

**International Court of Justice**

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

*(Ukraine v. Russian Federation)*

**OBSERVATIONS OF IRELAND ON THE ADMISSIBILITY OF ITS  
DECLARATION OF INTERVENTION**

**13 February 2023**

## **Observations of Ireland on the Admissibility of its Declaration of Intervention**

1. On 19 September 2022 the Government of Ireland filed its Declaration of Intervention at the International Court of Justice ('the Court') under Article 63 of the Court's Statute ('the Statute') in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*. In its Declaration Ireland, as a Contracting Party to the Convention on the Prevention and Punishment of the Crime of Genocide ('the Convention'), sets out the construction of Articles I and IX of the Convention for which it contends.
2. Ireland notes that both Ukraine and the Russian Federation have filed observations on Ireland's Declaration and that in its Observations the Government of Ukraine expresses its view that the Declaration is admissible<sup>1</sup>.
3. Ireland further notes that in its Observations<sup>2</sup> the Russian Federation has filed objections to the admissibility of Ireland's Declaration of Intervention and that, in such circumstances and pursuant to Article 84, paragraph 2, of its Rules, the Court shall hear from Ireland and the Parties to the case before determining the question of the admissibility of Ireland's Declaration. Ireland further notes that, as the Registrar of the Court indicated in his letter to the Agent of Ireland dated 31 January 2023, the Court has decided to do so by means of a written procedure and has fixed 13 February 2023 as the time-limit for submission of Ireland's written observations on the admissibility of its Declaration.
4. Accordingly, Ireland submits herewith the following written observations on (i) the admissibility of its Declaration of Intervention and (ii) the objections of the Russian Federation to the admissibility of the said Declaration.

### **Observations on the Admissibility of Ireland's Declaration of Intervention**

5. In its case law the Court has established that a declaration of intervention under Article 63 of the Statute shall be admissible only when the Court has ensured that the

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<sup>1</sup> Observations of Ukraine on the Declaration of Intervention of Ireland, 15 Nov. 2022, para 9.

<sup>2</sup> Written Observations on Admissibility of the Declarations of Intervention submitted by Australia, Austria, Denmark, Estonia, Finland, Greece, Ireland, Luxembourg, Portugal and Spain, 15 Nov. 2022

declaration concerned falls within the provisions of Article 63 and then verified that the conditions set out in Article 82 of the Rules of Court ('the Rules') have also been met<sup>3</sup>.

6. 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 notify 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 it.'*

7. By letter dated 30 March 2022 to the Ambassador of Ireland to the Kingdom of the Netherlands, the Registrar of the Court duly notified the Government of Ireland as a Contracting Party to the Convention that, by Ukraine's Application of 26 February 2022 instituting proceedings against the Russian Federation, the Convention had been '*invoked both as a basis for the Court's jurisdiction and the substantive basis of [Ukraine's] claims on the merits.*' The Registrar noted in his letter that: '*Ukraine seeks to found the Court's jurisdiction on the compromissory clause contained in Article IX of the Genocide Convention, asks the Court to declare that it has not committed a genocide as defined in Articles II and III of the Convention, and raises questions concerning the scope of the duty to prevent and punish genocide under Article I of the Convention. It therefore appears that the construction of this instrument will be in question in this case.*'

8. Article 82, paragraph 1 of the Rules of the Court provides that:

*'A State which desires to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall file a declaration to that effect, signed in the manner provided for in Article 38, paragraph 3, of these Rules. Such a declaration shall be filed as soon as possible, and not later than the date fixed for the opening of the oral proceedings. In exceptional circumstances a declaration submitted at a later stage may however be admitted.'*

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<sup>3</sup> *cf.* 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, paras. 7–8.

9. The Government of Ireland recalls that, desiring to avail itself of the right of intervention in this case, it filed its Declaration of Intervention on 19 September 2022, and that as of the date of these Observations no date for the opening of oral proceedings has been fixed by the Court.
10. Article 82, paragraph 2 of the Rules of the Court 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:*  
*(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.’*
11. Ireland recalls that in its Declaration of 19 September 2022 the name of the undersigned was stated as its Agent in these proceedings and that the said Declaration specified the present case and the Convention as those to which it relates. Ireland further recalls that the said Declaration contained:  
*(a) particulars of the basis on which Ireland considers itself a Contracting Party to the Convention, namely that it acceded to the Convention on 22 June 1976 and that, in accordance with Article XIII of the Convention, the accession of Ireland became effective on 20 September 1976;*  
*(b) the identification of the particular provisions of the Convention the construction of which Ireland considers to be in question, namely Articles I and IX;*  
*(c) a statement of the construction of those provisions for which Ireland contends; and*  
*(d) a list of the documents in support of its Declaration, which documents were attached to it, namely a copy of the above referenced letter of the Registrar to the Ambassador of Ireland at The Hague, dated 30 March 2022, and a copy of the Notification by the Director of the General Legal Division of the Office of Legal Affairs, United Nations Secretariat, of the Accession by Ireland to the Convention, dated 9 July 1976.*

12. Accordingly, having regard to the particulars set out above, it is submitted that Ireland's Declaration of Intervention clearly falls within the provisions of Article 63 of the Statute and meets the conditions set out in Article 82 of the Rules of the Court.

### **Observations on the Objections raised by the Russian Federation**

13. By its Written Observations on Admissibility of the Declarations of Intervention submitted by Australia *et al*, dated 15 November 2022, the Russian Federation has filed objections to the admissibility of Ireland's Declaration of Intervention. These objections may be briefly summarised as follows:

(i) that in making its Declaration Ireland's 'real intention' is not to express its own views on the construction of the Convention but rather become *de facto* co-applicants and pursue a joint case with Ukraine, and that in this sense its Declaration is not a 'genuine intervention';

(ii) that Ireland's intervention, as one of a number of interventions under Article 63 of the Statute, would be incompatible with the principle of equality of the parties and the requirements of the good administration of justice;

(iii) that the Court cannot decide on admissibility of declarations of intervention before it considers the preliminary objections of the Russian Federation;

(iv) that Ireland's declaration presupposes that the Court has jurisdiction and / or that Ukraine's Application is admissible;

(v) that an intervention on Article IX of the Convention is impermissible *per se*; and

(vi) that Ireland's Declaration seeks to address issues unrelated to the construction of the Convention.

14. Having considered the objections of the Russian Federation Ireland offers the following observations.

15. With regard to the first objection of the Russian Federation, Ireland can assure the Court that its real intention is indeed to express its view on the construction of Articles I and IX of the Convention and accordingly has advanced in its Declaration the construction of those provisions for which it contends. Notwithstanding that real intention, however,

Ireland also notes that the Russian Federation has advanced no authority in the case law of the Court to support its contention that a ‘genuine intervention’ is one determined by reference to the intentions of the intervening state. As the case law of the Court demonstrates, a ‘genuine intervention’ is one that falls within the provisions of Article 63 of the Statute and meets the conditions set out in Article 82 of the Rules of Court. This is an objective test and no subjective requirement of ‘real intentions’ exists.

16. With regard to the objection of the Russian Federation that interventions, including Ireland’s, if deemed admissible, would be incompatible with the principle of equality of the parties and the requirements of the good administration of justice, in Ireland’s view the equality of the parties before the Court cannot be affected by the intervention of states pursuant to Article 63 of the Statute. The Court has observed that ‘*the principle of the equality of the parties follows from the requirements of good administration of justice.*’<sup>4</sup> Ireland agreed that equality of the parties is essential to ensure a fair outcome but notes that this is assured where both parties have the same opportunities to plead and present their cases. In Ireland’s view an intervention under Article 63 of the Statute does not disturb the pleading or presentation by either party of its case, and by making such an intervention a state does not thereby become a party to the case. This view is confirmed in the case law of the Court. For instance, in its Order of 6 February 2013 on the Declaration of Intervention of New Zealand in the *Whaling* case, the Court was clear in its statement that ‘*such an intervention cannot affect the equality of the Parties to the dispute.*’<sup>5</sup>
17. In its third objection the Russian Federation argues that the Court may not decide on the admissibility of declarations of intervention before it first considers the preliminary objections of the Russian Federation, and the Russian Federation cites several judgments of the Court as authority for this argument. However, in Ireland’s view the Russian Federation is mistaken in its understanding of these judgments, all of which can be distinguished from the present case. There is in fact no authority for the view advanced by the Russian Federation in the case law of the Court nor does the plain meaning of Article 63 of the Statute support that view.

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<sup>4</sup> Judgments of the Administrative Tribunal of the ILO upon complaints made against UNESCO, ICJ Reports 1956, pp77

<sup>5</sup> ICJ Reports 2013, p. 9, para. 18.

18. The Russian Federation cites the *Military and Paramilitary Activities*<sup>6</sup> and the *Nuclear Tests*<sup>7</sup> cases as authorities for excluding consideration of an intervention prior to disposing of preliminary objections. However, in both these cases the Court had decided under Article 79 of the Rules to address the issues of jurisdiction and admissibility in the first phase before dealing with merits in a second phase. This is not the approach taken by the Court in the present case as the Court has taken no decision under Article 79 that questions concerning its jurisdiction or the admissibility of the Application are to be determined separately.
19. In fact, in the *Military and Paramilitary Activities* case the Court would appear to have dismissed El Salvador's declaration during the jurisdictional phase because it did not contend for the construction of Article 36 of the Statute of the Court, which provided the basis for the Court's jurisdiction in that case. In the *Nuclear Tests* case, having deemed it admissible, the Court nevertheless deferred consideration of Fiji's declaration to the merits phase because it did not contend for the construction of any convention providing a legal basis for the Court's jurisdiction and was in fact limited to matters relating to the merits.
20. The Russian Federation also cites the *Nuclear Tests (Request for Examination)*<sup>8</sup> case. However, in that case the Court held a hearing on both New Zealand's Application to revive earlier proceedings and the declarations of interventions made by Samoa, the Solomon Islands, the Marshall Islands and the Federated States of Micronesia, and dismissed both the Application and the declarations together. This case is not an authority for postponing consideration of interventions until after disposal of preliminary objections.

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<sup>6</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. 216, paras 2-3.

<sup>7</sup> *Nuclear Tests (New Zealand v. France)*, Application to Intervene, Order of 12 July 1973, I.C.J. Reports 1973, p. 325.

<sup>8</sup> *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case*, I.C.J. Reports 1995, pp. 306-307, paras 67-68.

21. In its fourth objection the Russian Federation presents the *Military and Paramilitary Activities*<sup>9</sup> case as supporting its argument that a declaration of intervention made in the jurisdiction and admissibility phase of a case ‘presupposes’ jurisdiction and admissibility and its consideration should therefore be delayed until the merits phase. In Ireland’s view this objection is misconceived for two reasons. Firstly, the Court has not ordered separate phases in the present case. Secondly Article 63 of the Statute does not distinguish between the jurisdictional and merits phases of litigation or between substantive and procedural provisions of a convention: an intervention may be made by a state in relation to the construction of any or all provisions of a convention to which it is a party and which is or are in question in a case before the Court, including the provision of a convention on the basis of which the Court’s jurisdiction may be grounded. As noted above, El Salvador’s declaration during the jurisdictional phase in the *Military and Paramilitary Activities* case would appear to have been dismissed at that stage because it did not contend for the construction of any provision of a convention relevant to questions of jurisdiction and admissibility in that case. That did not prevent it from making a later declaration on the construction of a convention relevant to the merits of the case if it wished to do so.
22. With respect to the fifth objection raised by the Russian Federation, namely that an intervention on Article IX of the Convention is impermissible *per se*, in Ireland’s view there is simply no authority for this proposition. The fact that Judge Kreća in the *Bosnia Genocide*<sup>10</sup> case described Article IX of the Convention as ‘a standard compromissory clause’ does not in any way mean that it is a clause of a convention for the construction of which a state may not contend under Article 63 of the Statute or Article 82 of the Rules. There is no authority for such an assertion.
23. In its Declaration of Intervention in the present case the construction of Article IX for which Ireland contends is that a dispute in which an allegation of commission of genocide, or failure to prevent genocide, is made by one Contracting Party to the Convention against another Party, which the latter denies, is a dispute that comes within

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<sup>9</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. 216, para. 2.

<sup>10</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Preliminary Objections, Judgment, Separate opinion of Judge *ad hoc* Kreća, I.C.J. Reports 1996, p. 770, para. 105.



the scope of Article IX. This is a legitimate subject of intervention under Article 63 of the Statute.

24. Finally, the Russian Federation notes that *‘intervention under Article 63 of the Statute is limited to the interpretation of the treaty provisions in question in a contentious case’* and argues that *‘(a)ny declaration of intervention purporting to address any matter that is not confined to this limited object must consequently be declared inadmissible.’*<sup>11</sup> It proceeds to argue that Ireland’s Declaration should be deemed inadmissible because it *‘refers to the principle of good faith in the application of the Convention.’*<sup>12</sup>

25. This argument rests on a misunderstanding of Ireland’s Declaration. That Declaration’s reference to the principle of good faith simply recalls the provisions of the Vienna Convention on the Law of Treaties relevant to the interpretation of a treaty, namely Article 31(1) and (3)(c), which codify the relevant rules of customary law on these points. Article 31(1) provides that 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.’* Article 31(3)(c) provides that in interpreting a treaty there *‘shall be taken into account... any relevant rules of international law applicable in the relations between the parties.’* One such rule is set out in Article 26 of the Vienna Convention on the Law of Treaties, which codifies the relevant customary international law rule and provides that *‘Every treaty in force is binding upon the parties to it and must be performed by them in good faith.’* Ireland is not asking the Court to construe the provisions of the Vienna Convention on the Law of Treaties but rather, in contending for the construction it places on Articles I and IX of the Genocide Convention, simply recalling the relevant rules of treaty interpretation.

## **Conclusion**

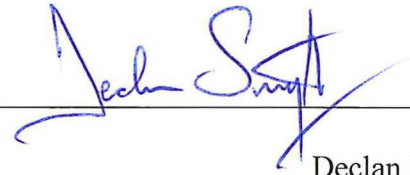
26. For the reasons set out above Ireland is satisfied that its Declaration of Intervention clearly falls within the provisions of Article 63 of the Statute and meets the conditions set out in Article 82 of the Rules of Court. Accordingly, it requests the Court to dismiss

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<sup>11</sup> Written Observations of the Russian Federation 15 November 2022, para 105, p. 47.

<sup>12</sup> Written Observations of the Russian Federation 15 November 2022, para 106(g), p. 49.

the objections of the Russian Federation and determine that its Declaration of Intervention is admissible.



Declan Smyth

Agent of the Government of Ireland