these tools, one of the most effective instruments is recourse to the legal structures governing adjudication, namely procedural principles. Procedural principles are often embedded in the very nature of the rules contained in the Civil Procedure Code. This means that these principles, explicitly or implicitly, are situated at the core of one or

more procedural rules, and those rules have been enacted on the basis of procedural principles. By relying on these principles, the judge fills gaps in the law, and this frees the judge from uncertainty arising from the absence of a legal provision or an applicable rule in the dispute under consideration. On the other hand, reliance on legal principles results from the absence or insufficiency of sources encountered by the judge during the process of adjudication.

5.3. Introduction to Procedural Principles in Civil Disputes:

Regarding the introduction of the principles governing the adjudication of civil disputes and the explanation of their common classifications, two approaches are available. On the one hand, procedural principles may be presented under three general categories: principles guaranteeing fair trial while respecting the equality of the parties, principles concerning the reciprocal role of the judge and the parties, and principles concerning the characteristics of adjudication. On the other hand, the principles governing the adjudication of civil disputes may be addressed under two general categories. The first category includes principles that guarantee the basic and fundamental rights of the parties during the adjudicatory process. These principles are necessary for proper and appropriate adjudication in order to establish justice between the parties, and disregard of them will create a fundamental defect in the establishment of proceedings accompanied by justice and equity. This category of principles will be examined under the title "fundamental principles of civil procedure." The second category consists of principles that, although they do not reach the level of importance and connection with justice in adjudication that the first category possesses, must nevertheless be observed in judicial proceedings. This category will be examined under the title "principles relating to the quality and organization of adjudication."

5.3.1. Fundamental Principles of Civil Procedure:

This category of principles consists of the most essential concepts that realize justice in adjudication and represents the most fundamental rights enjoyed by the parties throughout the course of the proceedings. These principles are called "fundamental" because they guarantee the most basic rights of persons in all proceedings, whether civil or criminal, and hold a

position superior to ordinary laws; in most countries, they are emphasized in the constitution. The fundamental principles governing civil procedure are examined in five parts.

A. The Right of Access to Justice and the Right to a Fair Trial:

The “right of access to justice and the right to a fair trial” are two fundamental principles that guarantee access to the basic rights of individuals in the adjudicatory process. The “right of access to justice” means that every person must have access to a competent authority and be able to seek justice when his or her legal right has been violated. The “right to a fair trial” is also among the important and fundamental principles of procedure. A fair trial means the general guarantees provided in the judicial mechanism to protect the rights of the parties in the adjudication of various types of disputes before a competent, independent, impartial, and predictable court. This right is recognized as one of the most important rights of individuals, and perhaps the most important right, because it may be said that the specific and concrete manifestation of having a right is that, if the right is violated, it can be remedied through a reliable legal method; this reliable method is the pre-established procedure and mechanisms whose fairness has persuaded the collective conscience of society.

B. The Adversarial Nature of Proceedings and Respect for Defense Rights:

The adversarial nature of proceedings is another fundamental principle that guarantees the basic rights of the parties in adjudication and, from this perspective, enjoys a status and authority beyond ordinary law. The adversarial nature of proceedings requires that each party to the dispute be able to bring to the attention of the judge all documents, evidence, and everything considered necessary for success in the case, while at the same time having access to what the opposing party has submitted in this regard. The purpose of this principle is in fact to guarantee the equality of the parties and to provide an opportunity through which the parties can present their matters before the court and have the possibility of defending their rights. Regarding the sanction for violation of the adversarial principle, although the implementation of this principle has not been expressly provided in any statutory text, Article 371(3) of the Civil Procedure Code absolutely regards failure to observe procedural principles as a ground for

quashing the judgment under appeal before the Court of Cassation. Although this provision appears in the chapter concerning cassation, it seems that the appellate authority also has the power to quash the first-instance judgment because of failure to observe the adversarial principle in the first-instance proceedings.

C. Independence and Impartiality of the Court:

The right of the parties to benefit from an independent and impartial tribunal must be regarded as another fundamental principle of procedure. Judicial independence means immunity from any influence or executive control by governing powers, superior authorities, or the parties to the dispute. Under this principle, a judge may be regarded as independent when he or she hears the case without being affected by pressure or influence from others. Regarding the sanction arising from violation of the principle of independence and impartiality of the court, it must be said that the legislator has taken these principles into account in Articles 8 and 91 of the Civil Procedure Code. Therefore, the court is required to hear the case independently and impartially. Accordingly, if the court proceeds to hear the dispute without regard to the above matters, it commits a disciplinary violation. In addition, under Article 371(3) of the Civil Procedure Code, the matter will constitute a ground for quashing the judgment in the Supreme Court.

D. Public Hearings:

The public nature of proceedings means the possibility for the general public to attend court hearings and become aware of the process of hearing the case. During trial before the court, the hearing must be public, entry and exit of individuals into and from the courtroom must be free, and entry must not depend on the permission of the judge. The importance of observing the principle of public hearings lies in the fact that holding hearings publicly has a significant effect on the transparency of these hearings and creates a sense of trust in the performance of the court. Regarding the sanction for violation of the principle of publicity, since this principle is considered a guarantee for those being judged so that they may be judged transparently under a form of public oversight, it may be regarded as one of the “procedural principles, mandatory rules, and rights of the parties” with such a level of importance that it may deprive the judgment of legal validity under Article 371(3) of the Civil Procedure Code. Therefore, revocation or quashing

of the judgment on this ground is defensible. In addition, if the court's decision regarding whether the proceedings should be public or closed is, in light of the contents of the file and other evidence, clearly contrary to the relevant statutory texts, it may be regarded as a disciplinary violation under the general rule of Article 15(8) of the Judicial Conduct Supervision Act adopted on October 9, 2011.

E. Issuance of a Reasoned and Legally Substantiated Judgment:

The reasoned and legally substantiated character of a judgment means that, at the time of issuing the judgment, the judge must state in the judgment all the grounds, scientific bases, and factual and legal justifications on which the judgment is based. In fact, a judgment may be called reasoned when the judge, by relying on findings derived from the totality of the facts existing in the case file and by applying them to legal acts, legal events, and specific regulations, provides justification for the judgment. A legally substantiated judgment is also a judgment in which the judge applies the facts of the dispute to the relevant statutory provision or provisions and records this in the judgment. Regarding the importance and necessity of making a judgment reasoned and legally substantiated, it must be said that, in addition to preventing disorder and arbitrary decision-making by judges, this requirement gives validity and coherence to the judgment and also provides the parties with a criterion for determining whether the judgment is just or unjust. As for the sanction attached to this principle, the Supreme Court has regarded the failure to state the grounds of a judgment as a ground for quashing it in several decisions. Moreover, under Article 15(1) of the Judicial Conduct Supervision Act, issuing a judgment that is not legally substantiated and not reasoned is subject to a fourth- to seventh-degree disciplinary penalty. In addition to the five principles mentioned above, other fundamental principles, such as the right of access to a lawyer, the principle of the parties' authority to initiate and terminate proceedings, the principle of the parties' control over the grounds and subject matter of the dispute, and the principle of presumption of innocence, are among the fundamental principles of procedure that are embedded within the five principles mentioned above.

5.3.2. Principles Organizing Adjudication:

In this section, principles will be introduced that, rather than concerning the basic and fundamental rights of the parties during the adjudicatory process and guaranteeing justice and equity in adjudication, are based on organizing adjudication, the manner of its administration, and the realization of order in the course of proceedings. Principles such as the "formal nature of adjudication," the "written nature of adjudication," and the "principle of conducting proceedings within a reasonable time and at reasonable cost" fall within this category.

A. The Principle of the Formal Nature of Adjudication:

Procedural principles must be distinguished from procedural formalities. The application of specific formalities for hearing disputes is itself regarded as one of the principles of civil procedure. The formal nature of adjudication means that the conduct of all persons involved in proceedings, from the judge to the parties and their lawyers, must be carried out in accordance with the specific form and order prescribed by the legislator in the Civil Procedure Code. For example, the manner of drafting a statement of claim, that is, the requirements of the statement of claim, falls within procedural formalities; as expressly stated by the legislator in Article 51 of the Civil Procedure Code, it must be prepared in Persian on special printed forms and in accordance with other statutory requirements. The principle of the formal nature of adjudication is among those principles that have been created not so much for the purpose of guaranteeing the basic rights of the parties and realizing justice and equity in adjudication, but rather for the purpose of organizing and regulating disputes and preventing arbitrariness and disorder in adjudication. It should not be overlooked that the scope of application of the principle of formal adjudication is not absolute in all disputes. In some civil disputes, the formal nature of adjudication is accompanied by limitations and exceptions. In some provisions of the Civil Procedure Code, the legislator has limited the scope of this principle in order to accelerate the hearing of disputes and prevent delay in proceedings. For example, in actions concerning unlawful possession, disturbance, and obstruction of rights, the legislator, because of the importance and necessity of expediting

the hearing, has not deemed the formalities ordinarily applicable in other disputes necessary under Article 177 of the Civil Procedure Code. In light of the above discussions, the important issue is the sanction arising from violation of the principle of formal adjudication during the hearing of civil disputes. The legislator has not expressly addressed the sanction for violating the principle of formal adjudication and has only dealt sporadically, in some provisions of the Civil Procedure Code, with the sanctions attached to certain instances of procedural formalities. Under this Code, when the parties fail to observe the formal nature of adjudication, they will generally face sanctions such as the issuance of an order rejecting the statement of claim, annulment of the statement of claim, exclusion from the set of evidence, or treatment as supporting indications. Regarding the sanction for violation of procedural formalities by the court, the legislator has merely mentioned certain instances of procedural formalities. For example, under Article 11 of the Civil Judgments Enforcement Act, failure to observe the formalities relating to the issuance of an enforcement writ may, depending on the case, lead to annulment of the enforcement writ, cancellation of enforcement operations, or restitution of the subject matter of enforcement. Likewise, under Article 350 of the Civil Procedure Code, failure to observe the formal requirements of the statement of claim at the later stage results in the issuance of a notice to cure defects and, ultimately, quashing of the judgment issued. What appears certain is that a single sanction cannot be determined for all formalities that must be observed in civil proceedings. Therefore, in order to examine the sanction attached to the principle of formal adjudication, each procedural formality must be examined separately.

B. The Principle of Written Proceedings:

Under the principle of written proceedings, every act necessary for advancing the adjudicatory process, from the filing of the statement of claim to the issuance and pronouncement of the judgment, must be recorded in writing in the relevant file so that, in cases of doubt and disagreement regarding the validity of the parties' documents and evidence, renewed review and supervisory examination of them will be possible. In other words, the written nature of adjudication, in addition to being capable of proving the judge's impartiality or even partiality, gives the parties the

possibility and opportunity to defend themselves against writings through reciprocal responses, objections, and other means of challenging judgments. Nevertheless, despite acceptance of the principle of written proceedings, the oral aspect of civil proceedings should not be overlooked. The parties have the right to appear personally at the hearing to present their claims and defenses orally, or to use a lawyer to present their statements. Under Article 93 of the Civil Procedure Code, they may do so. They may also orally present matters that are to the benefit of the other party and to their own detriment, under Article 204 of the Civil Procedure Code, or orally submit their requests to the court under Article 313 of the Civil Procedure Code.

C. The Principle of Conducting Proceedings Within a Reasonable Time and at Reasonable Cost:

The reasonableness of the time and costs of hearing a civil dispute is among the most important criteria relating to the quality of adjudication and contributes to improving the efficiency of the adjudicatory process. Under the principle of conducting proceedings within a reasonable time, the process of hearing the dispute and deciding it must take place within a short and appropriate period so that, while preventing proceedings from becoming protracted and avoiding unjustified delay in adjudication, it also prevents the purpose expected by the claimant from bringing the action before the judicial authority from losing its value. The importance of the principle of conducting proceedings within a reasonable time lies in the fact that its observance has a significant effect on accelerating the dispute-resolution process and preventing delay in proceedings. Alongside the "principle of reasonable duration of proceedings," another principle must also be mentioned, namely the "reasonableness of litigation costs." Under this principle, civil procedure must be designed with reasonable and ordinary costs in such a way that, while discovering the truth and resolving the dispute, it enables citizens to have easy access to justice and the judiciary. Otherwise, it must be said that the possibility of attaining justice and expanding legal protection would be available only to the wealthy, while the poor, who are more in need of support, would have no path to the judicial system and effective judicial protection.

6. The Role of General Principles in the International Court of Justice:

6.1. *The Principle of Elementary Considerations of Humanity:*

Judge Weeramantry, in the advisory opinion on the Legality of the Threat or Use of Nuclear Weapons in 1996, stated that a developed legal system, in addition to express commands and prohibitions, also contains a series of general principles that are applicable, according to time, to subjects and events for which no express rule exists. In his view, nuclear weapons violate the principle of human dignity to the highest degree, and no weapon has been found in human history, apart from nuclear bombs, that negates human dignity and human worth in this manner. He stated that the fundamental concept of humanitarian law must be sought in the phrase "elementary considerations of humanity." Referring to the extensive and inhumane danger posed by the use of nuclear weapons to humankind and to their destructive effect on several thousand years of human civilization, Weeramantry believed that law cannot contain a rule authorizing the suicide of the very community it governs. Referring to Hart, the positivist legal scholar, he stated that there are certain established rules of conduct that every living social organization must possess and preserve. These universally recognized principles of conduct, which are based on the essential truth and substance of humankind, may be regarded as a minimum of natural law. The purpose of law is to establish a rational order centered on human life, whereas nuclear weapons destroy all hopes of realizing such an order. There is no need for the Court, in order to establish the customary prohibition of the use of nuclear weapons, to search for its psychological element. The Court must evaluate the use of these weapons by reference to the standard contained in this limitation, namely elementary considerations of humanity and the requirements of public conscience (Higgins, 1998; Meron, 2006).

6.2. *The Principle of Non-Intervention:*

In the Corfu Channel case in 1949, the United Kingdom, in justifying its unauthorized entry into Albanian territorial waters, relied on grounds including the right to secure evidence in another country, to present it to an international tribunal, and to facilitate the work of the Court. In rejecting this defense, the Court reasoned that

the alleged right of intervention was a manifestation of a policy of resort to force, which had been subject to serious abuses in the past and, regardless of the defects that might exist in the international system, could not find a place in international law. In the Court's view, among independent states, respect for territorial sovereignty is an essential principle of international relations. The Court recognized a specific, and not general, right of intervention as an exception to the principle of non-intervention only where such measures were aimed at advancing and strengthening the process of decolonization. Therefore, in contemporary international law, the right of self-determination, the freedom and independence of peoples, and the right of peoples to struggle to achieve these results are universally recognized. What is not universally accepted or recognized, however, is the right of such peoples to foreign assistance or support where that assistance entails intervention. The Court also stated that measures involving breach of the customary principle of non-intervention, if directly or indirectly connected with the use of force, also include breach of the principle prohibiting the use of force in international relations (Cheng, 1987; O'Connell, 1970).

6.3. *The Principle Prohibiting the Use of Force:*

In the Nicaragua case in 1986, the United States relied on a report of the United States Congress concerning the violation of human rights in Nicaragua in order to justify the use of force against that state. In the view of the Court, an allegation of human rights violations in one country cannot justify the use of force by another country in order to compel that country to respect human rights. The United States could assess the issue of respect for human rights in Nicaragua, but the use of force could not be regarded as an appropriate method for monitoring or guaranteeing respect for human rights. Measures in support of human rights with an exclusively humanitarian objective cannot be compatible with mining ports, destroying oil platforms, or training, arming, and equipping armed groups. The Court's reasoning in developing this principle is consistent with a principle accepted in all legal systems of the world, namely that resort to force belongs exclusively to the community and not to individuals (Kelsen & Tucker, 1967).

6.4. *The Principle That a Void Act Has No Legal Effect:*

In the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Territory in 2004, after finding that the construction of the wall lacked legality, the Court stated that Israel had to cease construction of the wall because cessation of an internationally wrongful act giving rise to responsibility is an established matter under general international law. All states were also required not to recognize the unlawful situation resulting from the construction of the wall in the occupied territory, including in and around East Jerusalem. Finally, the Court held that the United Nations, especially the General Assembly and the Security Council, had to take the necessary measures to end the unlawful situation resulting from the construction of the wall and the regime associated with it. The Court, which in its judgment of November 20, 1950, in the Asylum case had declared that the granting of asylum to Haya de la Torre by the Government of Colombia was contrary to the convention accepted by Colombia and Peru, held that this decision entailed a legal effect, namely ending the relevant unlawful situation (Cheng, 1987; Pellet, 2006).

In the advisory opinion concerning the Effect of Awards of Compensation Made by the United Nations Administrative Tribunal in 1954, Judge Winiarski stated that, although an arbitral award is always final and not subject to appeal, if it is rendered void because of defects, it will be without effect. This is not because the parties agreed to such a consequence when they accepted arbitration, but because it derives from an unavoidable general principle of law in all legal systems: not only a judgment, but every act that is legally void, is devoid of legal effects (Cheng, 1987).

6.5. *The Principle Prohibiting Discrimination:*

Judge Tanaka, in his interpretation of general principles of law, stated that law must be viewed as a whole comprising different branches, including civil, commercial, private, public, constitutional, administrative, procedural, substantive, and other fields. In his view, general principles are not limited to matters such as good faith, performance of obligations, respect for acquired rights, and responsibility for wrongful harm. The word “general” refers to principles common to all branches of law (Cheng, 1987).

In Judge Tanaka’s view, equality is not only a universally recognized legal principle, but generally stands at the apex of the legal system. This principle is inherent in natural law and therefore possesses a supra-constitutional character. Equality stands at the top of the hierarchy of the legal system, and all positive law, including constitutional law, must operate in the direction of and in harmony with this principle. By placing the principle of equality above all rights, he sought to position this principle in relation to two other principles of modern democracy, namely freedom and justice. Philosophically, the principle of equality is connected with the concepts of freedom and justice, but these two concepts become secondary in relation to the principle of equality. Injustice and conditions of servitude are truly the effects of legally unequal treatment. In other words, freedom and justice can exist only through adherence to the principle of equality. Judge Tanaka, while discussing the constitutional character of this principle, stated that the principle of equality is binding on all judicial and executive institutions, and then raised the question of whether legislators are immune from the binding nature of this principle. Under a constitution that expresses this principle by stating that all citizens are equal before the law, doubt may arise as to whether legislators are also bound by the principle of equality. The answer is that they are bound by this principle not only in exercising their ordinary legislative powers, but also in exercising their constitution-making powers. In explaining the content of this principle, Tanaka referred to several points. The most fundamental point in the principle of equality is that all human beings, as human beings, possess equal value; they are ends in themselves, and not means for others. The principle is that equal persons must be treated equally and unequal persons unequally. In other words, treatment must be proportionate to real differences. Equality before the law cannot be absolute; rather, it is relative, meaning that this principle permits different treatment in light of different factual circumstances. The necessity of different treatment can be justified only by the criterion of justice, that is, reasonableness (Higgins, 1998; Meron, 2006).

6.6. *The Principle of Reparation:*

If reparation is not the most important legal principle, it is at least one of the most important principles common

among nations within the meaning of Article 38(1)(c) of the Statute of the Court and one of the traditional foundations of law. An order requiring the losing party to pay litigation costs is a general principle of law, unless the court decides otherwise for appropriate reasons. The Administrative Tribunal of the League of Nations was the first international tribunal to confirm the existence of a general principle of law requiring the losing party to pay litigation costs. Judge Ammoun believed that it cannot be said that there is no relationship between reparation and litigation costs. There is no doubt that reparation must correspond to the damage suffered. The victim must be placed in the position in which he or she would have been had the injurious act not occurred. It is not equitable to impose upon the victim, in order to restore that position, the litigation costs, which may sometimes be heavy. Therefore, the obligation of the losing party to pay litigation costs may be regarded both as a general principle of law in itself and, as the Administrative Tribunal of the League of Nations stated, as an application of the principle of equity arising from Article 38(1)(c) of the Statute of the Court. It is true that neither the statute nor the procedural rules of the administrative tribunal contain any provision concerning this principle or how it should be applied. Nevertheless, the United Nations tribunal cannot abandon it. The League of Nations tribunal issued orders requiring the losing party to pay litigation costs in seventeen cases, confirming that the tribunal regarded payment of such costs by the losing party as a general principle, even though it was not provided in its statute. In a number of these decisions, the tribunal awarded compensation for the claimant's legal fees (Cheng, 1987; Pellet, 2006).

6.7. *The Principle Prohibiting Abuse of Rights:*

States may exercise sovereign rights over their own territory, but they may not use this right against the rights of other states. This statement of the Court in 1949 is noteworthy. The prohibition of abuse of rights must be understood through the relative nature of sovereignty, a matter that had no precedent in the era of classical international law. During this period, the Court contributed to the development of international law by formulating the principle prohibiting abuse of rights. The Court recognized that, as a result of profound changes in international relations, a new international law had emerged; a law built upon social interdependence. Judge

Alvarez, in his individual opinion, held that the Court had to change the law of the past and, in fact, update it and adapt it to the new conditions of international relations. It is true that the task of the Court is to apply existing law, and that if it changes the law it engages in legislation; however, the present Court has a new mission that had not been assigned to the former Court. The United Nations General Assembly, in light of Article 13 of the Charter concerning the codification and development of international law, stated in a resolution that the International Court of Justice must develop this law, or, in other words, update it. In his view, the Court must not act arbitrarily in performing this task, but must be inspired by the important principles of the new international law. Alvarez stated that, in the past, abuse of rights had no place in law, and everyone could exercise his or her right fully, and even if harm was caused to others, no obligation to make reparation existed. More recently, the civil law of some countries has expressly prohibited abuse of rights in private relations (Cheng, 1987; Danilenko, 1993).

6.8. *The Principle of Easement:*

In the Right of Passage over Indian Territory case in 1960, Portugal, in arguing for a right of passage over Indian territory, relied on Article 38(1)(c) of the Statute of the Court and stated that the domestic law of civilized nations unanimously accepted that the owner of enclosed land has the right to pass over adjacent land connected to it in order to gain access. Judge Wellington Koo believed that, in domestic law, access to enclosed property has always been guaranteed. There are certainly important differences between a right of passage over an internationally enclosed territory and a right of passage over enclosed land belonging to a private person. Despite all differences, their technical framework is similar, and the principle of recognizing such a right rests on a similar basis. This is a rational principle based on justice. In fact, the proposition that access to enclosed territory, whether under domestic law or under international law, entails a right of passage through surrounding territory belonging to an owner or under the sovereignty of another state, is based on rational reasoning and the fundamental principle of justice. With respect to such territories, whether in domestic law or in international law, this right of passage is necessary, and reason requires that this necessity be

secured in both legal systems (Cheng, 1987; O'Connell, 1970).

6.9. *The Principle of the Right of Self-Determination:*

In the advisory opinion on the Legal Consequences for States of the Continued Presence of South Africa in South West Africa, namely Namibia, the Court, referring to an important principle of international law, stated that it is necessary to note that interpretation of an instrument according to the intention of the parties at the time of its conclusion is an essential principle. Nevertheless, the Court is required to bear in mind that the concepts contained in Article 22 of the Covenant of the League of Nations concerning the mandate system for colonies and territories without sovereignty, such as “the strenuous conditions of the modern world,” “the well-being and development of such peoples,” and “a sacred trust,” are not static and fixed concepts; rather, they have an evolutionary and developmental character. Therefore, the Court’s interpretation cannot remain unaffected by the subsequent development of law through the Charter and customary law. The Court then linked the principle of the sacred trust of civilization to the principle of the right of self-determination and stated that, in the field under discussion, important developments had occurred over the preceding fifty years. These developments left no doubt that the ultimate objective of the sacred trust of humanity was the self-determination and independence of the peoples concerned (Cassese, 1996).

When the Court first examined the concept of self-determination, the term was still regarded by many as a political rather than a legal concept. In 1945, the Charter of the United Nations dealt with self-determination only for territories placed under the international trusteeship system. Nevertheless, in 1960, the United Nations General Assembly declared that the right of self-determination was a right belonging to all dependent territories. In its advisory opinion, the Court gave judicial confirmation to this proposition, stating that the subsequent development of international law concerning non-self-governing territories, as reflected in the Charter of the United Nations, had made the principle of self-determination applicable to all of them. The next important stage in this development was the Declaration on the Granting of Independence to Colonial Countries and Peoples, which included all peoples and territories

that had not yet achieved independence (Cassese, 1996; Danilenko, 1993).

6.10. *The Principle of Approximate Application:*

In the Gabčíkovo-Nagymaros Project case, Hungary, for environmental reasons, refused to perform its obligations under the 1977 treaty toward Slovakia, and Slovakia, in response and in order to achieve the objectives of the treaty, undertook operations to divert the Danube River. Slovakia, in justifying the legality of constructing and implementing the water-diversion works on the Danube as the only remaining solution, relied on a concept known as the “principle of approximate application,” which Lauterpacht had raised in the 1956 advisory opinion concerning the South West Africa Committee. Lauterpacht stated that it is an established legal principle that whenever a valid legal instrument cannot be implemented because of the conduct of one of the parties, action must be taken, without allowing the wrongdoing party to benefit from its unlawful conduct, in a manner that comes as close as possible to the purpose of those obligations. To the extent possible, effect must be given to a legal instrument rather than changing it. The Court, however, while not inclined to accept such a claim, stated that it was unnecessary to determine whether “approximate application” was a general principle of international law or not, because even if such a principle actually existed, it would be applicable only within the limits of the treaty in question. In the Court’s view, the diversion of the Danube River was inconsistent with the 1977 treaty (Cheng, 1987; Pellet, 2006).

7. Conclusion

Unlike the Civil Procedure Code of 1939, which divided the content and main body of civil procedure into two parts, namely “principles and formalities of procedure,” it seems that the content of civil procedure rests on three parts: “principles,” “rules,” and “formalities” of procedure. This view may be inferred from a careful examination of the provisions contained in the Civil Procedure Code of 2000, especially Article 1 and Article 371(3) of that Code. Understanding each of these concepts also depends on possessing criteria and standards for distinguishing them. Among the most important criteria of distinction are the relationship with

public order and the effect on the rights of the parties in the adjudicatory process. On this basis, a concept that has a close connection with public order or with the rights of the parties must be regarded as falling within the category of principles and mandatory rules of procedure. Of course, in Article 371(3) of the Civil Procedure Code, the legislator has used the rights of the parties separately from principles and mandatory rules. Separating the phrase “rights of the parties” from principles and mandatory rules creates the impression that principles and mandatory rules are unrelated to the rights of the parties, whereas it appears that procedural principles and mandatory rules themselves express the rights of the parties. Moreover, mandatory procedural rules guarantee observance of procedural principles in the hearing of civil disputes, and in this respect they differ from procedural formalities. Observance or non-observance of each of the principles, mandatory rules, and procedural formalities affects the validity of court judgments. In other words, violation of each of the concepts mentioned is accompanied by a legal sanction. Principles and mandatory rules, because of their close relationship with public order and the rights of the parties, are in no way subject to derogation, and departure from them at any stage of first-instance, appellate, or cassation proceedings will entail the invalidity of judicial acts and, ultimately, the quashing of the judgment issued. In this regard, while violation of procedural principles and mandatory rules leads to a fundamental disturbance in adjudication, disregard of some formalities does not necessarily create a fundamental defect in a judgment issued in compliance with other principles and mandatory rules. Among formalities, however, there are also regulations whose non-observance in proceedings affects the validity of the court’s judgment and leads to its quashing. Under Article 38 of the Statute of the International Court of Justice, general principles of law are an independent source of international law, possess a universal scope, and, before being derived from the will of states, express the legal conscience of humankind. These principles have an objective character, and the entire international legal system must be interpreted and applied in light of them. General principles of law occupy a special position not only in the International Court of Justice but also in other national and international courts. The European Court of Human Rights has emphasized in many cases the

applicability of human rights principles and the proposition that fundamental human rights form part of general principles of law. One of the purposes of the drafters of the former and current Statutes of the Court in drafting Article 38(1)(c) was to avoid the refusal to issue a judgment because of silence or absence of a rule. When the Court, in the operative part of its opinion concerning nuclear weapons, and after spending months examining the issue, reached the conclusion that international law, and therefore the Court, had nothing to say about the use of nuclear weapons in extreme circumstances for self-defense when a state is in danger, this matter drew criticism from some judges. The purpose of including general principles of law was to prevent legal gaps, and doctrine therefore generally supports a broad interpretation of general principles of law. For every international situation, there is not always an express legal rule that can be applied. However, every situation can be assessed on the basis of legal rules. It is precisely the judicial function of the Court, whether in contentious or advisory proceedings, to apply general principles to specific situations. No one should ignore the real circumstances of human beings. The judicial guide of the Court, whether in complex issues of interpreting humanitarian law or in resolving alleged conflicts between competing rules, must be the values that international law seeks to promote and protect. Nevertheless, some judges, including Judge Vereshchetin, believe that the issue of prohibiting reliance on the absence of legal rules or the necessity of filling such gaps by resorting to general principles of law concerns contentious judgments, in which the Court is asked to adopt a final and binding decision in order to resolve a dispute between the parties.

Authors’ Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

Acknowledgments

We would like to express our gratitude to all individuals helped us to do the project.

Declaration of Interest

The authors report no conflict of interest.

Funding

According to the authors, this article has no financial support.

Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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