

International Court of Justice

*Allegations of Genocide under the Convention on the Prevention and Punishment of the
Crime of Genocide*

(Ukraine v. Russian Federation)

*Spain's Written Observations
on the Admissibility of Its Declaration of Intervention*

10 February 2023

I. Introduction

1. On 29 September 2022, Spain submitted to the Court a Declaration of Intervention pursuant to Article 63 paragraph 2 of the Statute of the Court in the Case concerning *The Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*. While Russia pleaded to the Court to reject it as inadmissible, Ukraine argued that it is admissible.
2. With the present observations, Spain wishes to share with the Court its understanding of Article 63 of the Statute first in order to demonstrate that it fully complied with all the requirements (II.). It then addresses Russia's main arguments (III.) before concluding (IV.).

II. The Declaration complies with the requirements of the Statute

3. Article 63 of the Statute provides that

“1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notified all such states forthwith.

2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon in.”

4. Article 82, paragraph 2, of the Rules of the Court provides that a declaration of a State's desire to avail itself of the right of intervention conferred upon it by Article 63 of the Statute 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 documents in support, which documents shall be attached.

5. A plain reading of these provisions indicates that every State party to the Genocide Convention has a “right” to intervene, as confirmed by the Court¹. In line with Article 82(2)

¹ *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.

of the Rules, this right may be exercised in the present case if four objective criteria are fulfilled:

- (a) The State must show that it has become party to the Genocide Convention;
- (b) The intervention must identify the particular provisions of the Genocide Convention the construction of which is in question;
- (c) The intervention must contain “a statement of the construction” of these provisions of the Genocide Convention.
- (d) The intervention must contain a list of documents in support.

6. Hence, the admissibility test is a simple one. The Court has to ascertain whether the object of the desired intervention stems from a State Party to the Genocide Convention and whether the object of the intervention is in fact the interpretation of the identified provisions of the Genocide Convention².

7. The latter condition leaves room for only two grounds of inadmissibility. First, the Court can reject a statement if it turns out that a State does not advance a “construction” of the Convention in question, but ventures into territory of application. In such a case, an intervener would act as if it was a co-complainant or co-defendant, circumventing the procedural requirements to become a party in its own right. Second, the Court can declare an intervention inadmissible if the statement does not refer to the Convention in question, but to other self-standing bodies of international law. In such a case, the Court would not be required to look at the purported intervention, as it would be irrelevant to the case at hand.

8. Spain considers that it has fully complied with the admissibility requirements under Article 63 of the Statute and 82 of the Rules of the Court. As indicated in para. 16 of the Declaration, it became a party to the Genocide Convention. Moreover, it has announced to the Court its intention to contribute to the interpretations of Article IX of the Genocide Convention in paras. 13 of the Declaration. In doing so, Spain has refrained from making any statements that could be regarded as an attempt to apply the Convention to certain facts that occurred between Ukraine and Russia. Accordingly, it has also not endorsed the Ukrainian pleas or arrogated itself any other right that is reserved to a party to the dispute.

9. The Russian Federation nevertheless objects to this straightforward analysis by advocating five counter-arguments. However, a closer analysis reveals that none of them is based on the law. Rather, as will be shown in the next section, Russia invites the Court to read into the Statute

² *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.*

additional requirements on admissibility for interventions under Article 63 of the Statute, which are not there.

III. The arguments of the Russian Federation are not based on the law

A. There is no subjective test about the genuine intentions of the intervener

10. In its first argument, the Russian Federation tries to convince the Court rejecting the intervention as not being “genuine”. Quoting several political statements of a various intervening States in paragraphs 15-29, it takes issue with the fact that the intervention was part of a concerted political strategy to help Ukraine in the case. This, in the view of Russia, would reveal an intention of Spain to become a de-facto co-complainant.

11. The Russian presentation of the law is erroneous. The Court has used the expression of “genuine intervention” in *Haya de la Torre*³ to describe how it operated the objective test of finding out whether the object of the intervention of Cuba was the interpretation of the Havana Convention (a “genuine” intervention) or an attempt to re-litigate another case (not a “genuine” intervention). However, contrary to the Russian observation in paragraph 14, the Court did not consider the text of the declaration and the context within it had been filed to establish the “genuine *intention*” of Cuba. This semantic shift from an objective test (was the intervention “genuine”?) to a subjective test (was the government’s intention “genuine”?) does not have any basis in the case law of the Court. Accordingly, the political motivation of Spain underlying the declaration of intervention is irrelevant.

12. Similarly, the question whether an intervener would be “taking sides” or not, cannot trigger the inadmissibility of an intervention. Already in *Wimbledon*, the Court accepted that Poland as intervener shared the arguments of the applicant⁴. Moreover, Spain does not “advocate side-by-side with Ukraine as “de-facto- co-applicant”, as alleged in paragraph 31 of the Russian observations. As demonstrated above, Spain did not submit a complaint against Russia, did not advance any facts and claims against Russia on which it asked the Court to hand down a judgment, and did not arrogate itself any other rights of a complainant. Russia’s first argument is therefore entirely unfounded.

13. Finally, the Russian allegation that Spain has taken a different position on Article IX of the Genocide Convention in the *Yugoslavia v. Spain* case is erroneous. (par 31). In any case, even if a legal position had evolved over time (*quod non est*), such evolution would not be a criterion to deny the admissibility of the intervention.

³ *Haya de la Torre Case*, Judgment of June 13th, 1951, I.C.J. Reports 1951, p. 71, at p. 77

⁴ *Case of the SS Wimbledon*, judgment of 17 August 1923, P.C.I.J. Series A Nr. 1, p. 12, at p. 18.

B. There is no test verifying the effects of an intervention

14. In its second argument, the Russian Federation pleads admitting the intervention would be incompatible with the equality of the Parties and the requirements of good administration of justice. It thereby shifts the test under Article 63 of the Statute from verifying the “object” of the intervention to its “effects” on the case. That proposition is equally not supported by the law.

15. The first argument was already advanced by Japan in *Whaling in the Antarctic*. True, Judge Owada gave some credence to the idea of an effects test to restrict the admissibility of an intervention, as quoted extensively in paragraphs 36-38 of the Russian submission. However, he remained isolated with his position in the bench. The Court itself dismissed the very idea that an intervention would affect the equality of parties if it stays within the limits drawn by Article 63 ICJ-Statute. When admitting New Zealand’s intervention, it ruled⁵:

“18. Whereas 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 ; whereas 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 ; and whereas such an intervention cannot affect the equality of the Parties to the dispute ;

19. Whereas New Zealand has met the requirements set out in Article 82 of the Rules of Court; whereas its Declaration of Intervention falls within the provisions of Article 63 of the Statute; whereas, moreover, the Parties raised no objection to the admissibility of the Declaration; and whereas it follows that New Zealand’s Declaration of Intervention is admissible”.

16. In other words, the Court confirmed that a proper declaration of intervention under Article 63 of the Statute, which is limited to submitting observations on the construction of the convention in question, cannot affect the equality of the Parties *per se*.

17. While acknowledging the existence of this order (para. 37), Russia takes issue with the fact that the high number of interventions would nevertheless raise an issue of representativeness in the bench under Article 31(5) of the Statute (paras. 39-43) and become “unmanageable” for itself and the Court (para. 45). Admitting several interveners would also run “entirely against the Court’s previous practice of admitting only one intervenor per case” (para. 49). However,

⁵ *Whaling in the Antarctic (Australia v. Japan)*, Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 3, at p. 9, paras. 18-19.

contrary to the Russian assertions expressed in paragraphs 36-48, the Court's order in *Whaling in the Antarctic* also presents good law when the Court faces a situation of several interveners.

18. First, the assertion that the Court admitted only one intervener per case is misleading. To the best knowledge of Spain, the Court has never refused a declaration of intervention with the reasoning that it had already allowed the intervention of another State, and allowing a second one would therefore be inadmissible.

19. Second, such an approach would also be manifestly arbitrary. The Court has no power to declare an intervention inadmissible because another State had already done so before. Such a restriction would directly encroach of the "right of intervention" of every State party to a Convention whose construction is at issue. It may well be the case that States were cautious to exercise this right in the past, leading to very few interventions in the history of the Court so far. However, that is a pure matter of policy. According to the law, all State parties have the right to intervene under Article 63 of the Statute at the same time, if they so wish. Under the Genocide Convention, all State Parties can even invoke the responsibility of another party for a breach of its obligations *erga omnes* to institute proceedings against the other party⁶. In such a situation, when the treaty embodies matters of collective interest, the late Judge Cançado Trindade called upon all State Parties to contribute to the proper interpretation of the treaty as sort of a "collective guarantee of the observance of the obligations contracted by the State parties"⁷. In the present case, the fact that many other States felt the need to share their interpretation of the Genocide Convention with the Court cannot deprive Spain of its right to intervene under Article 63 of the Statute on this important matter.

20. Third, it is a direct and inevitable consequence of numerous interventions that some judges in the bench may hold the same nationality as an intervening State. However, that does not infringe the equality of the parties. As recalled by the Court in para. 18 of its order in the *Whaling* case, the interveners do not become party to the proceedings. Therefore, Articles 31 (5) of the Statute, and Articles 32 and 36 of the Rules, as quoted by the Russian Federation, do not apply. Moreover, all judges are bound to uphold their neutrality and impartiality in accordance with Article 20 of the Statute.

21. Fourth, Spain reckons that the number of interveners in the present case is unprecedented and may indeed present new organisational challenges to the Court. In line with Article 30(1) of the Statute, the Court enjoys large discretion to organise the proceedings. Spain welcomes the decision of the Court to ask for written submissions of the interveners with an identical deadline in order to streamline the process. In order to help in the good administration of justice, it also reiterates its willingness to coordinate its further action before the Court with other interveners, in particular other EU Member States, to contribute to an effective management of time of the Court and both parties.

⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Judgment of 22 July 2022, p. 36, paras. 107-108.

⁷ Separate Opinion of Judge Cançado Trindade, attached to *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand*, Order of 6 February 2013, I.C.J. Reports 2013, p. 33, para 53.

C. There is no duty of the Court to refrain from deciding on the admissibility of the intervention before considering Russia's preliminary objections

22. In its third argument, the Russian Federation maintains that the Court has never allowed interventions at the preliminary stage of the proceedings in which jurisdiction or admissibility of an application was challenged. In paras. 50-52, it quotes six cases in support. In the first three instances (*Military and Paramilitary Activities, Nuclear Tests* and *Nuclear Tests (Request for Examination)*), the Court is said to have discarded interventions in the respective phases relating to jurisdiction or admissibility. In the second three instances (*Haya de la Torre, Whaling in the Antarctic and Wimbledon*), the Court accepted interventions within the main phase, because – according to Russia in para. 51 – the jurisdiction was not challenged in a separate stage.

23. It appears that Russia draws from this practice a duty of the Court to refrain from deciding on the admissibility of the interventions before considering its preliminary objections. *Hélas*, such a duty does not exist in the law and the alleged precedents do not support this view either.

24. First, Article 63 of the Statute does not make any distinction between separate phases before the Court. Rather, the opening word “whenever” indicates that a State is allowed to intervene in all phases of the proceedings⁸. Moreover, Article 82(1), second sentence of the Rules sets out only an outer time limit, i.e. a duty to intervene no later than the date fixed for the oral hearing. Again, the mention of an “oral hearing” does not distinguish between separate phases of the Court – the intervention may be filed before the oral hearings set for the jurisdictional/admissibility phase or before the merits phase. In addition, the invitation to file a declaration “as soon as possible” in that provision confirms that the filing of an Article 63 declaration is admissible at this stage of the proceedings.

25. Russia also advances an erroneous interpretation of the words “Convention in question” in Article 63 of the Statute. In its view, it would be first for the Court to determine the “dispute” pending before it before allowing Convention states to intervene. However, the role of the Court in Article 63 of the Statute is restricted to verify whether the conditions enumerated in Art. 82(2) of the Rules are complied with. Contrary to the Russian allegation, the Court did not determine first the subject matter of the dispute in *Haya de la Torre*⁹. Rather, the Court only ascertained whether the object of the intervention of the Government of Cuba was in fact the interpretation of the Havana Convention in regard to the question whether Colombia is under an obligation to surrender the refugee to the Peruvian authorities.

26. Second, in the first two cases quoted by Russia in support for such a duty (*Military and Paramilitary Activities* and *Nuclear Tests*) the Court had actually decided to split the proceedings in separate phases¹⁰ before examining the admissibility of the subsequent

⁸ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Intervention of El Salvador, Dissenting Opinion of Judge Schwebel, I.C.J. Reports 1984, p. 223, at p. 234.

⁹ *Haya de la Torres Case*, Judgment of June 13th 1951, I.C.J. Reports 1951, p. 71, at p. 77.

¹⁰ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Provisional Measures, Order of 10 May 1984, I.C.J. Reports 1984, p. 169, at p. 187, Point D (separating

interventions. In the present case, the Court did not order under Article 79(1) of the Rules to separate the proceedings after the filing of Russia's preliminary objection. Rather, it has allowed Ukraine to address jurisdiction, admissibility and merits in one memorial. Accordingly, no authority can be drawn from *Military and Paramilitary Activities* and *Nuclear Tests* for the present case: in those cases, there was a different jurisdictional/admissibility phase, in the present case there is none.

27. Third, even if the Court had separated the proceedings in the two separate phases here, nothing in the case law supports a duty of the Court to refrain from deciding on the admissibility of an intervention during the jurisdictional phase. In *Military and Paramilitary Activities*, the Court's jurisdiction depended on an understanding of Article 36(2) and (5) of the Statute, and the merits touched upon questions of the UN Charter and customary international law. El Salvador's Declaration of intervention of 15 August 1984 addressed mainly the latter and did not contain any statement on how it would construe Article 36(2) and (5) of the Statute. Against that background, the Court dismissed the application "in as much as it relates to the current phase of the proceedings"¹¹. As judge Singh¹², judges Ruda, Mosler, Ago, Jennings and De Lacharrière¹³, as well as judge Oda¹⁴ explained, it had weighed in the Court that El Salvador's declaration was mainly directed to the merits of the case, but insufficient with respect to the jurisdictional question before the Court. This explanation is shared by the doctrine¹⁵.

28. Therefore, it appears that the Court rejected El Salvador's declaration as inadmissible during the jurisdictional phase *because and only insofar it did not contain any construction of Article 36(2) and (5) of the Statute as the jurisdictional base of the case*. The Court did not find that no intervention under Article 63 of the Statute could ever be admissible during a jurisdictional phase, as the Russian Federation seems to read into the Court's order of 4 October 1986.

29. The same is true for the *Nuclear Tests* case. After having ordered a jurisdictional phase in June 1973, the Court declared in July 1973 Fiji's intervention of May 1973 admissible. However, it deferred the consideration thereof to the merits as the intervention did not contain any construction of the jurisdictional basis of the case¹⁶. In other words, the Court was able to

jurisdiction and admissibility from the merits phase); *Nuclear Tests (New Zealand v. France)*, Interim Protection, Order of 22 June 1973, I.C.J. Reports 1973, p. 135, at p. 142

¹¹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Intervention of El Salvador, Order of 4 October 1984, I.C.J. Reports 1984, p. 215, at p. 216.

¹² *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Intervention of El Salvador, Separate Opinion of Judge Singh, I.C.J. Reports 1984, p. 218.

¹³ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Intervention of El Salvador, Separate Opinion of Judges Ruda, Mosler, Ago, Sir Robert Jennings, and De Lacharrière, I.C.J. Reports 1984, p. 219.

¹⁴ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Intervention of El Salvador, Separate Opinion of Judge Oda, I.C.J. Reports 1984, p. 220.

¹⁵ Juan José Quintana, *Litigation at the International Court of Justice*, Brill 2015, pp. 943-944.

¹⁶ *Nuclear Tests (New Zealand v. France)*, Application to Intervene, Order of 12 July 1973, I.C.J. Reports 1973, p. 324, at p. 325.

decide about the admissibility of the intervention during the ongoing jurisdictional phase, but deferred it to the merits phase, as it only dealt with issues relating to the merits.

30. Fourth, *Nuclear Tests (Request for Examination)* does not support the Russian argument either. In that rather specific case, the Court had before it New Zealand's application from August 1995 and four subsequent interventions under Article 63 of the Statute to re-examine § 63 of its earlier judgment in *Nuclear Tests*. Instead of separating the proceedings, the Court held a hearing in September 1995 and rejected both the application and the four interventions in an order of October 1995. Hence, the only lesson from this case is that the Court has discretion to dismiss an application together with purported interventions. However, the precedent does not entail a duty of the Court to disregard an intervention prior to the examination of preliminary objections from the Defendant.

31. In conclusion, nothing in Article 63 of the Statute or in the Court's case law supports the Russian view that the Court cannot deal with the admissibility of an intervention before deciding on Russia's preliminary objection.

D. There is no prohibition for Spain to address the Court's jurisdiction

32. In its fourth and fifth argument, the Russian Federation criticises that the declaration address would in effect address matters, which presuppose that the Court has jurisdiction and/or that Ukraine's application is admissible. Russia complains, in particular, that the declaration contains a construction of Article IX of the Genocide Convention on the jurisdiction of the Court. For Russia, this makes the declaration inadmissible as it is written in a way that presupposes that the Court has jurisdiction over the alleged dispute. Thereby, Russia effectively maintains that a State may not intervene on questions of jurisdiction, as taking a position on that point would "presuppose" that the Court has jurisdiction. In its fifth argument, it repeats this point with more clarity, contesting Spain's right to intervene on Article IX of the convention *per se*.

In Spain's view, this line of reasoning also runs contrary to Article 63 of the Statute and the Court's practice.

33. According to Article 63 (1) of the Statute, a State party may intervene on the "construction of a convention". The plain wording refers to the entire Convention, including its compromissory clause, as the case may be. Accordingly, nothing in the text suggests that a State may not offer its construction of Article IX of the Genocide Convention to the Court.

34. That point is further strengthened by the object and purpose of Article 63 of the Statute. States do not only have a legitimate interest to share with the Court their interpretation of substantive obligations contained in a Convention at stake before the Court. It is of equal importance to be heard on jurisdictional issues, as this may affect their own position before the

Court in future cases relating to themselves. Hence, an intervention under Article 63 of the Statute may cover both jurisdictional and substantive aspects¹⁷.

35. Subsequent practice before the Court points into the same direction. So far, the Court has never dismissed an intervention because it was (entirely or primarily) directed to interpreting a compromissory clause. Rather, in *Military and Paramilitary Activities* El Salvador's attempt to influence the jurisdictional question before the Court was unsuccessful because the declaration had not complied with the formal requirements under Rule 82(2)(b) and (c) for the great majority in the Court. Had it done so, it would have been of interest to the Court, as expressly confirmed by Judge Oda¹⁸. Moreover, Judge Schwebel even found that the faults of El Salvador's initial declaration on jurisdiction had been healed by subsequent letters. Based on this reading, he was prepared to admit El Salvador's declaration on jurisdictional matters.

36. In *Pakistani Prisoners of War*, Judge Pétren defended a similar view. He noted that Pakistan and India had different views about the Genocide Convention, including its jurisdictional clause. In his view, "Article 63 of the Statute of the Court required the questions thus raised to be notified without delay to the States parties to the two international instruments in question"¹⁹. Such an invitation would make no sense if States would not be able to make a statement in Article IX Genocide Convention under Article 63 of the Statute.

37. It follows that Spain correctly exercised its right to intervene under Article 63 of the Statute. The fact that the intervention entirely addresses the compromissory clause under Article IX of the Genocide does not render the intervention inadmissible.

E. The Declaration does not contain issues unrelated to the Genocide Convention

38. In its last argument, the Russian Federation refers to Spain's statements in par. 8, 29 and 30. It alleges that these observations does not relate to the construction of the Genocide Convention and contains an impermissible incursion into the interpretation or application of other rules of international rules that are distinct from the treaty in question and derive from different sources.

¹⁷ MN Shaw (ed), *Rosenne's Law and Practice of the International Court 1920-2015* (5th ed, Vol III, Brill Nijhoff 2016), p. 1533; H. Thirlway, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence* (Vol I, OUP 2013), p. 1031; A. Miron/C. Chinkin, "Article 63" in: Zimmermann/Tams/Oellers-Frahm/Tomuschat (eds), *The Statute of the International Court of Justice: A Commentary* (3rd ed. OUP 2019), p. 1741, at p. 1763, note 46.

¹⁸ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Intervention of El Salvador, Separate Opinion of Judge Oda, I.C.J. Reports 1984, p. 220, at p. 221.

¹⁹ *Trial of Pakistani Prisoners of War (Pakistan v. India)*, Interim Protection, Order of 13 July 1973, Separate Opinion of Judge Pétren, I. C.J. Reports 1973, p. 334, at p. 335.

39. The argument is based on a misperception of Spain's statement. Clearly, the statement did not introduce this issue as a self-standing matter. Rather, the statement was part of the construction of Article IX of the Convention.

40. Such technique is permissible under international law. According to Article 31(3)(c) of the Vienna Convention on the Law of Treaties, representing customary international law²⁰, the interpretation of a treaty may include

“any relevant rules of international law applicable in the relations between the parties.”

According to the Report of the ILC Study Group on Fragmentation of International law, the notion of “relevant rule” includes customary international law, general principles of law and treaty law²¹. It follows that mentioning a general principle of law as an interpretative aid to Article IX of the Convention cannot be disqualified as “impermissible incursion”. Rather, it contributes to the required integral interpretation of international law as a legal order.

41. Spain finds further support for its position in the Court's order of 16 March 2022. In paragraph 58, the Court stated:

*The acts undertaken by the Contracting Parties “to prevent and to punish” genocide must be in conformity with the spirit and aims of the United Nations, as set out in Article 1 of the United Nations Charter.*²²

42. It appears that the Court interpreted Article I of the Genocide Convention in light of Article 1 of the UN-Charter. In a similar vein, Spain suggest that it is possible to interpret Article IX in the same light, as permitted by Article 31(3)(c) of the Vienna Convention. Such operation does not transcend the boundaries of Article 63 of the Statute, but stays within the requirement of constructing the Convention at issue in line with accepted rules of treaty interpretation.

43. As it is known, Spain's intervention focuses on art. IX which is certainly a procedural article as it refers to the solution of disputes that arise between the parties at the time of interpreting,

~~Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)~~, Judgment of 22 July 2022, p. 31, para. 87: “The Court will have recourse to the rules of customary international law on treaty interpretation as reflected in Articles 31 to 33 of the Vienna Convention on the Law of Treaties of 23 May 1969”; see also *Application of the International Convention On the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections, Judgment of 4 February 2021, p. 24, para. 75 with further references.

²¹ Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law: Report of the Study Group of the ILC finalised by Mr. Martti Koskenniemi, 13 April 2006, pp. 94-96. https://legal.un.org/ilc/documentation/english/a_cn4_l682.pdf.

²² *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russia)*, Order of 16 March 2022, p. 13, para. 58.

applying and executing the convention. However, to the extent that “executing the convention implies the adoption by the States of legislative, judicial and judicial cooperation measures, article IX considerably broadens its profiles.

44. Spain, therefore, considers of importance that Article IX be interpreted by the Court. This is the aim of Spanish declaration which, as required, includes a constructive reading of Art. IX.

45. Spain considers that Article IX allows recourse to the International Court of Justice for it to determine whether or not a State (“any of the parties to the dispute”):

1) has committed a specific act of genocide,

2) has complied or not with the treaty obligation to prevent the commission of acts of genocide in its territory, and

3) has sanctioned the acts of genocide in the manner required by the Convention.

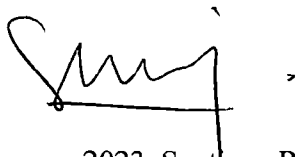
Spain offers this construction of a capital article of the Convention based on the rules of interpretation included in the Vienna Convention on the Law of Treaties: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose” (Art. 31.1).

46. Consequently, contrary to what Russia has stated, the Spanish Declaration does not ask the Court to analyze provisions unrelated to the Convention, such as those relating to the prohibition of the use of armed force, or provisions other than Article IX.

IV. Conclusion

47. For the reasons set out above Spain is convinced that its Declaration of Intervention fully complies with the requirements under Article 63 of the Statute and Article 82 of the Rules.

The Court should therefore decide that the intervention is admissible and allow Spain to present its written observations in good time in order to exercise its right to intervene as party to the Genocide Convention.

A handwritten signature in black ink, appearing to read 'Santiago Ripol Carulla', with a horizontal line underneath the name.

10th February 2023, Santiago Ripol Carulla, Agent of the Government of Spain