

INTERNATIONAL COURT OF JUSTICE

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

**WRITTEN OBSERVATIONS OF THE GOVERNMENT OF FINLAND ON
THE ADMISSIBILITY OF FINLAND'S DECLARATION OF
INTERVENTION**

13 FEBRUARY 2023

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INTRODUCTION

1. The following observations are submitted in response to the letter from the Registrar dated 31 January 2023 regarding the modalities for submitting observations in writing on the admissibility of Finland's Declaration of Intervention in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.
2. Finland has taken due note of the Written Observations submitted by the applicant, Ukraine, on 15 November 2022 and the respondent, the Russian Federation, also on 15 November 2022. Finland notes that whereas the applicant considers that Finland's Declaration of Intervention is admissible, the respondent requests the Court to dismiss the Declaration as inadmissible. Alternatively, the respondent requests that the Declaration be dismissed as inadmissible inasmuch as it relates to the jurisdictional phase of the proceedings, or that the consideration of its admissibility be deferred until after the Court has made a decision on the preliminary objections of the Russian Federation.
3. The Written Observations of the Russian Federation were presented as a single document addressing the admissibility of the Declarations of Intervention filed by Australia, Austria, Denmark, Estonia, Finland, Greece, Ireland, Luxembourg, Portugal and Spain. While Finland provides below its views regarding the admissibility of its Declaration of Intervention, it takes into account the Written Observations of the Russian Federation inasmuch as they seem to pertain to its Declaration.
4. The Russian Federation seeks to challenge the admissibility of Finland's Declaration of Intervention by claiming
 - (a) that the intervention is not genuine, meaning that its real object is not the construction of the Genocide Convention, but rather pursuing a joint case with Ukraine;
 - (b) that the intervention would be incompatible with the principle of equality of the parties and the requirements of good administration of justice;

(c) that the Court cannot, in any event, decide on the admissibility of Finland's Declaration before it has decided on the preliminary objections of the Russian Federation;

(d) that the Declaration addresses matters that presuppose that the Court has jurisdiction and/or that Ukraine's Application is admissible;

(e) that the Declaration should be declared inadmissible because it seeks to address issues unrelated to the construction of the Genocide Convention and that Finland cannot intervene on Article IX of the Convention *per se*;

(f) that the Declaration seeks to address issues unrelated to the construction of the Genocide Convention, and that allowing interventions on such matters at this stage would prejudice the question of the Court's jurisdiction *ratione materiae*.¹

5. In what follows, Finland refutes each of the objections raised by the Russian Federation to the admissibility of Finland's Declaration of Intervention.

Part I (in response to claims under 'a') will establish that Finland's Declaration of Intervention complies with the requirements of Article 63 of the Statute of the Court and Article 82 of the Rules of the Court and is admissible.

Part II (in response to claims under 'b') will show that Finland's intervention has no bearing on the equality of arms principle.

Part III (in response to claims under 'c') will demonstrate that the Court may decide on the admissibility of Finland's Declaration of Intervention before considering the preliminary objections of the Russian Federation.

Part IV (in response to claims under 'd') will show that the intervention may relate to the jurisdiction of the Court.

Part V (in response to claims under 'e') will establish that Finland's intervention is pertinent to the construction of the Genocide Convention.

In conclusion, Finland requests that its Declaration of Intervention under Article 63 of the Statute be declared admissible.

¹ *The Russian Federation's Written Observations on Admissibility of the Declarations of Intervention Submitted by Australia, Austria, Denmark, Estonia, Finland, Greece, Ireland, Luxembourg, Portugal and Spain*, 15 October 2022, para. 9.

6. Finland wishes to point out at the outset that its right to intervene under Article 63 of the Statute of the Court is not dependent on the consent of the parties to the case. As the Court has confirmed in the context of Article 62 in *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)* case, its competence with regard to intervention does not derive from the consent of the parties to the case but from their consent to the Court's exercise of its powers under its Statute.²

I. FINLAND'S INTERVENTION COMPLIES WITH REQUIREMENTS AND IS ADMISSIBLE

7. Finland further recalls that an intervention in accordance with Article 63 of the Court's Statute is an incidental proceeding that constitutes the exercise of a right, as the Court has confirmed.³ At the same time, "such right to intervene exists only when the declaration concerned falls within the provisions of Article 63".⁴
8. Finland notes that this right is only subject to the conditions set out in the Statute and Rules of the Court.⁵ Finland further notes in this regard that its Declaration is in complete compliance with Article 63 of the Statute of the Court and the formal requirements under Article 82 of the Rules of the Court.
9. Finland's Declaration was accompanied by the relevant documents concerning its status as a State Party to the 1948 Convention of the Prevention and Punishment of the Crime of Genocide and the nomination of its Agent and Co-Agent.⁶ In its Declaration, Finland underlined that it does not seek to become a party to the proceedings and confirmed that, in accordance with Article 63, paragraph 2, of the Statute of the Court, "by availing itself of its right to intervene, Finland accepts that the construction given by the judgment in the case will be equally binding upon it".⁷ Finland further clarified that it seeks to intervene regarding the interpretation of certain provisions of the Genocide Convention, which are in issue in the proceedings. The provisions in question are identified in the Declaration⁸, which also contains a statement

² *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene*, Judgment, I.C.J. Reports 1990, para. 96. See also J. Merrills, E. de Brabandere, *Merrills' International Dispute Settlement* (7th ed. Cambridge University Press 2022), p. 214.

³ *Haya de la Torre Case*, Judgment of June 13th, 1951, I.C.J. Reports 1951, p. 76; *Territorial and Maritime Dispute (Nicaragua v. Colombia), Application by Honduras for Permission to Intervene*, Judgment, I.C.J. Reports 2011, para. 36. See also *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand*, Order of 6 February 2013, I.C.J. Reports 2013, para. 8.

⁴ *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand*, Order of 6 February 2013, I.C.J. Reports 2013, para. 8.

⁵ *Ibid.*, para. 18.

⁶ *Declaration of Intervention, submitted by Finland on 21 September 2022*, annex I (Letter from the Registrar of the International Court of Justice to the States Parties to the Genocide Convention, 30 March 2022) and annex II (Instrument of Accession by the Government of Finland to the Genocide Convention, 26 January 1960)).

⁷ *Ibid.*, para. 15.

⁸ *Ibid.*, para. 13.

concerning their construction.⁹ Finally, the Declaration was filed as soon as possible and well before the opening of the oral proceedings. Finland therefore considers that its Declaration of Intervention fulfills the requirements set forth in Article 63 of the Statute and Article 82 of the Rules of the Court.

10. The Russian Federation claims that “the interventions are not genuine: their real object is not the construction of the Convention but pursuing a joint case with Ukraine”.¹⁰ Finland rejects this claim and reminds that the Genocide Convention is a legal instrument of fundamental importance for the international community as a whole, both regarding individual criminal responsibility and State responsibility. As a State Party to the Genocide Convention, Finland has a direct interest in ensuring the proper interpretation of the provisions of the Convention.¹¹ Intervention under Article 63 has been rightly described as “a form of intervention to protect an interest of a legal nature, not which may be affected by the decision in the case but in the more limited sense that it may be affected by the interpretation given by the Court to the multilateral treaty in question.”¹²
11. Finland wishes to point out that Article 63 has a limited objective allowing the intervening State to convey to the Court its views concerning the proper construction of the relevant provision or provisions of the multilateral treaty in question.
12. In *Haya de la Torre Case*, to which the Russian Federation refers in its Written Observations, the Court concluded that Cuba’s Declaration of Intervention as originally submitted did not satisfy the conditions of a genuine intervention. Such a conclusion was justified given that the written submissions of Cuba were “almost entirely” devoted to a discussion of questions which the Court had already decided in its earlier Judgment “with the authority of *res judicata*”.¹³ The reasons for deeming Cuba’s submission as not qualifying for a genuine intervention are in no way relevant to the question of the admissibility of Finland’s Declaration.
13. Intervention under Article 63 does not make of the intervening State a party to the dispute. Reference can in this regard be made to the Court’s statement in *Whaling in the Antarctic* that “it must make clear [...] that, since the intervention of New Zealand does not confer upon it the status of party to the proceedings, Australia and New Zealand cannot be regarded as being

⁹ *Ibid.*, paras. 18-24, 25-26 and 27-32.

¹⁰ *The Russian Federation’s Written Observations on Admissibility of the Declarations of Intervention Submitted by Australia, Austria, Denmark, Estonia, Finland, Greece, Ireland, Luxembourg, Portugal and Spain*, 15 October 2022, para. 1

¹¹ On 20 November 2012, New Zealand filed in the Registry a declaration of intervention in the *Whaling in the Antarctic (Australia v. Japan)*. Relying on Article 63, paragraph 2, of the Statute, it contended that, as a party to the ICRW, it had a direct interest in the construction that might be placed upon the Convention by the Court in its decision in the proceedings. See *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of the Government of New Zealand*, 20 November 2012, para 13.

¹² S. Rosenne, *Intervention in the International Court of Justice* (Dordrecht, Boston, London, Martinus Nijhoff Publishers 1993), p. 73.

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

‘parties in the same interest’ within the meaning of Article 31, paragraph 5, of the Statute.”¹⁴ Similarly, “in an intervention under Article 63 - which is a form of non-party intervention - the intervener influences the future judgment by arguing for a certain interpretation of a multilateral convention that is applicable to the dispute between the original parties.”¹⁵

14. As far as the question of “siding with” Ukraine is concerned, Finland recalls that the question of support to one or the other party does not form part of the conditions for admissibility of a declaration of intervention set forth in Article 63 of the Statute and Article 82 of the Rules of the Court.
15. It is similarly difficult to find support in the Court’s jurisprudence to the contention that the political motivations of a State seeking to intervene would be relevant to the admissibility of that State’s declaration of intervention. On the contrary: In several cases in which a State has intervened or sought to intervene in support of one of the parties to the dispute, the Court has not regarded such support as a relevant aspect regarding the admissibility of the declaration of intervention.¹⁶ In *S.S. Wimbledon*, the Permanent Court of International Justice did not see an obstacle for Poland intervening in support of the Applicant States.¹⁷ The understanding that a State seeking intervention may “take sides” is furthermore consistent with the explanation given by the Chairman of the Drafting Committee of the Advisory Committee of Jurists regarding the purpose of Article 63 of the Statute of the Permanent Court of International Justice.¹⁸

II. FINLAND’S INTERVENTION HAS NO BEARING ON THE EQUALITY OF ARMS PRINCIPLE

16. The Russian Federation also argues that admitting Finland’s Declaration of Intervention would be incompatible with the principle of equality of the parties and good administration of justice. Finland rejects this claim and contends that its Declaration of Intervention has no bearing on the equality of the parties to the proceedings. In the *Whaling in the Antarctic* case, Japan raised the issue of equality of the parties, regarding which the Court stated that:

¹⁴ *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand*, Order of 6 February 2013, I.C.J. Reports 2013, para. 21.

¹⁵ Z. Crespi Reghizzi, “The objects and effects of non-party intervention before the International Court of Justice” in *Leiden Journal of International Law* 2022, 35(1), p. 168.

¹⁶ In the two *Nuclear Tests* cases, Fiji sought to intervene in support of Australia and New Zealand, respectively. See *Nuclear Tests (Australia v. France)*, Application to Intervene, Order of 12 July 1973, I.C.J. Reports 1973, p. 320; *Nuclear Tests (New Zealand v. France)*, Application to Intervene, Order of 12 July 1973, I.C.J. Reports 1973, p. 324. In the *Whaling in the Antarctic* case, Japan drew attention to the Joint Media Release of Australia and New Zealand *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand*, Order of 6 February 2013, I.C.J. Reports 2013, para. 17.

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

¹⁸ Advisory Committee of Jurists, P.C.I.J., Procès-Verbaux of the Proceedings of the Committee, June 16 – July 24, 1920 (Van Langenhuisen Brothers, 1920), p. 745-746. Available at https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_D/D_proceedings_of_committee_annexes_16june_24july_1920.pdf (accessed on 1 February 2023).

“...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 that] such an intervention cannot affect the equality of the Parties to the dispute”.¹⁹

17. The fact that several declarations of intervention have been filed in this case cannot, in Finland’s view, in any way affect Finland’s right to intervene as a State Party to the Genocide Convention under Article 63 of the Statute of the Court. Finland is nevertheless willing to coordinate the next procedural steps with the other States having filed such a declaration, if the Court deems this useful in the interest of the expedient administration of justice.

III. THE COURT MAY DECIDE ON THE ADMISSIBILITY OF FINLAND’S INTERVENTION BEFORE CONSIDERING THE PRELIMINARY OBJECTIONS OF THE RUSSIAN FEDERATION

18. According to the Russian Federation, the Court cannot decide on the admissibility of Finland’s Declaration of Intervention before it considers the preliminary objections of the Russian Federation. Finland wishes to point out that no such requirement is contained in Article 63 of the Statute or Article 82 of the Rules of the Court. Article 63 makes no distinction between separate procedural phases before the Court. Rather, the opening word “whenever” indicates that a State is allowed to intervene in all phases of the proceedings²⁰. Moreover, Article 82(1), second sentence of the Rules of the Court 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 the “oral hearing” does not distinguish between separate phases before the Court. 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.
19. The Russian Federation also claims that “the long-standing practice of the Court militates against admitting declarations of intervention prior to the resolution of preliminary objections.” Finland finds this claim unconvincing in light of the examples referred to in paragraphs 53 and 54 of the Written Observations of the Russian Federation. Of the three cases mentioned in paragraph 53, *Nuclear Tests* and *Nuclear Tests (Request for Examination)* concerned Article 62 of the Statute, which, unlike Article 63, does not confer a right to intervene. As far as the third case, *Military and Paramilitary Activities*, is concerned, it should be noted that El Salvador’s Declaration of Intervention was considered inadmissible at the jurisdictional phase as it only addressed provisions that were relevant at the merits phase. The three cases mentioned in paragraph 54 (*Haya de la Torre Case*, *Whaling in the Antarctic* and *Wimbledon*), on their part, do not seem to contribute to a practice regarding the sequence of intervention and

¹⁹ *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand*, Order of 6 February 2013, I.C.J. Reports 2013, para. 18.

²⁰ *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, pp. 234-236.

preliminary objections, given that the question did not arise, either because there was no separate stage for preliminary objections or because there were no preliminary objections at all.

20. Thus nothing in Article 63 of the Statute or in the Court's case law supports the view held by the Russian Federation that the Court could not decide on the admissibility of a Declaration of Intervention before considering Russia's preliminary objections.
21. Finland is therefore of the view that the Court may decide on the admissibility of Finland's Declaration of Intervention before deciding on its jurisdiction in the case and on the admissibility of Ukraine's claims. This is all the more important as Finland's Declaration of Intervention concerns the construction of the very Article that forms the basis of the Court's jurisdiction in the case.

IV. THE INTERVENTION MAY RELATE TO THE JURISDICTION OF THE COURT

22. The Russian Federation claims that Finland's Declaration of Intervention addresses matters which presuppose that the Court has jurisdiction and/or that Ukraine's application is admissible. The Russian Federation maintains that the Court should not allow Finland to intervene on questions of jurisdiction, as this would "presuppose" that the Court has jurisdiction. In Finland's view, this line of reasoning cannot be supported with reference to Article 63 of the Statute of the Court or to the practice of the Court.
23. According to Article 63(1) of the Statute of the Court, a State party may intervene on the "construction of a convention". This wording refers to a convention in its entirety, including a compromissory clause where it is part of the convention. Accordingly, nothing in that provision suggests that a State could not present its views on the construction of Article IX of the Genocide Convention to the Court.
24. The practice of the Court confirms this reading. 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 Oda²¹.

²¹ *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. 221.

V. FINLAND'S INTERVENTION IS PERTINENT TO THE CONSTRUCTION OF THE GENOCIDE CONVENTION

25. The Russian Federation argues that Finland's Declaration seeks to address issues unrelated to the construction of the Convention, the admission of which would prejudice questions relating to the Court's jurisdiction *ratione materiae*, such as "good faith", "notions of territorial integrity and use of force", and "whether there is evidence that genocide has been committed or may be committed in Ukraine".²²
26. Finland's Declaration refers to good faith performance of international obligations as part of general international law, including by quoting the Court's observation that the principle "obliges the parties to apply [a treaty] in a reasonable way and in such a manner that its purpose can be realized."²³ Article 2(2) of the Charter of the United Nations contains a general obligation: "All Members [...] shall fulfil in good faith the obligations assumed by them in accordance with the present Charter." It is obvious that the principle of good faith is also relevant to the construction of the Genocide Convention in accordance with established principles of treaty interpretation. Finland would like to recall in this respect the Vienna Convention on the Law of Treaties, according to which 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 light of its object and purpose.²⁴ It is equally obvious that "[i]n discharging their obligation to prevent genocide, the Contracting parties must act within the limits permitted by international law".²⁵
27. As far as the obligation under Article 2(4) of the Charter of the United Nations is concerned, Finland's intervention mentions it in the context of the interpretation of Article 1 of the Genocide Convention and when commenting, in general terms, on the extent of the jurisdiction of the Court. In both instances, Finland's arguments are relevant to the construction of the provisions of the Genocide Convention, which shall take into account "any relevant rules of international law applicable between the parties".²⁶

²² *The Russian Federation's Written Observations on Admissibility of the Declarations of Intervention Submitted by Australia, Austria, Denmark, Estonia, Finland, Greece, Ireland, Luxembourg, Portugal and Spain*, 15 October 2022, para. 106(e).

²³ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, para. 142.

²⁴ See Article 26 ('*Pacta sunt servanda*') and Article 31 (General rule of interpretation). See also *ILC, Draft Articles on the Law of Treaties*, art. 27, paragraph 12 of the commentary: "Paragraph 1 [of Article 31] contains three separate principles. The first—interpretation in good faith—flows directly from the rule *pacta sunt servanda*. The second principle is the very essence of the textual approach: the parties are to be presumed to have that intention which appears from the ordinary meaning of the terms used by them. The third principle is one both of common sense and good faith; the ordinary meaning of a term is not to be determined in the abstract but in the context of the treaty and in the light of its object and purpose. These principles have repeatedly been affirmed by the Court."

²⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, para. 430; *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Provisional Measures, Order of 16 March 2022, para. 57.

²⁶ *Vienna Convention on the Law of Treaties*, Art. 31(3)(c).

28. Finally, the claim that Finland’s intervention would refer to “whether there is evidence that genocide has been committed or may be committed in Ukraine” is completely without basis. The Declaration merely comments, in general terms, on the obligations of a State Party to the Genocide Convention under Article 1 of the Convention, in an attempt to assist the Court in the construction of the Article. The facts of the case have not been argued in Finland’s Declaration of Intervention.

VI. CONCLUSIONS

29. For the reasons set out above, Finland respectfully requests the Court

- (a) to reject all the objections to the admissibility of its Declaration of Intervention raised by the Russian Federation in its Written Observations.
- (b) to declare that Finland’s Intervention under Article 63 of the Statute of the Court is admissible.

Respectfully,



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Agent of Finland



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