

Before the  
INTERNATIONAL COURT OF JUSTICE

**WRITTEN OBSERVATIONS  
OF THE REPUBLIC OF CYPRUS**

on the Written Observations of Ukraine and the Russian Federation  
regarding the Admissibility of the Declaration of Intervention under Article 63  
of the Statute of the International Court of Justice by the Republic of Cyprus

In the case concerning

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

10 February 2023

## WRITTEN OBSERVATIONS OF THE REPUBLIC OF CYPRUS

### I. INTRODUCTION

1. The Republic of Cyprus (the ‘Republic’ or ‘Cyprus’) hereby submits its Written Observations on the Written Observations of Ukraine and of the Russian Federation on the admissibility of the Declaration of Intervention filed by the Republic of Cyprus under Article 63 of the Statute of the International Court of Justice (the ‘Court’) with reference to the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide*. The Written Observations of Ukraine and of the Russian Federation were filed in the Registry of the Court on 30 January 2023, pursuant to Article 83, paragraph 1, of the Rules of Court, within the time-limit fixed by the Court for that purpose, and were transmitted to the Republic on the same day, by letter of the Court’s Registrar.

2. In its Written Observations, Ukraine considers the Declaration of Intervention by the Republic of Cyprus as admissible.<sup>1</sup> By contrast, the view of the Russian Federation is that the Republic’s Declaration of Intervention is not admissible, though its arguments refer to a number of Declarations of Intervention collectively (those by the Kingdom of Belgium the Republic of Bulgaria, the Republic of Cyprus, the Principality of Liechtenstein, the Republic of Malta, Canada and the Kingdom of the Netherlands, Norway, the Slovak Republic, and the Republic of Slovenia) and do not refer to the Republic’s Declaration specifically.<sup>2</sup>

3. In what follows, the Republic of Cyprus provides its written observations on the arguments put forward by the Russian Federation. In the view of the Republic, some of these arguments are either inapplicable or at best peripherally applicable to Cyprus (which is in fact mentioned less than any other state in the Russian Federation’s collective ‘objection’<sup>3</sup>), but are also inapposite in establishing the inadmissibility of the Republic’s Declaration of Intervention.

### II. THE FIRST TWO ARGUMENTS OF THE RUSSIAN FEDERATION

4. The first two arguments of the Russian Federation, in sections II.A and II.B of its Written Observations, are that the Declaration of Intervention is ‘not genuine’, as it does not, it is claimed, aim at the construction of the Genocide Convention, but it rather aims to pursue, allegedly, ‘a joint case with Ukraine’ as ‘de facto co-applicant[] rather than non-part[y]’;<sup>4</sup> and that the admission of the Declaration of Intervention would be incompatible with the principle of equality of the parties and the requirements of good administration of justice.<sup>5</sup> In the view of the Republic, these two arguments can be taken together – one being, in reality, the necessary consequence of the other.

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<sup>1</sup> Written Observations of Ukraine on the Declaration of Intervention of the Republic of Cyprus, 30 January 2023, paragraph 2.

<sup>2</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, *passim*.

<sup>3</sup> *ibid*, paragraph 8.

<sup>4</sup> *ibid*, paragraphs 11–35.

<sup>5</sup> *ibid*, paragraphs 36–53.

5. The Republic of Cyprus wishes to avail itself of its right of intervention under Article 63 of the Statute in order to contend for a particular construction of the provisions of the Genocide Convention which are in question in the current phase of the proceedings between Ukraine and the Russian Federation, and in particular of Article IX of the Convention, triggered by a disagreement over the interpretation, application or fulfilment of Article I of the Convention. The Republic has clearly stated this in its Declaration of Intervention,<sup>6</sup> and has limited its observations to the construction of these provisions.<sup>7</sup> The Republic does not wish to become a party to the case between Ukraine and the Russian Federation, nor indeed could it on the basis of the limited right of intervention provided for by Article 63. The Republic has not presented arguments going beyond the ‘limited object’<sup>8</sup> of an Article 63 intervention.

6. The Russian Federation contends that it has to deal with ‘mass[] intervene[ti]on] ... as part of a collective political strategy’,<sup>9</sup> with the intervening states ‘supporting an applicant against a respondent’,<sup>10</sup> and all of them taking by and large the same position as to interpretation as that presented by Ukraine.<sup>11</sup> According to the Russian Federation, this ‘coordinated mass intervention’ would put it ‘in a seriously disadvantaged position, thereby affecting the integrity of the judicial process as a whole’.<sup>12</sup>

7. Leaving aside the question to what extent the Republic of Cyprus has indeed adopted a similar or even ‘identical’ position to that of Ukraine or any intervening state (notably, Cyprus is absent from the table comparing Declarations that the Russian Federation has submitted as Annex 28 to its Written Observations), it is interesting to note that in *Whaling in the Antarctic*, Japan complained that New Zealand, in its Declaration of Intervention under Article 63, took in part a *different* position than Australia as to the construction of relevant provisions of the Whaling Convention and thus put Japan at the disadvantage of having to respond to two different sets of arguments.<sup>13</sup> In short, Japan raised the same complaint as the Russian Federation does in this case, for precisely the opposite reason. If indeed the interpretation put forward by all interveners is one and the same, all the more reason for the Russian Federation to feel confident that its construction will at one stroke prevail over all contrary but allegedly similar interpretations put forward by the intervening states.

8. Be that as it may, in *Whaling in the Antarctic*, Japan also raised the issue of cooperation between Australia and New Zealand, in the context of which the latter’s intervention was alleged to have taken place.<sup>14</sup> Japan connected this issue to questions of equality of parties and the good administration of justice,<sup>15</sup> as does the Russian Federation in the present instance.<sup>16</sup> Notably, however, Japan did not object to the admissibility of New Zealand’s Declaration, and

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<sup>6</sup> Declaration of Intervention under Article 63 of the Statute of the Court by the Republic of Cyprus, 9 December 2022, paragraph 11.

<sup>7</sup> *ibid.*, paragraphs 18–33.

<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 5, paragraph 7.

<sup>9</sup> The Russian Federation’s Written Observations, n 2, paragraphs 9, 21.

<sup>10</sup> *ibid.*

<sup>11</sup> *ibid.*, paragraph 26.

<sup>12</sup> *ibid.*, paragraph 36.

<sup>13</sup> *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)*, Written Observations of Japan on New Zealand’s Written Observations, 31 May 2013, paragraphs 3–4.

<sup>14</sup> *ibid.*, paragraph 4. See also *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)*, Order of 6 February 2013, *ICJ Reports 2013*, p 8, paragraph 17.

<sup>15</sup> *ibid.*

<sup>16</sup> The Russian Federation’s Written Observations, n 2, paragraphs 36ff.

merely requested the Court to make certain accommodations, in particular with respect to time allocation both at oral proceedings and for their preparation.<sup>17</sup>

9. The Court has considered these arguments, a version of which is now advanced by the Russian Federation, and has disposed of them in *Whaling in the Antarctic*. The Court stated, first, that

the concerns expressed by Japan relate to certain procedural issues regarding the equality of the Parties to the dispute, rather than to 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[.]<sup>18</sup>

It went on to state, second, that

intervention under Article 63 of the Statute is limited to submitting observations on the construction of the convention in question and does not allow the intervenor, which does not become a party to the proceedings, to deal with any other aspect of the case before the Court[.]<sup>19</sup>

Thus,

such an intervention cannot affect the equality of the Parties to the dispute[.]<sup>20</sup>

10. As already noted in paragraph 5 above, the Declaration of Intervention by the Republic of Cyprus is within the limited scope of intervention under Article 63 of the Statute, and the Republic does not wish to, and cannot, become a party to the proceedings or intervene on any other aspect of the case between Ukraine and the Russian Federation. The Republic is certain that the Court is well placed to make all the required arrangements and accommodations in order to guarantee the good administration of justice in the proceedings before it. In fact, and contrary to what the Russian Federation suggests,<sup>21</sup> it was in precisely that spirit that the Republic of Cyprus, wishing to render all possible assistance to the Court ‘in the interest of the administration of justice’, confirmed that it would not stand in the way of the Court grouping its Declaration together with other Declarations should the Court deem it useful.<sup>22</sup>

11. In conclusion, and in echoing in part a late Judge of the Court, it is the view of the Republic of Cyprus that, far from affecting the equality of parties and being incompatible with requirements of good administration of justice, intervention under Article 63 of the Statute in fact gives proper expression to the principle of good administration of justice, especially when it is with respect to the construction of provisions of a treaty, such as the Genocide Convention, which are of interest to a large number of states.<sup>23</sup> This is precisely what is stressed in paragraph 10 of the Republic’s Declaration of Intervention, which the Russian Federation seeks to mis-

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<sup>17</sup> *Whaling in the Antarctic*, Order of 6 February 2013, n 14, p 8, paragraph 17.

<sup>18</sup> *ibid*, p 9, paragraph 18.

<sup>19</sup> *ibid*.

<sup>20</sup> *ibid*.

<sup>21</sup> The Russian Federation’s Written Observations, n 2, paragraph 27.

<sup>22</sup> Declaration of Intervention, n 6, paragraph 12.

<sup>23</sup> *Whaling in the Antarctic*, Separate Opinion of Judge Cançado Trindade, n 14, pp 37–38, paragraph 69.

construe in its Written Observations (also referring to obligations *erga omnes*, rather than obligations *erga omnes partes*, whose construction, the Republic's Declaration notes, are in question in the present proceedings).<sup>24</sup>

### III. THE THIRD TO FIFTH ARGUMENTS OF THE RUSSIAN FEDERATION

12. The Russian Federation further argues, in sections II.C, II.D, and II.E of its Written Observations, that the Declaration of Intervention by the Republic of Cyprus should be declared inadmissible (a) because the Court cannot decide on the admissibility of the Declaration before deciding on Preliminary Objections; (b) because the Declaration of Cyprus presupposes that the Court has jurisdiction and/or that Ukraine's Application is admissible; and (c) because the Republic of Cyprus cannot intervene on Article IX of the Convention *per se*.<sup>25</sup>

13. The Republic of Cyprus observes that these arguments can be taken as one, and rest on a fundamental misconstruction, or misrepresentation, of the scope and purpose of intervention under Article 63 of the Statute of the Court.

14. Article 63 of the Statute does not limit the right of intervention to a specific phase of the proceedings. Rather, it establishes that right '[w]henever the construction of a convention ... is in question'.<sup>26</sup> Compromissory clauses will necessarily fall to be interpreted at the preliminary objections phase of any case, should preliminary objections be raised, and intervention in order to contend for their construction does not in any way presuppose that the Court has jurisdiction or that the Application is admissible. Article IX of the Genocide Convention is a compromissory clause, and it establishes obligations for the Republic of Cyprus as much as it does for any other state that is party to the Convention. *Whenever* the construction of Article IX of the Convention is in question, as it is in the present phase of the proceedings between Ukraine and the Russian Federation, the Republic of Cyprus is entitled to intervene and put forward its interpretation in accordance with Article 63 of the Statute.

15. The position that compromissory clauses fall to be interpreted at the preliminary objections phase of a case where jurisdiction is claimed on the basis of such a compromissory clause is logically necessary. The Russian Federation relies heavily on the refusal of the Court to admit the Declaration of El Salvador in *Military and Paramilitary Activities In and Against Nicaragua*.<sup>27</sup> Yet, the jurisdictional bases invoked in that case were the declarations under Article 36(2) of the Statute of the Court and a compromissory clause in a *bilateral* treaty. More importantly, the Declaration of Intervention by El Salvador did not identify or discuss any provisions that were actually in question at the preliminary objections phase of the proceeding. Rather, it was actually mainly directed to the merits. It was for this reason that the Court, in a very terse Order, refused to admit the Declaration.<sup>28</sup>

16. This is confirmed in a number of Separate and Dissenting Opinions appended to the Court's Order. In their Separate Opinion, Judges Ruda, Mosler, Ago, Jennings, and de Lacharrière clearly state that they have voted with the majority because they 'have not been able to

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<sup>24</sup> The Russian Federation's Written Observations, n 2, paragraph 25.

<sup>25</sup> *ibid*, paragraphs 9, 54–102.

<sup>26</sup> Emphasis added.

<sup>27</sup> The Russian Federation's Written Observations, n 2, paragraphs 56, 67, 73, 75ff, 81ff.

<sup>28</sup> *Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America)*, Order of 4 October 1984, *ICJ Reports 1984*, p 216, paragraph 2.

find, in El Salvador's written communications to the Court, the necessary identification of such provision, or provisions, which it considers to be in question in the jurisdictional phase of the case ... nor of the construction of such provision, or provisions, for which it contends'.<sup>29</sup> Even a cursory reading of El Salvador's Declaration of Intervention confirms that this was indeed the case, its pretention to only be intervening in matters of jurisdiction and admissibility notwithstanding.

17. In his Separate Opinion, Judge Oda confirms that '[h]ad El Salvador's initial Declaration been properly formulated, ... [it] *might well* have been the first case of intervention under Article 63 of the Statute to be considered by the Court at a jurisdictional phase of a case'.<sup>30</sup>

18. Judge Schwebel, for his part, confirms that 'whenever' in Article 63 indeed means 'whenever', ie at any phase of the proceedings in a case,<sup>31</sup> as the Republic has argued in paragraph 14 above. Judge Schwebel goes on to state in no uncertain terms that

[t]here are multilateral conventions that, in whole or in part, relate to jurisdictional questions. Their construction by the Court in a case between two States *can affect the legal position of a third State* under such conventions no less than it can affect their position under other conventions, or parts of other conventions, whose clauses are substantive rather than jurisdictional.<sup>32</sup>

This clearly supports the argument of the Republic in paragraph 14 above that the compromissory clause in the Genocide Convention, establishing, as it does, obligations for the parties to the Convention, can serve as the basis of intervention under Article 63, whenever its construction is in question. In fact, Judge Schwebel explicitly states that '[a]nother convention which has been the subject of jurisdictional controversy before the Court and described as a convention whose construction was susceptible of such intervention is the Convention on the Prevention and Punishment of the Crime of Genocide'.<sup>33</sup>

19. There can be little doubt that compromissory clauses in treaties fall to be interpreted just like any other provision, in accordance with the general rules on treaty interpretation reflected in the Vienna Convention on the Law of Treaties. To recall Judge Higgins, 'there is no rule that requires a restrictive *interpretation* of compromissory clauses'.<sup>34</sup> Decisions of the Court on the scope of compromissory clauses are 'judicial decisions *like any other*',<sup>35</sup> and to that extent it should be admissible to intervene to contend for their construction under Article 63 of the Statute of the Court.

20. This should be enough to lay to rest the claims of the Russian Federation that Cyprus may not intervene on Article IX *per se*, that the Court must decide on preliminary objections

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<sup>29</sup> *Military and Paramilitary Activities*, Order of 4 October 1984, Separate Opinion of Judges Ruda, Mosler, Ago, Jennings, and de Lacharrière, n 28, p 219, paragraph 3.

<sup>30</sup> *Military and Paramilitary Activities*, Order of 4 October 1984, Separate Opinion of Judge Oda, n 28, p 221, paragraph 5 (emphasis added).

<sup>31</sup> *Military and Paramilitary Activities*, Order of 4 October 1984, Dissenting Opinion of Judge Schwebel, n 28, p 234.

<sup>32</sup> *ibid*, p 235 (emphasis added).

<sup>33</sup> *ibid*, p 236, citing the dissenting opinion of Judge Petren in *Trial of Pakistani Prisoners of War (Pakistan v India)*, Interim Protection, Order of 13 July 1973, *ICJ Reports 1973*, pp 334–335.

<sup>34</sup> *Oil Platforms (Islamic Republic of Iran v United States of America)*, Preliminary Objection, Judgment of 12 December 1996, Separate Opinion of Judge Higgins, *ICJ Reports 1996*, p 857, paragraph 35 (emphasis added).

<sup>35</sup> *ibid* (emphasis added).

before deciding on the admissibility of the Republic's Declaration of Intervention, and that the Declaration presupposes that the Court has jurisdiction and/or that the Application is admissible. It also demonstrates the misplaced reliance of the Russian Federation on the non-admission of the Declaration of El Salvador in *Military and Paramilitary Activities*, which is clearly distinguishable. One final word is perhaps in order, to demonstrate the absurdity of the position of the Russian Federation in this respect: were it to be correct, states parties to a convention containing a compromissory clause could *never* intervene under Article 63 to contend for its construction, or would only be able to do so if, *out of sheer circumstance*, there were in the case no bifurcation of proceedings. This would make little sense.

#### IV. THE SIXTH ARGUMENT OF THE RUSSIAN FEDERATION

21. The Russian Federation argues, in section II.F of its Written Observations, that the Republic of Cyprus seeks to address issues unrelated to the construction of the Convention in its Declaration, and thus that the admission of the Declaration would prejudge questions relating to the Court's jurisdiction *ratione materiae*.<sup>36</sup> It names these issues as 'the existence of a dispute between the parties, the use of force, [and] countermeasures with extensive references to other sources of international law, including the UN Charter'.<sup>37</sup> The Russian Federation has also raised this as indicating a lack of 'genuine intention' in the Republic submitting a Declaration of Intervention.<sup>38</sup>

22. The 'existence of a dispute between the contracting parties relating to the interpretation, application or fulfilment' of the Genocide Convention is literally part of the compromissory clause that is Article IX of the Convention which falls to be interpreted in the preliminary objections phase of the proceeding. In its Declaration, the Republic contends precisely for a particular construction of these words in the relevant provision.<sup>39</sup> It is also in that context that Cyprus argues that the broad scope which it attributes to Article IX in its construction must be seen to encompass 'non-violation complaints' and provides an example of circumstances where the inability to bring such non-violation complaints under the compromissory clause would render it ineffective.<sup>40</sup> This is in essence an argument from the text, context, and object and purpose of the treaty, which the Russian Federation somehow misrepresents as 'presupposing' the Court's jurisdiction.<sup>41</sup>

23. The references, in the Republic's Declaration of Intervention, to 'the use of force [and] countermeasures with extensive references to other sources of international law, including the UN Charter' are nothing but arguments in the Republic's construction of Article I of the Genocide Convention, for which it contends.<sup>42</sup> Article I of the Convention, in turn, is in question in the present phase of the proceedings because a dispute over its interpretation, application or fulfilment would trigger the compromissory clause of Article IX, which, as Cyprus argues in its Declaration, cannot be interpreted in a vacuum, without reference to (and thus construction of) the substantive provisions of the Convention.

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<sup>36</sup> The Russian Federation's Written Observations, n 2, paragraphs 103ff.

<sup>37</sup> *ibid*, paragraph 104(c).

<sup>38</sup> *Ibid*, paragraphs 22–23.

<sup>39</sup> Declaration of Intervention, n 6, paragraphs 19–25.

<sup>40</sup> *ibid*, paragraphs 23, 25.

<sup>41</sup> The Russian Federation's Written Observations, n 2, paragraph 83(c).

<sup>42</sup> Declaration of Intervention, n 6, paragraphs 26–32.

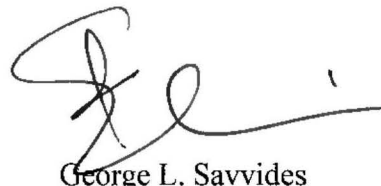
24. That this position is correct is confirmed by the Court in *Oil Platforms*. In that case, the Court stated in no uncertain terms that '[i]t must ascertain whether the violations of the Treaty of 1955 pleaded by Iran *do or do not fall within the provisions of the Treaty*',<sup>43</sup> and then proceeded to interpret Articles I, including by reference to general international law and the UN Charter, IV(1), and X(1) of the Treaty. The Court devoted some time in interpreting the word 'commerce' in Article X(1) and provided ample reasoning for its 'construction', which was also by reference to Article I of the Treaty.<sup>44</sup>

25. It appears that even the Russian Federation admits this position. According to Ukraine's Written Observations, 'Russia's preliminary objections place at issue the interpretation of several articles of the Convention'.<sup>45</sup> According to the Russian Federation, the Court should 'carry out, at [the preliminary objections] stage, a proper *interpretation* of the provisions invoked by Ukraine (Articles I and IV of the Convention) *to determine the obligations contained therein and the scope of the Court's jurisdiction razione materiae*'.<sup>46</sup> The Republic had no access to this submission, which has come to its knowledge through the reference in Ukraine's Written Observations. The position thus taken by the Russian Federation in its preliminary objections is difficult to square with its position that intervention on the interpretation of these provisions, also by reference to other applicable rules of international law, would 'prejudge' the jurisdiction of the Court *ratione materiae*.

26. As such, the arguments presented by the Republic of Cyprus in its Declaration of Intervention are arguments that pertain to the construction of the relevant provisions of the Genocide Convention that are in question in the proceedings, and for which the Republic contends.

## V. CONCLUSION

27. In these Written Observations, the Republic of Cyprus argues that none of the arguments of the Russian Federation, to the extent that they are raised as objections to the admissibility of the Republic's Declaration of Intervention under Article 63 of the Statute of the Court (as they do not all refer to Cyprus, and some of them do so only peripherally), are apposite. The Republic of Cyprus submitted its Declaration under Article 63 in full compliance with the limited objective of putting forward its construction of provisions of the Genocide Convention that are, in its consideration,<sup>47</sup> in question at the current phase of the proceedings between Ukraine and the Russian Federation.



George L. Savvides  
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<sup>43</sup> *Oil Platforms*, n 34, p 810, paragraph 16.

<sup>44</sup> *ibid*, pp 818, 820, paragraphs 45, 52.

<sup>45</sup> Written Observations of Ukraine, n 1, paragraph 7.

<sup>46</sup> *ibid* (emphasis added).

<sup>47</sup> See Article 82(2)(b) of the Rules of Court.