



## Reflecting “The Abuse of Process Doctrine” in the Statutes of Dispute Settlement Bodies

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### Abstract

The abuse of process doctrine is a concept that has made its way from domestic law to international law, and today its use in international dispute settlement bodies has increased. This concept has been defined in various ways, one of its short and simple definitions defines this doctrine as the use of legal tools to achieve goals that are contrary to the main goals that a legal right was created to achieve. The prohibition of abuse of rights and the principle of good faith are the two legal foundations of the doctrine of abuse of process and in this regard, the International Court of Justice emphasizes that the basic concept of abuse of rights and abuse of process may be similar but the results of these two concepts are different from each other. The International Court of Justice has considered the doctrine of abuse of process as an admissibility objection but this doctrine has also been evaluated as a jurisdictional objection in the ICSID Court. International dispute settlement bodies are divided into two groups when faced with this doctrine: The first group of bodies that have an explicit provision on the ability to apply the doctrine of abuse of process and the second group of bodies that have explicit regulations on this matter. The International Court of Justice, as the only judicial body of the United Nations, does not have an explicit provision on the doctrine of abuse of process, neither in its statutes nor in its procedural rules, but in practice, it has dealt with this issue many times. For example, we can mention the dispute between Gambia and Myanmar regarding the application of the Convention on the Prohibition and Punishment of the Crime of Genocide. In this case, the International Court of Justice emphasizes the application of this doctrine regarding claims based on a valid title of jurisdiction only in exceptional circumstances. In the second group, the International Tribunal for the Law of the Sea is a body that explicitly mentions in the 1982 United Nations Convention on the Law of the Sea the possibility of applying the doctrine of abuse of process in its proceedings. However, this body does not have a provision about the conditions that it considers to be equivalent to the abuse of process and the criteria for verifying this doctrine. In clarifying the applicability of the doctrine of abuse of process, the European Court of Human Rights is a body that has



made a great effort to define the abuse of process, and even by categorizing the cases in which this doctrine has been discussed, he has tried to express the criteria that constitute the abuse of process. The important point is that this doctrine is accepted in the European Convention on Human Rights regarding individual petitions and there is no such specification in this convention regarding proceedings inter-states. The European Court of Human Rights, in the practical guide on admissibility criteria, divides its cases in connection with the issue of abuse of process into several categories, among which these criteria can be mentioned: The untrue facts that submits a petition based on false facts with the intention of deceiving the court is an abuse of the right to petition, the criterion of inappropriate language indicates that if the applicant uses hurtful, insulting or threatening language, the criterion of violation of the duty of confidentiality is the intentional violation of the duty to maintain the confidentiality of the amicable dispute resolution negotiations, leading to the verification of the abuse of process and the rejection of the petition against the respondent or their representatives or the court of judges and its members, this can be considered as an abuse of the judicial process and the criterion of a petition that is clearly hurtful or devoid of real purpose indicates that if the applicant repeatedly presents a hurtful or clearly baseless petition, he is guilty of abusing the right to present a petition. In the case of the European Court of Human Rights, it is also noteworthy that not only harming the defendant is considered to be equivalent to the abuse of process but also harming the purpose and judicial function of the Court is also a criterion for verifying the abuse of process. The United Nations Human Rights Committee, as a quasi-judicial body, has the authority to deal with the complaints of individuals against their states according to the Optional Protocol of the International Covenant on Civil and Political Rights. It has also recognized the application of the doctrine of abuse of process in its proceedings but it does not state the conditions that include abuse of process. Referring to the history of the draft of this protocol shows that unreasonable delay is considered an abuse of process, and providing misleading information to the committee is also considered an abuse of process.

**Keywords:** Abuse of Rights Doctrine, Abuse of Process Doctrine, International Court of Justice, European Court of Human Rights, International Tribunal for the law of the sea.

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