

INTERNATIONAL COURT OF JUSTICE

**ALLEGATIONS OF GENOCIDE UNDER THE CONVENTION ON THE
PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE**

(UKRAINE V. RUSSIAN FEDERATION)

**WRITTEN OBSERVATIONS OF UKRAINE ON THE
DECLARATION OF INTERVENTION OF THE REPUBLIC OF MALTA**

30 January 2023

1. On 24 November 2022, the Republic of Malta (“Malta”) filed a Declaration of Intervention (the “Declaration”) pursuant to Article 63 of the Statute of the Court. On the next day, the Registrar of the Court, acting in accordance with Article 83 of the Rules of Court, forwarded a certified copy of the Declaration to the Agent of Ukraine and informed him that the Court had fixed 30 January 2023 as the time-limit within which the Governments of Ukraine and the Russian Federation may furnish their written observations on the Declaration.

2. The Government of Ukraine provides its observations regarding Malta’s Declaration of Intervention below. In the view of the Government of Ukraine, the Declaration of Malta fulfills the requirements of Article 63 of the Statute and Article 82 of the Rules of the Court and is, accordingly, admissible.

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3. Article 63 confers a “right to intervene in the proceedings” to a State notified of a case involving the construction of a convention to which the State is a party. In assessing whether a declaration falls under Article 63, “the only point which it is necessary to ascertain is whether the object of the intervention . . . is in fact the interpretation of the [relevant] Convention in regard to the question” at issue in the dispute.¹ The declaration must also satisfy the conditions set forth in Article 82 of the Rules of the Court. As Article 63 of the Statute provides for intervention as of right,² where a State seeking to intervene has met the conditions

¹ *Haya de la Torre Case, Judgment of 13 June, I.C.J. Reports 1951*, p. 77. See also *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013*, pp. 5–6, para. 8.

² Statute of the International Court of Justice, Article 63(2). See also *Haya de la Torre Case, Judgment of 13 June, I.C.J. Reports 1951*, p. 76; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya) Application to Intervene, Judgment, I.C.J. Reports 1981*, p. 13, para. 21; *Territorial and Maritime Dispute (Nicaragua v. Colombia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2011*, p. 433, para. 35.

provided under Article 63 of the Statute and Article 82 of the Rules, the declaration is deemed admissible.³

4. The Declaration of Malta satisfies all the necessary requirements. The instant case puts in question the construction of the Genocide Convention. Malta is a party to the Genocide Convention and thus has a right to intervene under Article 63. Based on the text of the Declaration of Malta, which identifies Malta's interpretation of specific provisions of the Genocide Convention, namely Article IX, the Declaration's object is the interpretation of the Genocide Convention.

5. Article 82(1) provides that declarations under Article 63 "shall be filed as soon as possible, and not later than the date fixed for the opening of the oral proceedings. In exceptional circumstances a declaration submitted at a later stage may however be admitted." Article 82(2) provides further requirements:

2. The declaration shall state the name of an agent. It shall specify the case and the convention to which it relates and shall contain:

(a) particulars of the basis on which the declarant State considers itself a party to the convention;

(b) identification of the particular provisions of the convention the construction of which it considers to be in question;

(c) a statement of the construction of those provisions for which it contends;

(d) a list of the documents in support, which documents shall be attached.

³ See *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013*, pp. 5–6, paras. 7–8.

6. All of these requirements are met. Malta has filed its Declaration well before the opening of oral proceedings, which have not been set. Malta has also appointed an agent,⁴ and the Declaration notes the basis on which Malta considers itself a party to the Genocide Convention,⁵ identifies “particular provisions” of the Genocide Convention it considers to be in question, and provides a statement regarding the “construction of those provisions.”⁶ Finally, the Declaration includes “a list of the documents in support and attaches those documents.”⁷ Accordingly, all of the requirements of Article 82 are met and the Declaration is admissible.

7. Russia’s filing of preliminary objections on 3 October 2022 does not have an effect on the admissibility of Malta’s intervention. As stated in the Declaration, Malta wishes to avail itself of its right to intervene with respect to the construction of Article IX of the Genocide Convention, which concerns the jurisdiction of the Court and is therefore at issue in addressing Russia’s preliminary objections.⁸ Malta has the right under Article 63 of the Statute to intervene with respect to the interpretation of any provision of the Convention that is at issue, including any provision that the Court is asked to interpret during the preliminary objections phase of the case.⁹

⁴ Declaration of Intervention Under Article 63 of the Republic of Malta, *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russia)*, 24 November 2022, para. 36.

⁵ *Id.* para. 10.

⁶ *Id.* paras. 17–31.

⁷ *Id.* para. 32.

⁸ *Id.* paras. 17–31.

⁹ See Hugh Thirlway, *THE LAW AND PROCEDURE OF THE INTERNATIONAL COURT OF JUSTICE: FIFTY YEARS OF JURISPRUDENCE, VOLUME I (2013)*, p. 1031 (“If for example a case is brought on the basis of the compromissory clause in a multilateral convention, the interpretation of that clause may be of interest to all the other States parties (or at least those of them who have not made a reservation to the clause). It would therefore seem that there is no reason why intervention under Article 63 should not be possible to argue a question of jurisdiction or admissibility, if that question involves the interpretation

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8. For the reasons set forth above, it is the view of the Government of Ukraine that the Declaration of Intervention filed by Malta under Article 63 of the Statute of the Court is admissible.

of a multilateral treaty.” (internal citations omitted)); ROSENNE’S LAW AND PRACTICE OF THE INTERNATIONAL COURT: 1920–2017, VOLUME III PROCEDURE (Malcolm N. Shaw QC ed., 5th ed. 2016), p. 1533 (“If the dispute over jurisdiction relates to the interpretation of a multilateral treaty which contains a compromissory clause or any other provision including another instrument intrinsically linked to that treaty, it is not self-evident why any other party to that treaty cannot intervene under Article 63 in any phase of the proceedings: close examination of the legislative history of that provision in 1920 and of the initial Rules of Court of 1922 strongly indicates that this was precisely the intention behind that provision.” (internal citation omitted)).

30 January 2023

Mr. Anton Korynevych

Agent of Ukraine