

**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 HELLENIC REPUBLIC ON  
THE ADMISSIBILITY OF ITS DECLARATION OF INTERVENTION FILED  
UNDER ARTICLE 63 OF THE STATUTE OF THE COURT**

**13 FEBRUARY 2023**

## Introduction

1. On 30 March 2022, the Registrar of the Court addressed a notification to the States Parties to the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”) pursuant to Article 63, paragraph 1, of the Statute of the Court, which provides that “[w]henever 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”.

2. On 13 October 2022, the Hellenic Republic filed a Declaration of Intervention pursuant to Article 63, paragraph 2, of the Statute of the Court, which confers on every state so notified “the right to intervene in the proceedings”.

3. On 15 November 2022, Ukraine, as provided for in Article 83, paragraph 1, of the Rules of the Court, filed in the Registry of the Court written observations on the Hellenic Republic’s Declaration of Intervention, pleading that it is admissible. On the same day, the Russian Federation, acting pursuant to the said provision, filed written observations on the admissibility of the Declarations of Intervention submitted by ten states, including the Hellenic Republic, requesting the Court to dismiss the Declarations concerned on several grounds of inadmissibility or to defer consideration of admissibility of the Declarations until after the Court has made a decision on the Russian Federation’s preliminary objections<sup>1</sup>.

4. On 31 January 2023, the Registrar of the Court informed the Hellenic Republic that:

“In light of the fact that the Russian Federation has filed objections to the admissibility of your Government’s declaration of intervention, the Court, pursuant to Article 84, paragraph 2, of its Rules, must hear the State seeking to intervene and the Parties before deciding on the question of admissibility. In this regard, the Court has decided to do so by means of a written procedure. To that end, it has fixed 13 February 2023 as the time-limit for your Government to submit observations in writing on the admissibility of its declaration, and 13 March 2023 as the time-limit for the Parties to submit observations in writing on the admissibility of that declaration.”

5. Therefore, the Hellenic Republic hereby submits its written observations on the admissibility of its Declaration pursuant to the aforementioned provision of Article 84, paragraph 2, of the Rules of the Court. Within this context, it will address the

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<sup>1</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, 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, dated 15 November 2022.

objections raised by the Russian Federation only to the extent that they are directly related to its own Declaration of Intervention.

6. With the present observations, the Hellenic Republic will demonstrate that:
- the Declaration of Intervention conforms with the requirements of the Statute and is genuine (I);
  - the Declaration of Intervention does not affect the principle of the equality of the parties and the requirements of good administration of justice (II);
  - the Hellenic Republic has the right to intervene on Article IX of the Genocide Convention *per se* (III);
  - the Court may decide on admissibility of the intervention before considering the Russian Federation's preliminary objections (IV);
  - the Declaration of Intervention does not contain issues unrelated to the Genocide Convention (V).

### **I. The Declaration of Intervention conforms with the requirements of the Statute and is genuine.**

7. The first objection of the Russian Federation is premised on the argument that the interventions were not genuine, as their real object arguably was, not the construction of the Genocide Convention, but pursuing a joint case with Ukraine.

8. In this respect, however, it should be noted that the broader political context relied on by the Russian Federation is irrelevant for the purposes of assessing the admissibility of the Hellenic Republic's Declaration of Intervention, which has a limited object under the Statute of the Court. As already mentioned above, Article 63 of the Statute confers a right to intervene to every state notified of a case involving the construction of a convention to which it is a party. It is in exercise of this right that the Hellenic Republic filed its Declaration of Intervention.

The Court has underlined that, in assessing whether a declaration falls under Article 63, "*the only point which it is necessary to ascertain is whether the object of the intervention ... is in fact the interpretation of the [relevant] Convention in regard to the question*"<sup>2</sup> at issue in the dispute. The declaration must also conform to the conditions of Article 82 of the Rules of the Court, which provides in paragraph 1 that a declaration under Article 63 of the Statute "shall be filed as soon as possible, and not later than the date fixed for the opening of the oral proceedings". Paragraph 2 of Article 82 further provides that:

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

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<sup>2</sup> *Haya de la Torre Case (Colombia/Peru)*, Judgment of June 13th, 1951, I.C.J. Reports 1951, p. 71, at p. 77. See also *Whaling in the Antarctic (Australia v. Japan)*, Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 3, at pp. 5–6, para. 8.

- (a) particulars of the basis on which the declarant State considers itself a party to the convention;
- (b) identification of the particular provisions of the convention the construction of which it considers to be in question;
- (c) a statement of the construction of those provisions for which it contends;
- (d) a list of the documents in support, which documents shall be attached.”

9. The Hellenic Republic’s Declaration of Intervention fulfills all the conditions set out in Article 63 of the Statute and Article 82 of the Rules of the Court. It was submitted with regard to the proper interpretation of Article IX of the Genocide Convention, which is in question in the present case, as it is evident both from Ukraine’s application in which it seeks to found the jurisdiction of the Court on Article IX of the Genocide Convention<sup>3</sup> and the Russian Federation’s document of 7 March 2022 communicated to the Court, rejecting Article IX as basis of the Court’s jurisdiction in the present case<sup>4</sup>. It should be further pointed out that the Declaration was filed at the earliest reasonably available opportunity, namely after the filing of Ukraine’s Memorial and after the Court having previously rendered its Order on provisional measures in the case, it states the name of an agent (and a co-agent), specifies the case and the convention to which it relates, as well as the basis on which the Hellenic Republic considers itself a party to the Genocide Convention, identifies “particular provisions”, i.e. Article IX, of the Genocide Convention it considers to be in question, and provides a statement regarding the construction of those provisions. Finally, the Declaration includes a list of the documents in support and attaches those documents.

10. Finally, as regards the expression “genuine intervention”, it should be pointed out that the Court used it in *Haya de la Torre*<sup>5</sup> in order to find out whether the object of the intervention of Cuba was the interpretation of the Havana Convention (therefore, a “genuine” intervention) or an attempt to re-litigate another case (therefore, not a “genuine” intervention). However, contrary to the Russian Federation’s observation in paragraph 14, the Court did not seek to establish the “genuine *intention*” of Cuba. Accordingly any purported intentions or motivations underlying a declaration of intervention are irrelevant.

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<sup>3</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Application instituting proceedings, filed in the Registry of the Court on 26 February 2022, paras. 7 and 12.

<sup>4</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Document (with annexes) from the Russian Federation setting out its position regarding the alleged “lack of jurisdiction” of the Court in the case, dated 7 March 2022, paras. 10 *et seq.*

<sup>5</sup> *Haya de la Torre Case (Colombia/Peru)*, *loc. cit.*

## **II. The Declaration of Intervention does not affect the principle of the equality of the parties and the requirements of good administration of justice.**

11. The Russian Federation claims that conferring on the Hellenic Republic the status of intervenor in this particular case would be incompatible with the principle of equality of the parties and the requirements of good administration of justice. However, all the relevant argumentation of the Russian Federation is based on the false premise, that the Hellenic Republic's Declaration of Intervention is not "genuine" and that its real object is not to present the Hellenic Republic's views on the construction of the Genocide Convention, but to advocate for one of the parties against the other as "de facto co-applicant".

12. As it was clearly demonstrated in paragraphs 7-10 above, this claim should be dismissed. Indeed, it is clear that by filing, following the relevant notification by the Registrar of the Court, a Declaration of Intervention under Article 63 of the Court's Statute in the present case, the Hellenic Republic did not seek to become a party to the proceedings. Rather, the Hellenic Republic has exercised the right conferred upon it by Article 63 to intervene as a Party to the Genocide Convention, in order to present its views on its construction. Given the utmost normative importance of the Genocide Convention, the Hellenic Republic as a State Party has an interest of its own in the proper and uniform interpretation of the Convention as well as in the preservation of its integrity.

13. The Hellenic Republic does not see -and the Russian Federation fails to show-how the exercise of the above right can impair the principle of equality of the parties and the good administration of justice in this particular case. In this respect, it is to be noted that the arguments, including the invocation of Articles 31, paragraph 5, of the Court's Statute and 36 of the Rules of the Court, put forward by the Russian Federation do not concern cases of intervention under Article 63 of the Court's Statute and, therefore, should be dismissed as irrelevant. As the Russian Federation itself contends in its written observations<sup>6</sup>, the Court made it clear in the case of *Whaling in the Antarctic*, when considering the admissibility of New Zealand's intervention under Article 63, that "*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 'parties in the same interest' within the meaning of Article 31, paragraph 5, of the Statute*"<sup>7</sup> and that an "*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>8</sup>. Therefore, "*such an intervention cannot affect the equality of the Parties to the dispute*"<sup>9</sup>.

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<sup>6</sup> *Op. cit.*, para 40.

<sup>7</sup> *Whaling in the Antarctic (Australia v. Japan)*, *op. cit.*, para. 21.

<sup>8</sup> *Ibid.*, para. 18.

<sup>9</sup> *Ibid.*

14. Finally, with regard to the allegations made by the Russian Federation in its written observations<sup>10</sup>, that granting the status of intervenor to the Hellenic Republic and the other states having filed a declaration of Intervention under Article 63 of the Statute would lead to procedural inequality to the detriment of the Russian Federation, as it would impair the equality of arms by unduly overwhelming the latter, and would create an unmanageable situation both for the Russian Federation and for the Court, the Hellenic Republic would like to recall that the Court is “*the sole guardian of the principle [of procedural equality of the parties] and the only guarantor of the due and proper administration of justice*”<sup>11</sup>. As such, the Court has the power to decide on the measures it deems appropriate, including in order to ensure the economy of the process and make it as smooth as possible. In this respect, the Hellenic Republic welcomes the decision of the Court to ask for written submissions of the intervenors with an identical deadline in order to streamline the process. With the view to help in the good administration of justice, the Hellenic Republic also reiterates its willingness to coordinate its further action before the Court with other intervenors, in particular other EU Member States, to contribute to an effective management of time of the Court and both parties.

### **III. The Hellenic Republic has the right to intervene on Article IX of the Genocide Convention *per se*.**

15. The Russian Federation claims that a State Party to the Genocide Convention cannot intervene on Article IX thereof *per se*. However, Article 63 of the Statute does not make a distinction between provisions in a convention, which relate to jurisdictional issues and those, which relate to substantive provisions. The wording of Article 63 is “*unqualified*”<sup>12</sup> in conferring to States Parties to a convention the right to intervene in a case where the construction of the abovementioned convention is in question.

16. That point is further strengthened by the object and purpose of Article 63. States have a legitimate interest to share with the Court their interpretation, not only of substantive obligations contained in a convention at stake before the Court, but also on jurisdictional issues, as the rationale underlying Article 63, i.e. to foster uniform interpretation of a convention<sup>13</sup>, equally applies to both. Moreover, it can be assumed that the Court would follow any decision that it would reach in the present case on the

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<sup>10</sup> *Op. cit.*, paras. 48-50.

<sup>11</sup> R. Kolb, *The International Court of Justice*, Hart Publishing, Oxford, 2013, p. 1125.

<sup>12</sup> Dissenting Opinion of Judge Schwebel, attached to *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Declaration of Intervention, Order of 4 October 1984, *I.C.J. Reports 1984*, p. 215, at p. 236.

<sup>13</sup> R. Kolb, *The International Court of Justice*, *op. cit.*, p. 731; C. Chinkin, “Article 63”, in A. Zimmermann *et al.*, (eds.), *The Statute of the International Court of Justice: A Commentary*, Oxford University Press, Oxford, 2012, 2<sup>nd</sup> ed., p. 1575.

interpretation of the compromissory clause of the Genocide Convention in potential subsequent cases involving Article IX thereof. The interpretation that the Court will give to the said provision concerns all States Parties, as it will have a considerable bearing on the settlement of disputes under a convention of capital importance. Hence, all States Parties to the Genocide Convention should have the right to submit their views on the interpretation of its compromissory clause.

17. 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, paragraph 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 Oda<sup>14</sup>. 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.

18. In light of the above, there appears to be no reason within the Court's Statute why an intervention should not be allowed for the purpose of placing an interpretation of a compromissory clause. On the contrary, an intervention under Article 63 may cover both jurisdictional and substantive aspects, as also confirmed by doctrine<sup>15</sup>.

#### **IV. The Court may decide on admissibility of the intervention before considering the Russian Federation's preliminary objections.**

19. The Russian Federation also claims that the Court cannot decide on the admissibility of the intervention before it has made a decision on the preliminary objections and that reference to Article IX of the Genocide Convention is of no assistance for the purposes of intervention at the jurisdictional stage of the proceedings.

20. As already contended by the Hellenic Republic, Article IX of the Genocide Convention may form the subject of an intervention under Article 63 of the Statute. It is precisely at the current stage of the proceedings (i.e. before any decision of the Court on jurisdiction or admissibility of Ukraine's application) that a State Party may

<sup>14</sup> Separate Opinion of Judge Oda, attached to *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *op. cit.*, at pp. 220-221.

<sup>15</sup> A. Miron, C. Chinkin, "Article 63", in A. Zimmermann *et al.*, (eds.), *The Statute of the International Court of Justice: A Commentary*, Oxford University Press, Oxford, 2019, 3<sup>rd</sup> ed., p. 1763; M.N. Shaw (ed.), *Rosenne's Law and Practice of the International Court: 1920-2015*, Brill Nijhoff, Leiden/Boston, 5<sup>th</sup> ed., 2016, Vol. III, para. 364, p. 1533; R. Kolb, *The International Court of Justice*, *op. cit.*, pp. 736-737; H. Thirlway, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence*, OUP, Oxford, 2013, Vol. I, p. 1031.

usefully offer its assistance by contributing its construction of the compromissory clause of the Genocide Convention. Hence, the Declaration of Intervention of the Hellenic Republic is not premature, as the Russian Federation claims, but filed at the only stage of the proceedings available to this effect. Otherwise, the Hellenic Republic would be deprived of the opportunity to share with the other States Parties and the Court its views on the construction of Article IX.

21. It should be further pointed out that 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 proceedings<sup>16</sup>. Moreover, Article 82, paragraph 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 proceedings before the Court; thus, 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.-This implies that Article 63 is applicable in all phases of a given case. The above reading of Article 63 is also supported by Judge Schwebel according to whom “intervention in the jurisdictional phase of a proceeding is within the scope of the right with which States are endowed by the terms of Article 63”<sup>17</sup>. In the same vein, Judge Sir Hersch Lauterpacht considered that intervention under Article 63 of the Statute “would not only be permissible but was also desirable in preliminary objection proceedings...”<sup>18</sup>.

22. As regards the argument of the Russian Federation, according to which, until after the jurisdictional phase of the proceedings, one cannot assert that interpretation or construction of Article IX of the Genocide Convention is or is not “in question” between the parties, this does not apply with regard to the Hellenic Republic’s Declaration of Intervention. As already mentioned above, Ukraine in its Application sought to found the Court’s jurisdiction on Article 36, paragraph 1, of the Statute and on Article IX of the Genocide Convention. The Russian Federation, in its document of 7 March 2022 communicated to the Court, was of the view that Article IX of the Genocide Convention did not confer jurisdiction on the Court in this case. Therefore, it is obvious that the proper construction of the compromissory clause of the Genocide Convention, i.e. its Article IX, is in question in the case before the Court.

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<sup>16</sup> Dissenting Opinion of Judge Schwebel, *op. cit.*, at p. 234.

<sup>17</sup> *Ibid.*, pp. 235-236.

<sup>18</sup> M.N. Shaw (ed.), *op. cit.*; See Separate Opinion of Judge Sir Hersch Lauterpacht, attached to the *Case of Certain Norwegian Loans, Judgment of July 6th, 1957: I.C.J. Reports 1957*, p. 9, at p. 64; Separate Opinion of Judge Sir Hersch Lauterpacht, attached to *Interhandel Case (interim measures of protection), Order of October 24<sup>th</sup>, 1957: I.C.J. Reports 1957*, p. 105, at p. 120.



23. The Russian Federation in its written observations also seeks to find in the case law support for its argument that the Court has never allowed interventions at the preliminary stage of the proceedings in which jurisdiction or admissibility of an application was challenged. However, the only conclusion that may be drawn from these cases is that the Court has never rejected as inadmissible an intervention solely on the ground that it was submitted at the jurisdictional stage of the proceedings. The case of El Salvador's declaration in *Military and Paramilitary Activities*, is telling in this respect. In that case, the Court had actually decided to split the proceedings in separate phases<sup>19</sup> before examining the admissibility of the subsequent interventions. In the present case, however, the Court did not order under Article 79, paragraph 1, of the Rules to separate the proceedings after the filing of Russian Federation's preliminary objections. 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* for the present case.

24. Moreover, even if the Court had separated the proceedings in the two separate phases in the present case, 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, paragraphs 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, paragraphs 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*"<sup>20</sup>. As Judge Singh<sup>21</sup>, Judges Ruda, Mosler, Ago, Jennings and De Lacharrière<sup>22</sup>, as well as Judge Oda<sup>23</sup> explained, it had weighed in the Court that El Salvador's declaration was mainly directed to the merits of the case, but was insufficient with respect to the jurisdictional question before the Court. This explanation is shared by the doctrine<sup>24</sup>.

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<sup>19</sup> *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.

<sup>20</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Declaration of Intervention, Order of 4 October 1984, I.C.J. Reports 1984, p. 215, at p. 216.

<sup>21</sup> Separate Opinion of Judge Nagendra Singh, attached to *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *ibid.*, p. 218.

<sup>22</sup> Separate Opinion of Judges Ruda, Mosler, Ago, Sir Robert Jennings and de Lacharrière, attached to *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *ibid.*, p. 219.

<sup>23</sup> Separate Opinion of Judge Oda, attached to *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *ibid.*, at pp. 220-221.

<sup>24</sup> J.-J. Quintana, *Litigation at the International Court of Justice*, Brill Nijhoff, Leiden/Boston, 2015, pp. 943-944.

25. 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, paragraphs 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 1984.

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

## **V. The Declaration of Intervention does not contain issues unrelated to the Genocide Convention.**

27. In its last argument, the Russian Federation alleges that the Hellenic Republic in its Declaration of Intervention "addresses the existence of dispute between Ukraine and the Russian Federation, issues of use of force, good faith in the application of the [Genocide] Convention and the notion of abuse of law". It also alleges that these issues do not relate to the construction of the Genocide Convention and contain an impermissible incursion into the interpretation or application of other rules of international law that are distinct from the treaty in question and derive from different sources.

28. However, the above argument is based on a misperception of the Hellenic Republic's Declaration of Intervention, which only addresses issues related to the construction of Article IX of the Genocide Convention. In this respect, it should be pointed out that, according to Article 31, paragraph 3, (c), of the Vienna Convention on the Law of Treaties, representing customary international law<sup>25</sup>, the interpretation of a treaty shall include "any relevant rules of international law applicable in the relations between the parties." It follows that Article IX of the Genocide Convention should also be interpreted in light of any relevant rules of international law, including the principle of good faith.

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<sup>25</sup> *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, I.C.J. Reports 2021*, p. 71, at p. 95, para. 75 with further references.

## **VI. Conclusion**

For the reasons set out above the Hellenic Republic is convinced that its Declaration of Intervention fully complies with the requirements under Article 63 of the Statute and Article 82 of the Rules. Therefore, the Hellenic Republic respectfully requests the Court to reject all the objections to the admissibility of its Declaration of Intervention and to decide that the intervention is admissible.

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes that form a stylized, somewhat abstract shape.

Zinovia Chaido Stavridi, Agent of the Government of the Hellenic Republic