



WRITTEN OBSERVATIONS  
OF THE REPUBLIC OF BULGARIA ON  
THE ADMISSIBILITY OF ITS  
DECLARATION OF INTERVENTION

IN THE CASE

ALLEGATIONS OF GENOCIDE UNDER THE  
CONVENTION  
ON THE PREVENTION AND PUNISHMENT  
OF THE CRIME OF GENOCIDE  
(UKRAINE V. RUSSIAN FEDERATION)

13 February 2023

## I. INTRODUCTION

1. With reference to the Registrar's Letter No. 158426 of 30 January 2023 and Letter No. 158445 of 31 January 2023, the Republic of Bulgaria hereby submits its written observations on the admissibility of its Declaration of Intervention in the case *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.
2. On 18 November 2022, the Republic of Bulgaria submitted to the International Court of Justice a Declaration of Intervention pursuant to Article 63, paragraph 2 of the Statute of the International Court of Justice („the Statute“) on the case *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (“the Convention” or “the Genocide Convention”).
3. On 30 January 2023, Ukraine submitted its written observations on the Declaration of Intervention of the Republic of Bulgaria (“the Bulgarian Declaration”), stating the admissibility of the Declaration pursuant to the fulfillment of the requirements of Article 63 of the Statute and Article 82 of the Rules of the International Court of Justice (“the Court”).
4. On 30 January 2023, the Russian Federation submitted its written observations on the Declarations of Intervention of a number of States, including the Republic of Bulgaria, challenging the admissibility of those on the following grounds:
  - a) the interventions are not genuine: their real object is not the construction of the relevant provisions of the Genocide Convention, as required by Article 63 of the Statute, but rather pursuing a joint case alongside Ukraine as *de facto* co-applicants rather than non-parties;
  - b) the participation of the Declarants in these proceedings would result in a serious impairment of the principle of equality of the parties to the detriment of the Russian Federation and would be incompatible with the requirements of good administration of justice;
  - c) the Court cannot, in any event, decide on the admissibility of the Declarations before it has made a decision on the Preliminary Objections, and that the Declarations address matters that presuppose that the Court has jurisdiction and/or that Ukraine's Application is admissible;
  - d) the reference to Article IX of the Convention is of no assistance for the purpose of intervention at the judicial stage of the proceedings; the Declarants cannot intervene on Article IX of the Convention *per se*;
  - e) the Declarants seek to address issues unrelated to the “construction” of the Genocide Convention, such as the interpretation and application of other

rules of international law and several questions of fact; allowing the Declarants to intervene on such matters at this stage would prejudice the question of the Court's jurisdiction *ratione materiae*<sup>1</sup>.

5. The Republic of Bulgaria will address the observations of the Russian Federation's written observations on admissibility of the Declarations of Intervention submitted by Belgium, Bulgaria, Cyprus, Liechtenstein, Malta, Canada and the Netherlands, Norway, Slovakia and Slovenia, that are relevant to the Bulgarian Declaration of Intervention.
6. The Republic of Bulgaria will argue that all requirements for intervention under Article 63 of the Statute and Article 82 of the Rules of the Court are fulfilled and its Declaration of Intervention is in full compliance with the said provisions, therefore is admissible; will address the Russian Federation's objections in Chapter II, Section A (Section II of this written observations); Further, the Republic of Bulgaria will argue that its Declaration of Intervention does not impair the principle of equality of the Parties to the proceedings, thus objecting the arguments of the Russian Federation in Section B of Chapter II of the written observations of the Russian Federation (Section III of this document); the Republic of Bulgaria will argue that it is entitled to intervene under Article 63 of the Statute at the jurisdictional stage, thus objecting the arguments in Section C (i) of Chapter II of the Observations of the Russian Federation (Section IV of this document); the Republic of Bulgaria will argue that is intervening on the construction of the Convention's provision relevant to the jurisdictional phase, thus objecting to the arguments in Section C (ii) of Chapter II of the Russian observations (Section V of this document); the Republic of Bulgaria will argue that its Declaration does not presuppose the positive determination of jurisdiction of the Court and the admissibility of the application of Ukraine, thus objecting to the arguments in Section D of Chapter II of the Russian observations (Section VI of this document); the Republic of Bulgaria will argue that its Declaration contains arguments relevant to the construction of the Genocide Convention in relation to the interpretation of the provision at the jurisdictional phase, thus objecting to the arguments in Section E of Chapter II of the Russian observations (Section VII of this document); the Republic of Bulgaria will argue that its Declaration contains arguments relevant to the construction of the Genocide Convention in relation to the systemic integration principle of interpretation, thus objecting to the arguments in Section F of Chapter II of the Russian observations (Section VIII of this document). In conclusion, the Republic of Bulgaria will respectfully request the Court to reject all objections to the admissibility of the Bulgarian Declaration by the Russian Federation and to declare its intervention admissible.

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<sup>1</sup> *The Russian Federation's Written observations on admissibility of the Declarations of intervention submitted by Belgium, Bulgaria, Cyprus, Liechtenstein, Malta, Canada and the Netherlands, Norway, Slovakia and Slovenia*, 30 January 2023, (Written observations of the Russian Federation), para. 9

- I. THE DECLARATION OF INTERVENTION OF THE REPUBLIC OF BULGARIA IS IN FULL COMPLIANCE WITH ARTICLE 63 OF THE STATUTE AND ARTICLE 82 OF THE RULES OF THE COURT
7. In line with Article 63 of the Statute and the Court's case law in its Declaration Bulgaria indicated that it is a Party to the Convention as of 12 January 1951<sup>2</sup> and presented the relevant documents thereto<sup>3</sup>. The Bulgarian Declaration demonstrated that in accordance with Article 63, para. 1 of the Statute, Bulgaria has received on 30 March 2022 a notification by the Registrar in the capacity of a Party to the Convention<sup>4</sup>. In addition, Bulgaria identified the particular provisions of the Genocide Convention the construction of which considers in question<sup>5</sup> and provided a statement of the construction of this provision.<sup>6</sup> The Declaration was filed on 18 November 2022, "as soon as possible" and before the opening of the oral proceedings. In accordance with the procedural requirements of Article 82 of the Rules of the Court, it was accompanied by a list of documents and annexes<sup>7</sup>.
  8. In accordance with the case law of the Court, underlining that an intervention is limited to the construction of the Convention in question and does not allow the intervener, which does not become a party to the proceedings, to deal with any other aspect of the case before the Court<sup>8</sup>, the Republic of Bulgaria stated that it does not seek to become a party to the proceedings and accepted the binding effect of the construction given by the Court<sup>9</sup>. The Declaration was explicitly limited to the construction of the Genocide Convention in the context of the case<sup>10</sup>.
  9. The Declaration of Intervention of the Republic of Bulgaria is in full compliance with the provisions of Article 63 of the Statute and Article 82 of the Rules of the Court, as well as the case law of the Court, confirming exhaustively the requirements for the execution of the right to intervene under Article 63 of the Statute<sup>11</sup>.
  10. In its observations the Russian Federation states that the interventions are not genuine, further developing that their real object is not the construction of the relevant provisions

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<sup>2</sup> *Declaration of Intervention of the Republic of Bulgaria pursuant to Article 63, paragraph 2 of the Statute of the International Court of Justice in the case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), 18 November 2022 ("the Bulgarian Declaration")*.

<sup>3</sup> Annex B to the Bulgarian Declaration

<sup>4</sup> Bulgarian Declaration, para 9

<sup>5</sup> *Ibidem*, para 17

<sup>6</sup> *Ibidem*, paras 19 - 28

<sup>7</sup> *Ibidem*, para 29 and Annexes

<sup>8</sup> *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand*, Order of 6 February 2013, ICJ Reports 2013, p. 3, at p. 9, para. 18.

<sup>9</sup> Bulgarian declaration, para 12

<sup>10</sup> *Ibidem*, para 13

<sup>11</sup> *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand*, Order of 6 February 2013, ICJ Reports 2013, p. 3, para 8.

of the Genocide Convention, as required by Article 63 of the Statute, but rather pursuing a joint case alongside Ukraine as de facto co-applicants rather than non-parties (Section A of Chapter II. Arguments of the Russian Observations).

11. By deciding on the admissibility of intervention under Article 63 of Statute in the *Haya de la Torre* case, the Court has ruled that “the only point which it is necessary to ascertain is whether the object of the intervention... is in fact the interpretation of the ... Convention”<sup>12</sup>. In the Court’s reasoning a “genuine” intervention would not discuss already decided questions, rather aimed at the interpretation of the construction of the Convention in question<sup>13</sup>. Contrary to the Russian observation<sup>14</sup>, the Court did not consider the text of the declaration together with the context within it was filed. The Court did not look to establish “the real intention of the State”. In addition, the Bulgarian Declaration does not address already reexamined or litigated questions by the Court and in this aspect, it should be regarded as “genuine” intervention.
12. Similarly, in the *S.S. Wimbledon* case the Permanent Court of International Justice stated that “[i]t will suffice for the Court to note that in this case the interpretation of certain clauses of the Treaty of Versailles is involved in the suit and that the Polish Republic is one of the States which are parties to this treaty” [emphasis added].<sup>15</sup>
13. With regard to the Joint Statements of 20 May 2022 and of 13 July 2022<sup>16</sup> it should be noted, that in the *Whaling* case<sup>17</sup> the argument of Joint Media Release of the Intervener and the Applicant in support of the position of the latter was brought to the attention of the Court<sup>18</sup>. The Court did not explore the intentions of the Intervener, although the argument was used in the context of the principle of equality of the parties.
14. From the nature of the provision of Article 63 of the Statute as recognized by the Court, namely a “right” of intervention<sup>19</sup>, two relevant conclusions should be made. First, different from the obligation, it is a general principle of law that it is up to the holder of the right if the right will be exercised. Second, once the material and procedural requirements are met, the holder of the right does not have to present its motivation or

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<sup>12</sup> *Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 77; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 1981, p. 13, para. 21.

<sup>13</sup> Ibidem, para 77

<sup>14</sup> The Russian Federation’s Written observations, para. 14

<sup>15</sup> *S.S. Wimbledon*, Judgment of 28 June 1923 (*Question of Intervention by Poland*), PCIJ, Series A, No. 1, p. 11, p. 13.

<sup>16</sup> Respectively para 15 and para 16 of the Russian Federation Written observations

<sup>17</sup> *Whaling in the Antarctic (Australia v. Japan)*, Declaration of Intervention of New Zealand, Order of 6 February 2013, ICJ Reports 2013, p. 3, para 8.

<sup>18</sup> *Japan’s Written Observations of 21 December 2012 on the Declaration of Intervention filed by New Zealand*

<sup>19</sup> *Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 76; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 1981, p. 13, para. 21.

intention behind the decision to or not to exercise its right. Thus, the intentions and motivations of the Intervening States are irrelevant to the case.

15. The *erga omnes* nature of the rights and obligations was noted by the Republic of Bulgaria with regard to “the construction that might be placed by the Court on the relevant provisions of the Convention” and demonstrating the aim of the intervention “to observe the consistent interpretation” of the Convention among all Contracting Parties<sup>20</sup>. In this regard, it was misrepresented in paragraph 25 of the written observations of the Russian Federation. Thus, the aim of the Bulgarian intervention, as presented by the Declaration as a legal document relevant to the case, is to assist the Court in the interpretation of the construction in question of the Genocide Convention (paragraphs 19 – 28 of the Bulgarian Declaration).
16. The statement of agreement of the Republic of Bulgaria to group its Declaration together with *similar* interventions, discussed under paragraph 27 of the written observations of the Russian Federation, was made in the interest of “sound and expeditious administration of justice” as clearly stated in para 15 of the Bulgarian Declaration, and should not be misinterpreted.
17. For the above set reasons, it is the view of the Republic of Bulgaria that its Declaration is in conformity with Article 63 of the Statute; there is no requirement to demonstrate and discuss the intentions of the decision to exercise the right of intervention. Consequently, the Republic of Bulgaria respectfully requests the Court to reject the argument of the Russian Federation that the Bulgarian Declaration is not genuine and on that ground inadmissible<sup>21</sup> (Chapter II, Section A of the Russian Federation’s observations).

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<sup>20</sup> Bulgarian Declaration, para 11

<sup>21</sup> Written observations of the Russian Federation, Section A of Chapter II

## II. THE DECLARATION OF INTERVENTION OF THE REPUBLIC OF BULGARIA DOES NOT IMPAIR THE PRINCIPLE OF EQUALITY OF THE PARTIES

18. In its written observations, the Russian Federation raises the objection that the interventions would be incompatible with the principle of equality of the parties and the requirements of good administration of justice (Section B of Chapter II of the written observations of the Russian Federation).
19. The Republic of Bulgaria recalls that equality of the parties is a fundamental principle of the procedural law closely linked to the fair trial and good administration of justice principle. In the context of the right to intervention under Article 63 of the Statute, the argument was considered by the Court in the *Whaling* case. By making

- 1) a clear distinction between “certain procedural issues regarding the equality of the Parties to the dispute” and “the conditions for admissibility of the Declaration of Intervention as set out in Article 63 of the Statute and Article 82 of the Rules of Court”;

- 2) emphasizing the limitation of the intervention to the construction of the convention in question and

- 3) not allowing the intervener, which does not become a party to the proceedings, to deal with any other aspect of the case before the Court,

the Court ruled that such an intervention cannot affect the equality of the Parties to the dispute principle.<sup>22</sup>

20. With regard to the argument of the Russian Federation about the number of intervening states, the Republic of Bulgaria recalls the provision of Article 63, paragraph 1 of the Statute, stating that “whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the registrar shall notify *all such states forthwith*” [emphasis added]. In addition, paragraph 2 of the same provision stipulates that “*Every state so notified* has the right to intervene in the proceedings” [emphasis added]. The right to intervention is owned by *all* Parties to the Convention and second, *every* party has its *own* right to intervene. Thus, the exercise of its own right of one Party to the Convention does not deprive the others to decide on their own whether to exercise their own right and to intervene. Drawing the opposite conclusion would be contrary to the general principle of law and on further note against the sovereign equality of States in the international relations.

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<sup>22</sup> *Whaling in the Antarctic (Australia v. Japan)*, Order of the Court, Declaration of Intervention of New Zealand, p., 9, para 18

21. In light of the above, the Republic of Bulgaria is in the view that there are no reasons for the Court to reverse its case law and respectfully requests the Court to reject the objection of the Russian Federation to the admissibility of the Bulgarian Declaration as incompatible with the principle of equality of the parties and the requirements of good administration of justice<sup>23</sup>.

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<sup>23</sup> Written observations of the Russian Federation, Section B of Chapter II



III. THE REPUBLIC OF BULGARIA IS ENTITLED TO INTERVENE UNDER ARTICLE 63 OF THE STATUTE AT THE JURISDICTIONAL STAGE

22. In its following argument, the Russian Federation expresses the view that the Court cannot allow an intervention at the preliminary stage of the proceedings in which its jurisdiction or the admissibility of an application is challenged (Section C (i) of Chapter II of the Observations of the Russian Federation).
23. The Republic of Bulgaria recalls the wording of Article 63, paragraph 1 of the Statute:

“Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith” [emphasis added].

The ordinary meaning of the opening word “whenever” indicates the existence of the right at any time of the proceeding, specified by the provision of Article 82, paragraph 1 of the Rules of the Court, stipulating that “a declaration shall be filed as soon as possible, and not later than the date fixed for the opening of the oral proceedings” [emphasis added]. The latter regulating the final stage of the deposition of the Declaration of Intervention. This reading is supported by the view of members of the Court concluding that:

“There is no hint in these terms - or in their *travaux préparatoires* - that they mean other than what their plain meaning says. “Whenever”- that is, whatever time in the proceedings of a case - imports not some but all, not some phases of a case but any phase”. (Dissenting opinion of Judge Schwebel p. 234) <sup>24</sup>

and also

“If the intention had been to confine intervention to the stage of the merits, the Rule presumably would have so stated”. (Dissenting opinion of Judge Schwebel p. 235)

By arguing its dissenting opinion, Judge Schwebel concluded that “[t]hus the terms of Article 63 and the Rules which the Court has adopted in implementation of those terms both indicate that intervention under Article 63 in the jurisdictional phase of a case is permitted”<sup>25</sup>.

24. The Republic of Bulgaria shares the view that due to significant differences on conceptual basis no conclusions should be drawn from the Court’s case law under Article 62 of the Statute to the present proceedings, primary but not only because this provision allows a

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<sup>24</sup> See Dissenting opinion of Judge Schwebel in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Declaration of Intervention of El Salvador)*, Order of 4 October 1984, ICJ Reports 1984, p. 223, at pp. 235-236

<sup>25</sup> *Ibidem*, para 235

third state to become a party to the proceedings with equal rights and obligations of the initial ones. The comparison of the two provisions, respectively of Article 62 and Article 63 of the Statute demonstrates inequalities not only to the effect of the intervention but also of the admissibility criteria. Therefore, no analogy should be made with Court's rulings on Declarations of Intervention under Article 62 of the Statute, making the arguments of the Russian Federation based on the *Nuclear Tests* case<sup>26</sup> and *Nuclear Tests (Request for Examination)*<sup>27</sup> case irrelevant and unjustified.

25. With regard to the Declaration of Intervention of El Salvador in the *Military and Paramilitary Activities* case<sup>28</sup>, it should be noted that the request was rejected on the ground not of its time of submission but rather for reasons of its substance considering questions on the merits of the case<sup>29</sup>. In the view of the majority of the judges "[t]his Declaration did not adequately meet the specifications set forth in Article 82, paragraph 2, of the Rules of Court; specifically, it failed to identify the particular provisions of the conventions whose construction El Salvador considered to be in question, and it did not contain a statement of the construction of those provisions for which El Salvador contends"<sup>30</sup>.
26. In light of the above, the Republic of Bulgaria respectfully requests the Court to reject the argument of the Russian Federation concerning the misinterpretation of Article 63 of the Statute<sup>31</sup> as inapplicable at the jurisdictional phase of the proceedings.

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<sup>26</sup> *Nuclear Tests Case (Australia v. France)*

<sup>27</sup> *Request for an Examination of the Situation in Accordance with paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France)*

<sup>28</sup> *Military and Paramilitary Activities in and against Nicaragua case (Nicaragua v. USA)*

<sup>29</sup> Quintana, J. J. (2015), *Litigation at the international court of justice: Practice and procedure*. BRILL, p. 943

<sup>30</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Intervention of El Salvador, Separate Opinion of Judge Schwebel, ICJ Reports 1984, p. 13, at p. 224*

<sup>31</sup> Written Observations of the Russian Federation, Section C (i) of Chapter II

IV. THE REPUBLIC OF BULGARIA IS INTERVENING ON THE CONSTRUCTION OF THE PROVISION OF THE CONVENTION RELEVANT TO THE JURISDICTIONAL PHASE

27. The Russian Federation argues that the intervener has to address interpretation of “a provision of the convention *over which the Parties express diverging views as to their interpretation in the case*”<sup>32</sup> [emphasis added] (Section C (ii) of Chapter II of the Russian observations).
28. The Republic of Bulgaria recalls another aspect of the wording of Article 63, paragraph 1 of the Statute:  
“Whenever *the construction of a convention* to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith” [emphasis added].
- It follows from the phrase used, that in question could be a construction of one or more provisions of the convention, with no exceptions, as well as “the construction of the convention” itself. A distinction between the interpretation of provisions on jurisdictional matters and on the merits is also not envisaged.
29. Paragraphs 19 – 28 of the Declaration of Intervention of the Republic of Bulgaria are dedicated to the identification and the statement of the construction of the compromissory clause of Article IX of the Genocide Convention. They represent the Bulgarian arguments in assistance of the Court in the interpretation of this Article in relation to the jurisdictional phase of the case.
30. In support of the view that Parties to the Convention could intervene at the jurisdictional phase before the findings of the Court on the preliminary objections by presenting their statement of the construction of the provisions of the convention is the wording of Article 82, paragraph 2, letter “b” of the Rules of the Court, stating that the intervener should identify “the particular provision of the convention the construction of which *it considers to be* in question” [emphasis added]. This provision clearly rejects the argument of the Russian Federation that the intervener should state the construction of “a provision of the convention *over which the Parties express diverging views as to their interpretation in the case*”.
31. The Bulgarian Declaration explicitly states that it addresses “jurisdictional issues, i.e. to the construction of the compromissory clause in Article IX of the Genocide Convention”<sup>33</sup>

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<sup>32</sup> Ibidem, para 59

<sup>33</sup> Bulgarian Declaration, para 17

32. In light of the above, the Republic of Bulgaria respectfully requests the Court to reject the objection to the admissibility of its intervention contained in Section C (ii) of Chapter II of the written observations of the Russian Federation.

V. THE DECLARATION OF INTERVENTION OF THE REPUBLIC OF BULGARIA DOES NOT PRESUPPOSE THE POSITIVE DETERMINATION OF JURISDICTION OF THE COURT AND THE ADMISSIBILITY OF THE APPLICATION OF UKRAINE

33. The Russian Federation argues that the Declaration of Intervention of the Republic of Bulgaria “attempt[s] to argue Court’s jurisdiction in favour of Ukraine<sup>34</sup>” and presupposes the jurisdiction of the Court and the admissibility of the application of Ukraine. (Section D of Chapter II of the Russian observations).
34. With regard to the Bulgarian Declaration, the Russian Federation refers to the analysis of the term “dispute” as established in the case law of the Court<sup>35</sup> and the proposed reading of the compromissory clause of the Genocide Convention.<sup>36</sup> With reference to the last sentences of those paragraphs, the Russian Federation argues that the Bulgarian Declaration addresses matters, “which presuppose that the Court has jurisdiction in this case or that Ukraine’s Application is admissible”.
35. The Russian Federation refers specifically to the following paragraph of the Bulgarian Declaration<sup>37</sup>

“The meaning of the term “dispute” is long established in the case law of the Court and previously of the Permanent Court of International Justice (“PCIJ”). The dispute as “a disagreement on a point of law or fact, a conflict of legal views or of interests” between the parties is essential for the interpretation of the construction of Article IX. In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other”. The parties must “hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations”. Moreover, “in case the respondent has failed to reply to the applicant’s claims, it may be inferred from this silence, in certain circumstances, that it rejects those claims and that, therefore, a dispute exists”. The Court has established that the dispute must in principle exist on the date on which the application was submitted. *With regard to the present application those requirements are clearly met.*” [references omitted, emphasis added]. (paragraph 20 of the Bulgarian Declaration)

By citing the last sentence with the emphasized insertion,

“With regard to the present application those requirements [*for existence of dispute*] are clearly met.”

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<sup>34</sup> Written Observations of the Russian Federation, para 74

<sup>35</sup> Bulgarian Declaration, para 20

<sup>36</sup> Ibidem para 24

<sup>37</sup> Written Observations of the Russian Federation, letter B, para 83

36. The Republic of Bulgaria notes, that the cited last sentence of paragraph 20 of its Declaration (as it is without the insertion of the Russian Federation) has theoretical and abstract nature, does not incline facts, evidences or matters of the discretion of the Court. The correct understanding of the sentence (as it is without the insertion of the Russian Federation) is to demonstrate the requirements of the legal “construction” of the first element of the concept of Article IX.
37. The Russian Federation refers as well to the following paragraph<sup>38</sup>
- “The reading of the Genocide Convention’s compromissory clause is further supported by its context. In particular, the use of the word “including” in the intermediate sentence indicates a broader scope of Article IX of the Convention. Disputes relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III are therefore only one type of dispute covered by Article IX, which are “included” in the wider phrase of disputes “relating to the interpretation, application and fulfilment” of the Convention. Hence, the context of the phrase (“relating to”) in Article IX confirms that *the Court’s jurisdiction goes beyond disputes between States about the responsibility for alleged genocidal acts, but also covers disputes between States about the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law*” [references omitted, emphasis added]. (paragraph 24 of the Bulgarian Declaration)
38. The Republic of Bulgaria further notes that the aim of the paragraph above is to clarify the statement of the construction in question by considering all of the elements of the interpreted provision under its context, thus clarifying the scope of Article IX of the Convention. The text uses legal terms and concepts, means and principles of interpretation, in order to place the provision under consideration within the broader perspective of the systemic integration interpretation principle. It does not relate to arguments of facts and draws no conclusions with regard to matters of discretion of the Court in the present case.
39. The Republic of Bulgaria further stresses that those arguments are part of the Section dedicated to the provisions of the Convention in question in the case (as the name of the Section clearly states) and are the expression of the view that the Bulgarian Declaration is limited “to the construction of the compromissory clause in Article IX of the Genocide Convention in line with the rule of interpretation envisaged in Article 26 and Article 31 of the Vienna Convention of the Law of Treaties as a reflection of the rules of customary international law.”<sup>39</sup>

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<sup>38</sup> Bulgarian Declaration, para 17

<sup>39</sup> Written Observations of the Russian Federation, letter B, para 83

40. In the light of the above, the Republic of Bulgaria respectfully requests the Court to reject the objection to the admissibility of its intervention as stated by Section D of the written observations of the Russian Federation.

VI. THE DECLARATION OF INTERVENTION OF THE REPUBLIC OF BULGARIA CONTAINS ARGUMENTS RELEVANT TO THE CONSTRUCTION OF THE GENOCIDE CONVENTION IN RELATION TO THE INTERPRETATION OF THE PROVISION AT THE JURISDICTIONAL PHASE

41. The Russian Federation further argues that the reference to Article IX of the Convention is of no assistance for the purposes of intervention at the judicial stage of the proceedings and that the Republic of Bulgaria cannot intervene on Article IX of the Convention *per se* (Section E of Chapter II of the Russian Federation written observations).
42. The Declaration of the Republic of Bulgaria clearly states that it is limited “to the construction of the compromissory clause in Article IX of the Genocide Convention *in line with the rule of interpretation envisaged in Article 26 and Article 31 of the Vienna Convention of the Law of Treaties as a reflection of the rules of customary international law*”<sup>40</sup> [emphasis added].
43. Therefore, the main paragraphs 19 – 28 of the Bulgarian Declaration are dedicated to the detailed analysis of Article IX of the Genocide Convention, starting from the term “dispute” as established in the case law of the Court<sup>41</sup>; focusing next on the proper construction of other parts of the provision by discussing the ordinary meaning of the provision with all aspects involved; supported by the context of the norm and the object and purpose of it in accordance with rules of interpretation of the Vienna Convention on the Law of Treaties<sup>42</sup>; and in conclusion bringing all those elements in the framework of the inter legal system under the systemic integration principle of interpretation<sup>43</sup>.
44. As already demonstrated under Section V and VI of this document, Article 63 of the Statute states that a Party to the Convention may intervene on the “construction of the convention”. Accordingly, there are no exceptions of the provisions that could be in question, including the compromissory clause of Article IX of the Genocide Convention, isolated or together with other provisions of the Convention. The relevance of the provision at the judicial stage of the proceedings was already discussed under Section V of the present document.
45. In light of the above, the Republic of Bulgaria respectfully requests to the Court to reject the objection to the admissibility of its intervention as stated by Section E of the written observations of the Russian Federation.

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<sup>40</sup> Bulgarian Declaration, para 17

<sup>41</sup> Ibidem, para 20

<sup>42</sup> Ibidem, paras 21, 22, 23, 24, 26

<sup>43</sup> Ibidem, para 28



VII. THE DECLARATION OF INTERVENTION OF THE REPUBLIC OF BULGARIA CONTAINS ARGUMENTS RELEVANT TO THE CONSTRUCTION OF THE GENOCIDE CONVENTION IN RELATION TO THE SYSTEMIC INTEGRATION PRINCIPLE OF INTERPRETATION

46. Under Section F of its written observations the Russian Federation argues that the Bulgarian Declaration contains references unrelated to the construction of the Genocide Convention that would result in prejudging questions relating to the Court's jurisdiction *ratione materiae*.
47. In paragraph 104, letter b of its Observations the Russian Federation discusses elements from the "Provisions of the Convention in Question in the Case" Sections of the Bulgarian Declaration<sup>44</sup>, already addressed in the Observations under Chapter V of this document.<sup>45</sup> Those paragraphs of the Bulgarian Declaration are dedicated to the theoretical analysis by abstract notions of the construction of the compromissory clause in Article IX of the Genocide Convention. No statements of facts or evidences are contained.
48. The true understanding of those arguments could be reached by stressing that the elements of the provision of the Convention were analyzed through their "conformity with the Convention with regard to the principle of interpretation... in good faith."<sup>46</sup> Moreover, the proper understanding of the Bulgarian arguments would be given by noting the consideration of the Court's case law used in the last sentence of paragraph 23 of the declaration, namely that "[i]n this aspect by the theological approach of interpretation ... 'an international instrument has to be interpreted ... within the framework of the entire legal system'.<sup>47</sup>"
49. Those considerations apply to the interpretation of the term "dispute"<sup>48</sup>, the principle of good faith<sup>49</sup> and the conclusion through generalization of the meaning of the concepts of "a good faith performance"<sup>50</sup>, of the notion of "abuse of the law"<sup>51</sup> (falsely cited as "the notion of abuse of rights" in paragraph 104, letter "b" of the Russian observations) and the use of force<sup>52</sup>, all necessary to assess the scope of Article IX of the Genocide

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<sup>44</sup> *Bulgarian Declaration, paras 20, 23 and 28*

<sup>45</sup> *Ibidem paras 19 – 28*

<sup>46</sup> *Ibidem para 23*

<sup>47</sup> *Ibidem para 23, last sentence referring to the Legal Consequences for States of the Continued Presence of South Africa in Namibia, Advisory opinion, ICJ, 21 June 1971, p. 53*

<sup>48</sup> *Ibidem para 20*

<sup>49</sup> *Ibidem para 23*

<sup>50</sup> *Ibidem para 28*

<sup>51</sup> *Ibidem para 28*

<sup>52</sup> *Ibidem para 28*

Convention related to the interpretation of the provision within its jurisdictional aspect “within the framework of the entire legal system.”<sup>53</sup>

50. In light of the above, The Republic of Bulgaria respectfully requests the Court to reject the objection under Section F of Chapter II of the written observations of the Russian Federation.

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<sup>53</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, Advisory opinion, ICJ, 21 June 1971, p. 53

IX. CONCLUSION

51. For the above reasons, the Republic of Bulgaria respectfully requests the Court that all objections to the admissibility of its intervention raised by the Russian Federation are rejected and that the Declaration of intervention of the Republic of Bulgaria under Article 63 of the Statute of the International Court of Justice in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* is declared admissible.

*Respectfully submitted,*



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Agent of the Republic of Bulgaria