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The Obligation of the source State in accordance with the principles of international law to prevent of transboundary harm in the digital space

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Abstract

Sources of international law are the main rules referred to in order to fulfill the international obligations of persons of international law;Article 38 of the Basic System of the International Court of Justice indicated the sources applied by the court when adjudicating disputes before it; in accordance with paragraph (c) of item 1 of the aforementioned article; the general principles of law adopted by civilized nations are one of the main sources to which it is referred to in the absence of international conventions or norms through which persons of international law can be obliged to fulfill and not violate international obligations;In accordance with those principles established by the civilized nations and recognized as one of the sources of international law ,One of these principles is the principle of good neighborliness', one of the international legal principles adopted by the international community and obliged States to respect it in international dealings with each other in order to develop international relations among themselves, as approved by the Charter of the United Nations .The principle of the non-abuse of the right is also an established principle of international jurisprudence and justice; failure to comply with it violates the rules of international law.

Keywords

source country, good neighbourliness', non-abuse of the right, digital space, digital activities.

Introduction

Sovereignty is a fundamental principle of international law that includes the collection of rights held by a state; as the entity entitled to exercise control over

its territory and its ability to act at the international level; In this way; Territorial sovereignty acts as a common organizing principle between states; As a result of internal rights over a particular territory; grants sovereignty to the state; against other countries; "The legal personality necessary for the establishment and adherence to international law.The customary international rule regarding trespassing on the property of others; States are prevented from crossing each other's borders without the consent of the other; arguing that a violation of sovereignty occurs when one state crosses into the territory of another State without its consent; When applied to the digital space; States assert that territorial sovereignty works as a rule also in the digital space, and thus prevent the transmission of harmful effects in the digital system of another country; This constitutes a commitment on the part of states as well, as it is on the Reality ground, to prevent serious trans-border damage arising from activities that occur in the field of their digital territory to other countries that are likely to be affected by these activities. Thus, principles adopted by international law, as well as international jurisprudence and justice, are consulted to oblige States to prevent the transfer of dangerous activities causing serious and transient damage.
for national borders and from these principles

1. The obligation of the source State under the principle of good neighbourliness (1)

The idea of good neighbourliness originated in ancient times by its necessity; it began as a custom before it became a binding legal principle; In the domestic law, where the concept of unfamiliar harms of neighbourliness appeared, then it moved to the general international law regulating international life under the name of the principle of good neighbourliness(2) Neighbourhood rules at the international level have assumed the character of customary binding rules, Where states have frequently applied them in their relations with each otherand believed that these rules are obligatory; The rules of good neighbourliness are among the relatively recent rules in international relations. And that was when it was applied

(1) Neighbourhood in international law is a diverse and multiple concept; It may take a stable position in the case of buffer zones, demilitarized zones, or the separation wall; It may be the opposite, as it takes an activity situation filled with the movement of people and goods, The shape of the borders varies from land borders to sea borders; which are often not free from disputes over land delimitation or demarcation and, in particular, disputes over transboundary environmental damage; These disputes are subject to bilateral agreements, the Charter of the United Nations, or general principles of international law; Including the principle of good neighbourliness, which plays an important role in establishing responsibility for those damages, As one of the principles that regulate the behaviour and relations of neighbouring countries.
See, Ben Weiss Qada, The principle of good neighbourliness as a basis for international responsibility for environmental damage, Journal of Real Estate Law and the Environment, Volume 10, No. 1, Algeria, 2022, P: 143.

(2) See, Muammar Ratib Mohamed Abdel Hafez, International responsibility for transporting and storing hazardous waste (hazardous waste between the hammer of corruption and the anvil of globalization), an analytical study in the framework of international law for the environment, House of Legal Books, Egypt, 2007, P: 110.

in the field of regulating the rights of countries located on common international rivers in the implementation of the rule of preventing changing the natural conditions of international rivers if that would lead to harming the rights of others(1) Good neighbourliness in international law means (that states take into account when exercising their sovereignty and competencies over their territory that the activities they conduct do not result in any serious damage to the territories of other states) (2); It also means that it is (an obligation on the part of the state to use its territory as it likes, without such use causing any harm to other countries(3), No longer associated with geographical proximity; The principles of good neighbourliness also apply to States that may be geographically separated; This principle is not limited to border areas; Its practice extends beyond the border areas order requires the formulation of legal principles that fairly regulate human activities not only on earth, in airspace, seabed, oceans or outer space; Rather, it extends to scientific and technological developments, whose activities are likely to cause serious harm to other countries (4) The principle of good neighbourliness was explicitly mentioned in the Charter of the United Nations preamble, as the peoples of the United Nations pledged (.... to take ourselves for tolerance and to live together in peace and good neighbourliness). It was also expressly stated in the preamble to the draft European Convention on the Protection of Fresh Water from Pollution issued by the Council of Europe in 1969; which recognized that (it is a general principle of international law that no State has the right to exploit its natural resources in a way that can cause serious damage to a neighbouring State) (5) The United Nations General Assembly also passed a resolution in October 1970 on the declaration of the principles of international law on friendly relations and cooperation between States in accordance with the Charter of the United Nations ;According to the preamble to the resolution (the peoples of the United Nations are determined to take themselves into tolerance and live together in peace and good neighbourliness) (6); and their decision in December 1988 on developing and promoting good neighbourliness among States; part (b) of the resolution contained a set of recommendations on good neighbourliness. (7) It

(1) See, Suzanne Mouawad Ghoneim, International Legal Systems to Ensure the Use of Nuclear Energy for Peaceful Purposes, New University House, Alexandria, Egypt, 2011. P: 554.
(2) See, Islam Mohamed Abdel Samad, International Protection of the Environment from Pollution in the Light of International Conventions and Provisions of International Law, New University House, Alexandria, Egypt, 2016, P: 157.
(3) See, Ben Wess, Qada, the principle of good neighbourliness as a basis for international responsibility for environmental damage. Op. Cit. P: 146.
(4) See, Sompong Sucharitkul, The Principles of Good-Neighborliness in International Law, Golden Gate University School of Law, 1996. P: (9 – 10).
(5) See, Draft European Convention on protecting freshwater against pollution, Recommendation 555, Report of the Committee on Regional Planning and Local Authorities). on May 12 1969. P: 02.
(6) See, the Resolution of the General Assembly of the United Nations, No. 2625, Declaration on Principles of International Law Relating to Friendly Relations and Cooperation among States under the Charter of the United Nations, October 24, 1970, document A/RES/2625(XXV)
(7) Part(B) of the resolution contained the following recommendations:
1. reconfirm that good neighbourliness is in line with the purposes of the United Nations. It should be based on full respect for the principles of the United Nations as enshrined in the Charter and in the Declaration of the Principles of International Law

appears from the above; The principle of good neighbourliness is one of the international legal principles approved by the international community and obligating states to respect it in their international dealings with each other to develop international relations among them in accordance with what was approved by the Charter of the United Nations; And, in accordance with the scientific and technological developments; This principle is no longer confined to the geographic proximity between states; Rather, it extends to other countries that do not have a neighbouring border between them. As long as the activities that take place or occur in the territory of a country, their harmful effects reach those countries.That there are international norms relating to international environmental law that are common in real space; One of the principles adopted by this direction is the "principle of good neighbourliness" in international environmental law; a principle that originated mainly in solving environmental problems and issues in real space; and then saw the possibility of its applicability to digital space; (1) This principle is considered in international environmental law to be a general principle that States use their resources in a way that does not destroy the environment, especially those of their neighbours; the principle of good neighbourliness means that no state has the right to use its territory in a way that can violate the rights of other states. (2) This principle has been established in the case of gas emissions transmitted from one country to another, which took place between the United States of America and Canada (Trail Smelter); Where it became clear that the existence of the "principle of good neighbourliness" in both international arbitration and as a general principle; Adds greater weight to the state's responsibility and legal responsibility to prevent any harmful transboundary activity that adversely affects another state; As it was stated in the international arbitration decision that there is a generally accepted rule that a state must not allow its territory to be used for purposes harmful to the interests of other states in a way that contravenes the provisions

on Friendly Relations and Cooperation between States in accordance with the Charter of the United Nations .
2. Ask again the countries to maintain international peace and security, develop good-neighbourly relations, to operate based on these principles;
3 .reconfirm that the generalization of the long-term practice of good neighbourliness, its principles and rules would promote friendly relations and cooperation between States under the Charter.
See, United Nations General Assembly Resolution on the Development and Promotion of Good Neighbourliness among States; December 9 1988, Document A/RES/43/171

(1) See, Jason Healey and Hannah Pitts, "Applying International Environment Legal Norms to Cyber State Craft", Journal of Law and Policy, Vol. 8:2 2021. P: 376.

(2) There is a group of jurisprudence that supports the establishment of international responsibility based on the principle of good neighbourliness; including the jurist "Andarsi", which emphasizes the importance of the principle as it represents one of the general principles of international law, under which the state is prohibited from bringing on its territory an activity that exposes the territory of another state to serious damage. At the same time, Professor "Jenks" believes that the principle of good neighbourliness imposes a general obligation on States to prevent harm and potentially harmful effects, considering that scientific and technological development has allowed new cases to be found for the use of the territory and is based on the principle of good neighbourliness. However, good-neighbourly rules are recognized in the national legislation of all countries.
See, Youssef Moallem, International responsibility without harm (the case of environmental damage), PhD thesis in public law, a branch of international law, University of Jilali El Yabes, Sidi Bel Abbes, Algeria, 2015, P: 83.

of international law(1) The abuse of the issue of gaseous emissions contributed to the establishment of a customary situation for the principle of good neighbourliness among countries, which developed through its adoption in several international documents, including the Stockholm Declaration of 1972, where the principal (21) of it explicitly decided the idea of good neighbourliness (2)

The 1982 United Nations Convention on the Law of the Sea implicitly referred to the principle of good-neighbourliness in its text (States shall take all necessary measures to ensure that activities under their jurisdiction or control are conducted in such a way that they do not cause harm through the pollution to other countries and their environment, and that pollution does not spread arising from events or activities under its jurisdiction or control outside the territories in which it exercises sovereign rights in accordance with this Convention (3)

also addressed the principle of good neighbourliness in cooperation in the field of environment related to natural resources shared by two or more countries in (Draft Principles United Nations Environment Program (UNEP); The seventh principle of the draft stipulates that (countries exchange information, notices, discussions and all other forms of cooperation related to shared natural resources based on The principle of good faith, in the spirit of good neighbourliness, and in a manner that avoids any unjustified delay, whether in the forms of cooperation or in achieving development or in resource conservation projects) (4)Although the draft principles do not constitute an international legal obligation; However, these principles Confirm the principle of good neighbourliness and its obligations as a rule in international law, and although this principle applies to environmental issues, it can apply the same concepts and purposes of the United Nations draft principles to the digital space (Okoye & Anachuna, 2021)(5)

Another additional dimension to the principle of good neighbourliness is the duty to cooperate in the investigation; recognition; avoiding environmental damage; Furthermore, this standard may include the exchange of public information and prior notification; The State of origin of the hazardous activities

(1) See, The Corfu channel case (United Kingdom V. Albania), international court of justice, reports of judgments, advisory opinions and orders, (Merits), Judgment of April 9, 1949. P: 22.

(2) As the principal stipulates that (States enjoy, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their resources in accordance with their environmental policy; they also have the responsibility to ensure that activities that take place within their jurisdiction or under their supervision do not cause damage to the environment of other countries or areas outside the borders. See, Report of the United Nations conference on the human environment Stockholm, 5-16 June 1972. P: 05.

(3) See, Article (194 / paragraph 2), Convention on the Law of the Sea 1982.

(4) The principles of the 1978 DRAFT UN PROGRAMME were written at the request of the United Nations General Assembly and issued two years after the working group began examining the subject.
See United Nations Environment Program, Governing Council Approval of the Report of the intergovernmental Working Group of experts on natural resources shared by two or more states, Vol.17, No. 5 (September 1978). P: 1099.

(5) See Jason Healey and Hannah Pitts, "Applying International Environment Legal Norms to Cyber Statecraft", Op. Cit. P: 376.

must notify the relevant and affected States of such activities of the existence of an emergency or of an activity that will have trans boundary effects; Provided that it is understandable to us that good neighbourliness does not necessarily require the state that consults with other countries to obligate them to give their opinion. Nevertheless, consultation and notification are among the essential aspects of good neighbourliness. (1) However, the relevant activity does not have to be the cause of transboundary harm is the act of the state; this criterion requires that the exporting state notify and consult with the affected States when hazardous activities within its borders have a negative impact (serious harm) on the territory or environment of other States; (Okudaye, 2021)(2)

For example, the obligations of the former Soviet Union to notify states of the Chornobyl nuclear disaster during the event required him to pay compensation later.(3) And we conclude from this that violating the principle of good neighbourliness results in conflicts, including traditional methods, for the percentage of responsibility and settling the dispute, including the International Court of Justice, if it is of a sufficient degree of gravity. In light of the above and its application to the digital space; if viral programs are considered as a type of transboundary emission (activities) or an obvious form of transboundary harm; the affected state must be able to prove the damage or destruction caused by the violation of the principle of good neighbourliness; Thus, the issue is not to prove the existence of virus programs; But the most important thing is the extent of the damage caused by it. Applying the terminology of the UNEP draft, "common natural resources",; Connected networks can be the digital space because anything from the communication networks of one country can arrange harmful and severe consequences in the networks of other countries in an easy and fast way, Thus, using the principle of good neighbourliness; the state should share information and inform others of possible issues related to digital activities, and to discuss and consult with other countries on harmful activities in the digital space; the aim of exchanging information and commitments is to improve cooperation To combat virus programs, web-based attacks, tools and other means that cause serious damage in the digital space; This is what was stated in Article (4) of the project

(1) See Max Valverde Soto, General Principles of International Environmental Law, Journal of International & Comparative Law: Vol.3. Iss.1, 1996. P: 197.

(2) This corresponds to the article (17) of the prevention of transboundary harm Project resulting from hazardous activities if the article states that : "The State of origin shall, without delay and by the most expeditious means, at its disposal, notify the State likely to be affected of an emergency concerning an activity within the scope of the present articles and provide it with all relevant and available information."
See, Yearbook of the International Law Commission, Report of the Commission to the General Assembly on the work of its fifty-third session, International liability for injurious co nsequences arising out of acts not prohibited by international law (prevention of transboundary harm from hazardous activities), 2001, Volume II Part II, P: 147.

(3) See, Linda A. Malone, The Chornobyl Accident: A Case Study in International Law Regulating State Responsibility for Transboundary Nuclear Pollution, Columbia Journal of Environmental Law, Vol.12. 1987. P: 207. n. 43.

prevention of transboundary harm from hazardous activities (1) The conclusion of this direction There is an international legal custom that has emerged in the digital space, which is the "principle of good neighbourliness" that obligates countries to cooperate in combating harmful activities in the digital space and to provide mutual assistance in this regard and not to harm the digital networks of other countries.

2. The obligation of the state of source under the principle of non-abuse of the right: the idea of non-abuse of the right at the level of international relations in the jurisprudence of international law emerged after the First International War; highlighted this principle during discussions on the establishment of the League of Nations; On the idea of sovereignty and its absolute competence of States for certain matters; The principle of preventing arbitrariness of these rights and specialities by the state has emerged as a means of limiting the absolute freedom of the state to exercise these rights.(2)

In accordance with this principle, the state considers that it has abused its right if it benefits from its rights in a controlling manner that causes harm to another State that cannot be justified by legitimate considerations of the interest of other states(3). Jurists of international law have been divided, and their opinions and views on the principle of non-abuse of the right are divided into two directions as follows:

1-1First direction: (critics of the principle)(4).

The jurists of this direction criticized the principle of non-abuse of the right Considering that it is of a wide range, it is impossible to find a specific expression; This threatens the stability of law in the international community; As the stability of the cases in which this principle is supposed to be applied in its broad sense indicates; Either there is no personal right to remedy the error resulting from its misuse; or that there is no reason to advance this principle because the right itself is surrounded by a wall of customary rules with which it is impossible to abuse it. (5)

One of the jurists criticizes this doctrine; Because it is difficult to prove purpose to harm; By saying (it is not easy to prove bad faith through legal evidence and that many jurists find that this principle has no place in general law because the right ends when arbitrariness begins and that there can be no arbitrariness in a right because a single work cannot be conforming to the law and in contravention of it at the same time) (6)

(1) See, Jason Healey and Hannah Pitts, "Applying International Environment Legal Norms to Cyber Statecraft". Op. Cit. P: 376.
(2) See, Fadi Al-Mallah, sultan of security, immunities and diplomatic privileges, is seen in theoretical and practical reality compared to Islamic law. Institution Knowledge, Alexandria, Egypt, 1981, P: 591.
(3) See, Bering, J Braun, T,R Lorz, R,A Schill, S Tams, C,J (2011). General Public International Law and International Investment Law, TELC, Berlin, P: 40.
(4) Among the supporters of this direction are Muhammad Talaat Al-Ghunaimi, Richard O'Sullivan, and George Schwarzenberger.
(5) See Mohammed Talaat al-Ghanimi,Al-Ghanimi , Peace Law, Knowledge Establishment, Alexandria, Egypt, 1973, P: 443.
(6) See, Richard O'Sullivan, Q.C, 4 Abuse of Rights, Current Legal Problems, Vol.8, Issue.1, 1955. P: 66.

Another jurist refuses to consider the principle of non-abuse of the right as one of the general legal principles recognized by civilized nations; As he considers (concerning English law, there is a consensus that this principle does not form part of the law of default responsibility, Even for European legal systems that have adopted the principle of Non-arbitrariness in the use of the right; The scope of its application has varied widely, and the solutions offered by this principle are difficult to apply at the international level). (1)

Another sees; This principle contains a contradiction; if a person uses his right, his work is lawful. And if it is illegal, it is because he exceeded his right and acted unlawfully. (2)

1-2 The second direction: (supporters of the principle) (3)

The jurists of this trend strongly defended the principle of non-abuse of the right; As one of the jurists said (that only the most primitive societies allow the use of the right without monitoring its social effects; and that the question of determining when the right has been abused must depend on the specific circumstances of each case rather than the application of an abstract legislative standard to all cases)

However, he stressed the necessity of caution when applying this principle by the international judiciary in appreciation of the existence of abuse of the right; by saying (There is no legal right, no matter how well-founded; it cannot be refused in some circumstances to recognize it because it has been abused; and that the principle of non-abuse of the right can be a means to achieve international justice if it is applied more conservatively and thoughtfully) (4)And sees another jurist cannot use the recognized freedoms of states legitimately(like the freedoms of individuals); Except in accordance with the medium to which it has decided; for its practice to be legitimate, it must be in accordance with its social purpose (5)Accordingly, there is no initial reason Prevents the extension of the principle of non-abuse of the right to international relations; on the contrary; It has been recognized and become necessary for reasons that have ensured success in

(1) See, Georg Schwarzenberger, Uses and Abuses of the Abuse of Rights in International Law, Transactions of Grotius Society, Vol. 42, Problems of Public and Private International Law,1956. P: 150.
(2) See, Fadi Al-Mallah, Sultan of Security, Immunities, and Diplomatic Privileges. Op. Cit. P: 594.
(3) Supporters of this direction include: Nicholas Politis, Michael Byers, Richie Busati, Bering J. Brown, Alexandre Kiss
(4) See, Michael Byers, Abuse of Rights, An Old Principle A New Age, McGill Law Journal, Vol.47, 2002. P: (406 – 607).
(5) Nicholas Politis believes that the liberties of the recognized states "must be seen to their purpose and outcome and the need for the latter to be legitimate; Nicholas established a standard of legitimacy aimed at using the right and making the legitimacy of the right coupled with the legitimacy of the purpose ." See, a group of researchers, Ibn Khaldun Center for the Humanities and Social Sciences, the principle of non-abuse of the right to international law; the Gulf crisis is a model of "applied study"; Qatar University, 2020, P: 20.

domestic law; (1) Another expressed his view on this principle by saying that "non-abuse of the use of the right is a principle of international law derived from the general structure of the legal system; it promotes and develops it in several ways by establishing a new customary rule and contributing to the creation of rules of agreement or rather the establishment of new principles) (2) The principle of non-abuse of the right has begun to be officially rooted As a general principle of international law at the meetings of the Special Advisory Committee of the Draft Statute of the Permanent International Court of Justice and in particular to the text of the article (38) of the Statute, This is because the absolute rights of the state are informed of principles that prevent them from being used to harm others. (3)

that the concept of authority States in the use of their sovereign rights are one of the basic concepts in international law; Especially in light of the expansion of state functions and the increase in its specialization; Although customary principles place restrictions onauthorities states and their rights; However, jurists of international law proceeded to establish the principle of non-abuse of the right as a basis for establishing international responsibility to limit transboundary harm as a result of activities within the scope of the sovereign rights of the state. (4)

Mentioned worth mentioning the principle of non-abuse of the right in more detail in the yearbook prepared by the International Law Commission in 1953, which was submitted to the United Nations General Assembly and contains comments on the project articles on international fisheries regulation; stated in the comments (that the Committee, by adopting the project articles, was affected by the principle of non-abuse of the right, which is supported by the international judiciary, and considers that this principle is closely related to the conditions regulated by the project articles; and that the non-abuse of the right to the extent that it constitutes a general principle of the general legal principles recognized by civilized nations; It provides, to a large extent, a precise legal basis for the general legal rule formulated in one of the articles of the project). (5)

The principle of non-abuse of the right was also mentioned; In the yearbook prepared by the International Law Commission in 1961; As stated in the second article of the project (the article defines the meaning of the phrase "international obligations of the state" to include non-abuse of the right; which means any procedure or action contrary to the rules of customary law or the Convention that

(1) See, Fadi Al-Mallah, Sultan of Security, Immunities, and Diplomatic Privileges. Op. Cit. P: 597.
(2) See, Yearbook of the International Law Commission 1960, Volume II, United Nations, Documents of the twelfth session. P: 58.
(3) Italian committee member Ricci Busatti defended the principle of non-abuse of the right as one of the general legal principles endorsed by civilized nations and which the court should apply in the disputes before it; Referring, as an illustration, to disputes that may arise in connection with the exercise of the coastal state's right to determine the width of its territorial sea. See, Yearbook of the International Law Commission 1960. Op. Cit. P: 58.
(4) See, a group of researchers, Ibn Khaldun Center for Humanities and Social Sciences considers the principle of non-abuse of the right in international law. Op. Cit. P: 19.
(5) See, Yearbook of the International Law Commission 1953, Volume I, Summary records of the fifth session, United Nations. P: 376.

regulates the exercise of states' rights and competencies, and that the state may not advance any provisions of its domestic law to disclaim liability arising from a breach or non-respect of an international obligation); The project also emphasized, in the context of its discussion of the elements of international responsibility; The principle of non-abuse of the right may become abasis for establishing this responsibility(1) This means that the principle of non-abuse of the right is not just a general principle; Rather, it is correct to rely on it as a base for establishing international responsibility, taking into consideration the necessity of proving the elements of international responsibility.The principle is also contained in international conventions, as in the Law of the Sea Convention of 1982; Which gave the law of the sea court the right to refrain from taking any action in the case before it if the claim made to it constituted an abuse of legal methods Or it is not well basis As the agreement showed, States parties fulfil in good faith in the obligations they bear under this agreementand in a manner that does not constitute an abuse of the right (2) That is, the agreement mentioned above made the principle of non-abuse of the right a special principle to be ruled by the court concerning the legal methods used for litigation before it; In addition, the Convention made the principle among its general provisions. (3)

The principle of non-abuse of the right in international law; requires a measure of the state's restraint of its freedom, which is established for it under its enjoyment of independence and sovereignty; Abuse of the right occurs; When the state achieves an interest for itself by using one of its rights, it constitutes harm that cannot be justified by the benefit achieved due to its insignificance in exchange for the harm or due to the illegality of the benefit(4); The principle in the jurisprudence of international law refers to the situation in which the state exercises its right in a way that impedes the rights of other states and in a way that causes harm to other states; There are several cases of the possibility of abuse of the right, the most important of which are: (5)

First. The first case: the use of the right in a manner inconsistent with the use by another country of its legitimate right; This occurs when a state exercises its rights in a way that impedes another state's use of its rights; Which results in harm to the other country due to failure to take into account the nature of the resources or common interests; The legitimate rights and interests must be in a

(1) See, Yearbook of the International Law Commission 1961, Volume II, Documents of the thirteenth session. United Nations. P: (46, 50).
(2) Article (294 / Para 1) of the Convention on the Law of the Sea states that "....if the court decides that the claim constitutes an abuse of legal methods or that it is not based on sound grounds, it shall refrain from taking any action in the case, Article (300) of the Convention stipulates that "States Parties shall fulfil in good faith the obligations assumed by them under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner that does not constitute arbitrary use of the right.
(3) See, a group of researchers, Ibn Khaldun Center for Humanities and Social Sciences. Op. Cit. P: 42.
(4) See, Bering, J Braun, General Public International Law. Op. Cit. P: 40.
(5) For more details, See, Alexandre Kiss, Abuse of Rights, Max Planck Encyclopedia of Public International Law, Oxford Public International Law, 2006. P: (20 – 30)

balanced framework, And arbitrariness, in this case, occurs when a state seeks to achieve its interests at the expense of the interests of another state; We find this picture in the Montevideo Convention on the Rights and Duties of States in 1933; As stated in the last paragraph of Article Three thereof (...there are no other restrictions on the exercise of these rights other than the exercise of the rights of other countries under international law). (1)

Secondly, the second case: is the use of the right for something other than what was prepared for it or an originally illegal objective; It occurs when the right is exercised to achieve objectives different from the objectives that established the right, which causes harm to another country. As a result, It is an abuse of the right so that it is used as an authority; This is what we see in the issue of free zones between France and Switzerland in 1930; The Permanent International Court of Justice has indicated that France cannot rely on its national legislation. To restrict the scope of its international obligations, The state may not dissociate itself from its international responsibilities. because the provisions of its domestic law do not allow it to sponsor or implement those international obligations, which the court considered to be the abolition of free zones by French law, which violatesthe binding force of the agreements in force between the two states; This explains France's abuse of its rights; France cannot evade or limit its international obligations through its domestic law. (2)

Thirdly. Third case: the use of the right to harm another State without violating its rights; In this case, arbitrariness is achieved as a result of damage without a clear violation of the rights of the State; Bad faith or proof of harm is not necessary to achieve this situation; the purpose of describing the act as arbitrary is to provide international protection to care for States from arbitrary expulsion, deportation and confiscation of property (3) Or a state exercising its right In the intercepting in the General Assembly of the United Nations or the Security Council to accept a new Member State of the United Nations, claiming that it must also accept other states.(4) The cases mentioned above have established several controls for the use of the right by States; States may not use their rights without a real reason; and This reason must also be legitimate; Otherwise, it is inconsistent with the right of another state; These previous cases above are based on the outcome and objective factors It examines the right as a means of achieving the goals and results; so it sees In the extent of the legitimacy of the results and objective while recognizing the legitimacy of the act in terms of the essence.(5)

(1) See, Article 3, Montevideo Convention on the Rights and Duties of States, December 26, 1933. P: 03.
(2) See, Case of the Free Zones of Upper Savoy and the District Of Gex, France v. Switzerland, Permanent Court of International Justice, Nineteenth (Extraordinary) Session, December 6 1930. P: 12
(3) See, Mitchell, D Andrew, Good Faith in WTO Dispute Settlement, Melbourne Journal of International Law, Vol.7, Issue.2, 2006. P: 11
(4) See, Muhammad Talaat Al-Ghunaimi, Al-Ghunaimi in the Peace Law. Op. Cit. P: 444.
(5) See, a group of researchers, Ibn Khaldun Center for Humanities and Social Sciences, the principle of non-abuse of the right in international law. Op. Cit. P: 30.

From the previous, it becomes clear that the abuse of the right is based on the illegality of the objective and the result despite the legality of the means that constitute the act based on a legitimate right in its essence; The principle is based On the idea that one party has no right to inflict harm on another by using the right, and The legality of using a right does not refer to the legitimacy of the purposes of the use or the results as long as it contradicts with the essence of the right; The Commission expresses this on International Law by saying that arbitrariness is an act contrary to international law It involves legal acts in its essence is that it is contrary to international law because it achieves goals and results that are contrary to the objectives of the international community in maintaining international peace and security. (1)

That the act is considered arbitrary according to the criteria of purpose and result, it must be in the light of the provisions of international law, not national laws; The International Court of Justice confirmed this in the case between the United States of America and the Italian Republic in 1989. (2)

America claimed that Italy had taken arbitrary action in its decision laying hands on the (Easley) company in violation of Article 1 of the supplementary agreement in 1951 to the Treaty of Amity, Trade and Navigation concluded between the two parties in 1948; And based on the Italian court's ruling that the decision is illegal, as it involves arbitrary use Authority (3) However, the International Court of Justice has decided

The fact that one of the actions of a public authority is likely to be illegal in domestic law does not necessarily mean that the act is illegal in international law, and illegality in itself and alone cannot be said to be arbitrary; "For example, it is unjustified .or unreasonable. or arbitrary" and maybe have a valuable significance; however, this does not necessarily mean that the work must be considered to be

(1) See, Yearbook of the International Law Commission 1959, Volume II, Documents of the eleventh session, United Nations. P: 07.

(2) The United States of America claimed that Italy had violated some provisions of the Treaty of Amity, Commerce and Navigation between the two parties concluded in 1948; the agreement supplementing it in 1951; The Italian authorities have initiated arbitrary measures against the Italian company (Esli), which is owned by the two companies (Raytheon and Machlit) of the United States of America. See in detail, Summary of Judgments, opinions and Orders issued by the International Court of Justice 1948-1991, pp. (261-268)

(3) Article (1) of the 1951 supplementary agreement states that " The nationals, corporations and associations of either High Contracting Party shall not be subjected to arbitrary or discriminatory measures within the territories of the other High Contracting Party resulting particularly in: (a) preventing their effective control and management of enterprises which they have been permitted to establish or acquire therein; or, (b) impairing their other legally acquired rights and interests in such enterprises or in the investments which they have made, whether in the form of funds (loans, shares or otherwise), materials, equipment, services, processes, patents, techniques or otherwise. Each High Contracting Party undertakes not to discriminate against nationals, corporations and associations of the other High Contracting Party as to their obtaining under normal terms the capital, manufacturing processes, skills and technology which may be needed for economic development".
See, Agreement supplementing the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic. Signed at Washington on September 26 1951. P: 326.

arbitrary in international law.(1) From the previous, it is clear that the two main criteria for adapting an act (activity) as arbitrary or not; They consist in the legality of both the purpose and the result under the purposes of international law; The objectives and the result must be legitimate; The legitimacy of one is not sufficient without the other; We may find a legitimate result, but it achieves an illegitimate objective, as in the case of the Electricity Company between Bulgaria and Belgium in 1939; As the termination of the Treaty of Arbitration and Judicial Settlement concluded between them in 1931; by the Bulgarian government a legitimate result;

However, the purpose of the repudiation is not legitimate; Where the Permanent Court of International Justice inferred the bad faith of the Bulgarian government by investigating when did the act; The court ruled that the Bulgarian government had abused its right toThe treaty during the submission of the Bulgaria Government's request to bring the case before the Permanent International Court of Justice (2); on the contrary, we may find a legitimate objective leading to an illegal result; (as in the Trail Smelter case); the objective of extracting and smelting minerals is legitimate, but the result of the pollution on American farmers was illegal. (3)

Thus, the criterion of abuse of the right is based on the illegality of both the objective and the result; The illegality of the objective is closely linked to the principle of good faith when brought An act or activity to achieve an illegal purpose Involves bad faith, which constitutesa breach of the principle of good faith. In addition to breaching the principle of non-abuse of the right, achieving a result or for illegal purposes is a clear presumption of arbitrariness, and it is a presumption that must be proven and may prove its opposite.Through what has been reviewed, the principle of non-arbitrariness in the use of the right is a principle established in international jurisprudence and justice; And the principle of non-abuse of the right can be dropped and measured in the source country in which digital activities that cause serious harm to other countries are taking place; Despite the legality of the activity or act used, the results and objectives arising from such activity are illegal because of the serious damage that this activity can cause; And then there's an obligation on the part of the source state. By not engaging in this type of digital activity that can cause serious harm to other States, whether they are neighbouring them or not; Referring to the international judiciary, which settled disputes that were submitted to it and resolved, and citing the principle mentioned above as one of the principles of international law whose failure to comply with it constitutes a violation of the rules of international law, and then raise international responsibility on the state violating this principle.

(1) See, Case Concerning ELETTRONICA SICULA S.P.A. (ELSI) (United States Of America v. Italy), International Court of Justice, Reports of Judgments, advisory opinions and orders, Judgment of July 20 1989, P. 74.
(2) See, The Electricity Company of Sofia and Bulgaria (Preliminary Objection), Belgium v. Bulgaria, Permanent Court of International Justice, Judgment, Judicial Year 1939. Para: (139 – 140). Inspected on 3/15/2022 http://www.worldcourts.com/pcij/eng/decisions/1939.04.04_electricity1.htm
(3) See Case Trail Smelter, (United States v Canada), Op. Cit. P: (1970 – 1971).

3 .Conclusion

The principle of good neighbourliness is one of the international legal principles approved by the international community and obligating states to respect it in international dealings, under what is recognized in the Charter of the United Nations; and under the scientific and technological developments; This principle is no longer confined to the geographic proximity between states; Rather, it extends to other countries that do not have a neighbouring border between them. As long as the activities that take place or occur in the territory of a country, their harmful effects reach those countries, and this principle is also established in some international cases, as in the case of gas emissions in the case of the Trail Smelter, as it turns out that there is a generally accepted rule thatThe state must not allow its territory to be used for purposes harmful to the interests of other states in a manner that violates the provisions of international law, which led to the adoption of this principle in a number of international documents, which imposes on states the duty to cooperate in the investigation; recognition; avoiding environmental damage, and applying it to the digital space; if viral programs are considered as a type of transboundary release (activity) or an obvious form of transboundary harm; the affected state must be able to prove the damage or destruction caused by the violation of the principle of good neighbourliness; Thus, the issue is not to prove the existence of virus programs; But more important is the extent of the damage caused by it; Hence, there is an international legal custom that has emerged in the digital space, which is the "principle of good neighborliness" that obligates countries to cooperate in combating harmful activities in the digital space and to provide mutual assistance in this regard and not to harm the digital networks of other countries.Among the principles of international law is also the principle of non-abuse of the right; As this principle was mentioned in many discussions of the International Law Commission as well as in international conventions, The principle is based on the idea that a State is not entitled to harm other States through its use of the right The legality of using a right does not go to the legitimacy of the purposes of use or result which may result from it as long as it violates the essence of the right; Despite the legality of the activity or action used, the results and objective arising from this activity are illegal because of the serious damage that this activity may cause; And then there is an obligation by the source country not to engage in this type of digital activities that could cause serious harm to other countries, whether they are neighbouring to it or not.

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