

INTERNATIONAL COURT OF JUSTICE

WRITTEN OBSERVATIONS OF THE GOVERNMENT
OF ITALY ON THE ADMISSIBILITY OF THE
ITALIAN DECLARATION OF INTERVENTION

filed in the Registry of the Court on 13 February 2023

ALLEGATIONS OF GENOCIDE UNDER THE CONVENTION ON THE PREVENTION
AND PUNISHMENT OF THE CRIME OF GENOCIDE

(UKRAINE V. RUSSIAN FEDERATION)

COUR INTERNATIONALE DE JUSTICE

OBSERVATIONS ECRITES DU GOUVERNEMENT
DE L'ITALIE SUR LA RECEVABILITE DE LA
DECLARATION D'INTERVENTION ITALIENNE

enregistrées au Greffe de la Cour le 13 février 2023

ALLEGATIONS DE GENOCIDE AU TITRE DE LA CONVENTION POUR LA
PREVENTION ET LA REPRESSION DU CRIME DE GENOCIDE

(UKRAINE C. FEDERATION DE RUSSIE)

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WRITTEN OBSERVATIONS ON THE ADMISSIBILITY OF THE DECLARATION OF
INTERVENTION OF THE GOVERNMENT OF ITALY

I. *INTRODUCTION*

1. The present observations are submitted in accordance with the letter of the Registrar dated 31 January 2023, in light of the Russian Federation’s Written Observations on the admissibility of the Declaration of Intervention of Italy, filed on 17 October 2022 (hereafter: “Russian Written Observations”), and of the Written Observations of Ukraine on the Declaration of Intervention of Italy, of the same date.

2. In the present Written Observations, Italy will confine itself to reacting to the Russian Written Observations, without repeating or elaborating upon the arguments put forward in its Declaration of Intervention.

3. In its Written Observations, the Russian Federation has challenged the admissibility of the Declarations of Intervention of a number of States, including Italy, on the following grounds:

(a) ... the interventions are not genuine: their real object is not the construction of the relevant provisions of the Genocide Convention, as required by Article 63 of the Statute, but rather pursuing a joint case alongside with Ukraine as de facto co-applicants rather than non-parties.

(b) ... the participation of the Declarants in these proceedings would result in a serious impairment of the principle of equality of the parties to the detriment of the Russian Federation and would be incompatible with the requirements of good administration of justice.

(c) ... the Court cannot, in any event, decide on the admissibility of the Declarations before it has made a decision on the Preliminary Objections, and that the Declarations address matters that presuppose that the Court has jurisdiction and/or that Ukraine’s Application is admissible.

(d) ... the Declarations should be equally declared inadmissible because the Declarants seek to address issues unrelated to the “construction” of the Genocide Convention, such as the interpretation and application of other rules of international law and several questions of fact, which is incompatible with the

limited object of Article 63. Furthermore, allowing the Declarants to intervene on such matters at this stage would prejudice the question of the Court's jurisdiction *ratione materiae*.¹

4. The Russian Federation has referred to the Declaration of intervention of the Government of Italy (hereafter: "Italian Declaration") exclusively in objections (a), (c) and (d). Since objection (b) is also tangential to the admissibility of Italy's intervention, Italy will also address objection (b).

5. Italy's Written Observations are divided in four parts, alongside this introductory section and the concluding remarks summarising Italy's position. First, Italy will recall the requirements for intervention under Article 63 of the Statute of the International Court of Justice and Article 82, paragraph 2, of the Rules of the Court, in order to address the Russian Federation's objection concerning the "genuine nature" of its intervention (**Part II – Italy's intervention complies with the requirements of Article 63 of the Statute and is "genuine"**); second, Italy will briefly address the alleged impairment on the equality of arms allegedly caused by multiple interventions (**Part III – Italy's intervention does not impair the equality of arms principle**); third, Italy will demonstrate the admissibility of its intervention at the jurisdictional stage, with a view to reacting to objection (c) (**Part IV – Italy is entitled to intervene under Article 63 of the Statute at the jurisdictional stage**); last, Italy will refute the alleged "unrelated" nature of the arguments put forward in its Declaration with respect to the construction of the Convention on the Prevention and Punishment of Genocide (hereinafter: "Genocide Convention") (**Part V – Italy's arguments are relevant to the construction of the Genocide Convention**).

II. ITALY'S INTERVENTION COMPLIES WITH THE REQUIREMENTS OF ARTICLE 63 OF THE STATUTE AND IS "GENUINE"

6. The Russian Federation's first objection to Italy's intervention is that the latter would not be genuine, i.e. not related to the subject-matter of the pending dispute. The Russian Federation

¹ *The Russian Federation's Written observations on admissibility of the Declarations of intervention submitted by France, Germany, Italy, Latvia, Lithuania, New Zealand, Poland, Romania, Sweden, the United Kingdom and the United States*, 17 October 2022, para 9 (hereafter: "Russian Written Observations").

refers to the *Haya de la Torre* case,² arguing that for an intervention to be admissible, the Party should be recognised to have a “genuine intention” to address the construction of the Convention in question.³

7. The Russian Federation’s argument concerning Italy’s intentions seems to imply an allegation of abuse of right, challenging Italy’s good faith in the exercise of its right under Article 63 of the Statute. Yet, “il est un principe général de droit bien établi selon lequel la mauvaise foi ne se présume pas”.⁴

8. As it will be demonstrated below, Italy’s Declaration is in full compliance with the letter and *rationale* of Article 63 of the Statute, and in any case intentions are not relevant for the admissibility of a Declaration under Article 63.

9. The Court has clearly stated that the intervention under Article 63 of the Statute is only subject to the conditions of the Statute and Rules of the Court, as verified by the Court itself.⁵ Such conditions are: (a) that the State willing to intervene is a Party to the convention in question; (b) that the Declaration of Intervention addresses the construction of the convention in question; and (c) that the Declaration complies with the formal requirements under Article 82 of the Rules of the Court.⁶

10. Italy has plainly complied with requirements under Article 63 of the Statute and Article 82 of the Rules of the Court. Since the point is fully addressed in the Italian Declaration, Italy will not here repeat those arguments. Suffice to recall that Italy has (a) filed its Declaration long before the opening of the oral proceedings; (b) declared that it has been a Party to the Genocide Convention since 4 June 1952;⁷ (c) identified the provisions of the Genocide Convention the construction of which Italy considers to be in question in the instant case;⁸ (d) provided a

² *Haya de la Torre Case*, Judgment of June 13th, 1951: I.C.J. Reports 1951, p. 71, pp. 76-77.

³ Russian Written Observations, para 14.

⁴ *Affaire du lac Lanoux (Espagne, France)* (1957) XII UNRIAA 281, 305.

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, para 8.

⁶ A Miron, C Chinkin, ‘Article 63’, in A Zimmermann *et al* (eds), *The Statute of the International Court of Justice: A Commentary* (3rd edn; OUP 2019) 1741, 1752 ff.

⁷ *Declaration of intervention of the Government of Italy, 15 September 2022*, para 18 (hereafter: “Italian Declaration”).

⁸ *Ibidem*, paras 20-24.

statement of construction of said provisions;⁹ and (e) provided a list of documents in support and annexing them to its Declaration.¹⁰

11. The Court's case law on Article 63 confirms that there are no further conditions pertaining to the admissibility of the intervention apart from those referred to above.¹¹

12. In the first case where the predecessor of Article 63 of the Statute, namely Article 63 of the Statute of the Permanent Court of International Justice, was invoked, the Court allowed the intervention of Poland expressing that "[i]t will suffice for the Court to note that in this case the interpretation of certain clauses of the Treaty of Versailles is involved in the suit and that the Polish Republic is one of the States which are parties to this treaty".¹²

13. In the *Haya de la Torre* case, the Court expressed that "the only point which it is necessary to ascertain is whether the object of the intervention of the Government of Cuba is in fact the interpretation of the Havana Convention",¹³ that is whether the Declaration concerned itself with the interpretation of the convention under dispute. The scope of Cuba's intervention was curtailed by the Court due to the fact that it addressed a number of points already decided by the Court and did not refer to the interpretation of the Havana Convention.

14. In the *Whaling* case, the Court declared New Zealand's Declaration admissible because it "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".¹⁴ The Court never referred to New Zealand's intentions.

15. The Russian Federation refers to a number of elements in order to challenge the "genuineness" of Italy's intentions, namely:

⁹ *Ibidem*, paras 26-52.

¹⁰ *Ibidem*, para 54 and annexes.

¹¹ *Supra*, para 9.

¹² *S.S. Wimbledon*, Judgment of 28 June 1923 (Question of Intervention by Poland), PCIJ, Series A, No. 1, p. 11, p. 13.

¹³ *Haya de la Torre* (fn 2), p. 77.

¹⁴ *Whaling* (fn 5), para 19.

- a. The Joint statements dated 20 May and 13 July 2022;¹⁵
- b. The fact that States willing to intervene have referred to the fact that “they possess a legal interest in light of the *erga omnes* character of the obligations under the Convention”,¹⁶ and
- c. The alleged inconsistency between the position expressed by Italy in the course of the present proceedings with respect to stands taken in the past.¹⁷

16. Such elements rather prove the contrary. As confirmed by the International Law Commission¹⁸ and by the Court case law on Declarations under Article 36 of the Statute, a unilateral act “must be interpreted as it stands, having regard to the words actually used”.¹⁹

17. Aside from statements which fall within the political discretion of States, the Joint statement dated 13 July 2022 precisely shows the pursuit of Italy’s intervention:

*It is in the interest of all States Parties to the Genocide Convention, and more broadly of the international community as a whole, that the Convention not be misused or abused. That is why the signatories of the present declaration which are Parties to the Genocide Convention intend to intervene in these proceedings. In light of the serious questions raised in this case, and in view of the far-reaching consequences of the judgment that the Court will render, it is important that the States Parties to this Convention be able to share with the International Court of Justice their interpretation of some of its essential provisions.*²⁰

¹⁵ Russian Written Observations, paras 15-16.

¹⁶ *Ibidem*, para 23.

¹⁷ *Ibidem*, para 27.

¹⁸ ‘Unilateral acts of States’ (2006-II-2) YbILC 159, 165 para 3.

¹⁹ *Anglo-Iranian Oil Co. case* (Jurisdiction), Judgment of July 22nd, 1952: I.C.J. Reports 1952, p. 93, p. 105

²⁰ ‘Joint statement on supporting Ukraine in its proceeding at the International Court of Justice’, 13 July 2022, available at https://ec.europa.eu/commission/presscorner/detail/en/statement_22_4509; emphasis added.

18. In its Declaration of Intervention, Italy clarified that its aim is “assisting the Court in construing such provisions of the Convention which are in question in this case in the pursuit of a common interest of each and all its Parties”.²¹

19. Italy specified that the *erga omnes* nature of obligations under the Genocide Convention justifies an interest of all Parties in its correct interpretation.²²

20. Finally, the Russian allegation that Italy has taken a different position in other proceedings is irrelevant for the purposes of the admissibility of its Declaration in the present case.

21. The words “actually used”²³ in the Italian Declaration confirm that Italy’s intention is that of assisting the Court in its interpretative activity, in order to avoid that the Convention be misused or abused. This is fully in line with the rationale of Article 63 of the Statute, which recognises the right of States which are Parties to a Convention, but not to a dispute, to act as “guardians” of the Convention.

22. Without prejudice to the above, no intentions other than that to contribute to the appropriate interpretation of a given convention are material to the letter and purpose of Article 63 of the Statute.

23. Accordingly, Italy respectfully requests the Court to reject the first objection to the admissibility of its intervention raised by the Russian Federation.

III. ITALY’S INTERVENTION DOES NOT IMPAIR THE EQUALITY OF ARMS PRINCIPLE

24. In its second objection, the Russian Federation alleges an impairment of the equality of arms principle flowing from multiple interventions under Article 63 of the Statute in the present case.

²¹ Italian Declaration, para 16.

²² *Ibidem*, para 14.

²³ *Anglo-Iranian Oil Co. case* (fn 16), p. 105.

25. Italy is fully aware that the equality of the arms is a fundamental principle of international adjudication, flowing from the principle of good administration of justice and from the obligation to peacefully settle international disputes.²⁴

26. However, such principle is to be balanced with Italy's right, as a Party to the Genocide Convention, to intervene in the proceedings pursuant to Article 63 of the Statute.

27. Italy considers that it is for the Court to consider carrying out any balancing exercise, in accordance with the proper administration of justice.

28. In any case, Italy wishes to recall the Court's position on the point at issue in the *Whaling* case, according to which "an intervention [under Article 63] cannot affect the equality of the Parties to the dispute".²⁵

29. In light of the above, Italy respectfully requests the Court to reject the second objection to the admissibility of its intervention raised by the Russian Federation.

IV. ITALY IS ENTITLED TO INTERVENE UNDER ARTICLE 63 OF THE STATUTE AT THE JURISDICTIONAL STAGE

30. The Russian Federation objects to the intervention of Italy also on the ground that there is no precedent on admission of intervention at the jurisdictional stage.²⁶

31. The Russian Federation argues that Italy is precluded from intervening when jurisdiction has not yet been ascertained. The Russian Federation argues that Italy presupposes the existence of a dispute between the Parties and that the Court has jurisdiction to entertain such dispute.²⁷

32. This objection does not pertain to the admissibility of the Declaration under Article 63 of the Statute and should therefore be rejected. As it will be demonstrated below, Article 63 does not

²⁴ *Judgments of the Administrative Tribunal of the ILO upon complaints made against the UNESCO*, Advisory Opinion of October 23rd, 1956: I.C.J. Reports 1956, p. 77, p. 86; *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014, p. 147, para 27.

²⁵ *Whaling* (fn 5) para 18.

²⁶ Russian Written Observations, par. 50.

²⁷ Russian Written Observations, para 81.

bar a State from intervening at the jurisdictional stage (**Section A**); the Italian Declaration of intervention pertains to the construction of provisions which are relevant for the assessment of the jurisdiction of the Court (**Section B**); and, in any case, Italy does not address issues that presuppose the existence of a dispute (**Section C**).

A. *ARTICLE 63 OF THE STATUTE DOES NOT EXCLUDE THE ADMISSIBILITY OF A DECLARATION OF INTERVENTION AT THE JURISDICTIONAL STAGE*

33. As Italy highlighted in its Declaration of Intervention, “Article 63 of the Statute does not make a distinction between provisions of a Convention concerning jurisdictional issues and those which pertain to the merits”.²⁸

34. Lacking textual arguments based on the Statute or the Rules of the Court, the Russian Federation seeks to base its assertion on the Court’s case law, with special regard to the *Military and Paramilitary Activities*, the *Nuclear Tests* and the *Nuclear Test (Request for Examination)* cases. Of these three cases, only the first one is relevant to this proceeding.

35. In the *Nuclear Tests* and *Nuclear Tests (Request for Examination)* cases, as the Russian Federation itself recognises, the intervening States acted under Article 62 of the Statute, rather than under Article 63. Yet the two situations cannot be equated – if only because Article 63 confers a *right* to intervene, differently from Article 62.

36. In any case, neither in the *Nuclear Tests*, nor in the *Nuclear Tests (Request for Examination)* case, applications for intervention were rejected due to an alleged inadmissibility at the jurisdictional stage.

37. In *Nuclear Tests*, the Court deferred the consideration of the Application to intervene by Fiji “until it has pronounced upon the questions to which the pleadings mentioned in its Order dated 22 June 1973 are to be addressed”.²⁹ As corroborated by the very same author quoted by

²⁸ Italian Declaration, para 23.

²⁹ *Nuclear Tests (Australia v. France)*, Application to Intervene, Order of 12 July 1973, I.C.J. Reports 1973, p. 320, p. 321.

the Russian Federation, the inadmissibility of such intervention was due to the fact that it “pertained entirely to the merit”,³⁰ with no bearing on jurisdictional issues.

38. In *Nuclear Tests (Request for Examination)*, the Court dismissed the Application for permission to intervene by Australia and the Applications for Permission to Intervene and Declarations of Intervention submitted by Samoa, Solomon Islands, the Marshall Islands and the Federated States of Micronesia because it found that the conditions for the request had not been met.³¹ The fact that applications had been filed at the jurisdictional phase was not considered relevant by the Court. The Court simply noted that, since the main proceedings had been removed from the Court’s list, there was no point in addressing interventions.

39. The only precedent mentioned by the Russian Federation which might be relevant to the present proceedings is the *Military and Paramilitary Activities* case. Here, however, the Russian Written Observations contain a misleading reading of the decision of the Court on intervention.

40. In that case, the Court considered El Salvador Declaration of Intervention inadmissible because, within the jurisdictional phase, the Declaring State did not address provisions pertaining to the jurisdiction of the Court, but only to the merits.³²

41. The Court’s approach was further clarified by the numerous separate opinions attached to the Court’s Order. Judge Singh expressed that the Declaration was “in effect ... directed to the merits of the case”³³. Judges Ruda, Mosler, Ago, Sir Robert Jennings and de Lacharrière highlighted that they “ha[d] not been able to find, in El Salvador’s written communications to the Court, the necessary identification of such particular provision or provisions which it considers to be in question *in the jurisdictional phase* of the case”,³⁴ Judge Oda stressed that the Declaration

³⁰ J Sztucki, ‘Intervention under Article 63 of the Statute in the Phase of Preliminary Proceedings: The “Salvadoran Incident” (1985) 79 AJIL 1005, 1012.

³¹ *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, p. 288, paras 65-67.

³² *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, paras 1-2.

³³ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Declaration of Intervention, Order of 4 October 1984 (Separate Opinion of Judge Nagendra Singh), I.C.J. Reports 1984, p. 218.

³⁴ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Declaration of Intervention, Order of 4 October 1984 (Separate Opinion of Judges Ruda, Mosler, Ago, Sir

“appeared mainly directed to the merits of the case, was vague and did not appear to satisfy the requirements of Article 82, paragraph 2(b) and (c), of the Rules of Court for an intervention at the present stage”;³⁵ last, Judge Schwebel, while stressing that nothing in Article 63 prevents an intervention at the jurisdictional stage,³⁶ agreed with the majority of the Bench that El Salvador’s Declaration “did not adequately meet the specifications set forth in Article 82, paragraph 2, of the Rules of Court”.³⁷

42. Having regard to the opinions referred to by the Russian Federation at paragraph 52 of its Written Observations, they are to be considered against the background of the above-mentioned Order. Judge Lachs’ statement that “there was no adequate reason to grant El Salvador the right of intervention at the jurisdictional stage”³⁸ referred to the fact that El Salvador Declaration only referred to issues relevant to the merits. The same consideration applies to Judges Ni and Sette-Camara Opinions.

43. The above reading of the case law on the admissibility of declarations of intervention at the jurisdictional phase is corroborated by authoritative legal scholarship:

[S]everal arguments plead in favour of the possibility for a third State to make a request to intervene at the phase of jurisdiction and admissibility, at least under Article 63. The wording of Article 63 is unqualified in asserting ‘[w]henever the construction of a convention ... is in question’ which implies that it is applicable in all phases of the case. Article 63 does not differentiate between types of treaty provisions, or types of treaty. The purpose of Article 63 is to allow parties to a multilateral convention to put their construction of the convention to the Court in proceedings to which they are not parties.³⁹

Robert Jennings and de Lacharrière), p. 219, para 3.

³⁵ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Declaration of Intervention, Order of 4 October 1984 (Separate Opinion of Judge Oda), p. 220, para. 2.

³⁶ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Declaration of Intervention, Order of 4 October 1984 (Dissenting Opinion of Judge Schwebel), p. 223, pp. 235-236.

³⁷ *Ibidem*, p. 224.

³⁸ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment (Separate Opinion by Judge Lachs), I.C.J. Reports 1986, p. 158, p. 171.

³⁹ Miron, Chinkin (fn 6) 1763; footnotes omitted.

B. *ITALY IS INTERVENING ON THE CONSTRUCTION OF PROVISIONS RELEVANT TO THE JURISDICTIONAL PHASE*

44. Having regard to the Russian Federation's arguments set out in paragraph 69, Italy stresses that its intervention addresses the construction of provisions which are relevant for the assessment of the jurisdiction of the Court.

45. It is self-evident that the Italian Declaration addresses prominently the construction of the compromissory clause contained in Article IX of the Genocide Convention.⁴⁰ While Italy's arguments are drafted in abstract terms, they are meant to assist the Court in the interpretation of Article IX in the jurisdictional phase of the present case.

46. Reference to the construction of substantive provisions of the Genocide Convention, with special regard to Articles I-III,⁴¹ is made also for the purpose of interpretation of Article IX, namely in relation to the assessment of the Court's jurisdiction *ratione materiae*. This is all the more relevant since the Russian Federation has filed Preliminary objections to the jurisdiction of the Court.

47. It emerges from the Russian Federation's letter to the Court dated 7 March 2022,⁴² that the scope of application of Article IX has been called into question with respect to certain substantive provisions of the Convention.⁴³

48. This is confirmed by a passage of the Russian Federation's Preliminary Objections quoted *verbatim* by Ukraine in its Written Observations:

Russia's preliminary objections place at issue the interpretation of several articles of the Convention. Russia takes the position that, in addition to Article IX, the Court should "carry out, at this stage, a proper interpretation of the provisions invoked by Ukraine (Articles I and IV of the Convention) to determine the obligations contained therein and the scope of the Court's jurisdiction *ratione*

⁴⁰ Italian Declaration, paras 26-41.

⁴¹ *Ibidem*, para 42-52.

⁴² Document (with annexes) from the Russian Federation setting out its position regarding the alleged "lack of jurisdiction" of the Court in the case, 7 March 2022, available at <https://www.icj-cij.org/en/case/182/other-documents>; see also Russian Written Observations, para 91.

⁴³ *Ibidem*, paras 7-11.

materiae”.⁴⁴

49. In light of the above, Italy respectfully requests the Court to reject the third objection to the admissibility of its intervention raised by the Russian Federation.

C. *IN ANY CASE, THE ITALIAN INTERVENTION DOES NOT PRESUPPOSE THE EXISTENCE OF A DISPUTE PRIOR TO THE DETERMINATION BY THE COURT*

50. Without prejudice to the above arguments, Italy rejects the Russian Federation’s allegation according to which the Italian Declaration presupposes the existence of a dispute between Ukraine and the Russian Federation.

51. The Russian Federation refers to the following passage of the Italian Declaration:

Italy contends that the ordinary meaning of Article IX of the Convention, its context and the object and purpose of the entire Convention show that a dispute regarding acts carried out by one State against another State based on claims of genocide which the latter State deems unsubstantiated falls under the notion of “dispute between Contracting Parties relating to the interpretation, application or fulfilment of the present Convention”.⁴⁵

52. This quote plainly disproves the allegation and shows that Italy’s arguments were simply put in abstract terms, relying on a general reading of Article IX of the Genocide Convention.

53. Italy has nowhere expressed in the Declaration its own position concerning the existence of a dispute between Ukraine and the Russian Federation, nor it has expressed its opinion on the jurisdiction of the Court in the instant case.

54. Italy is well aware that it is not up to an intervening State under Article 63 to focus on such issues of facts, next to the law, given that it “does not seek to become a party in the Proceedings brought by Ukraine against the Russian Federation in this case”.⁴⁶

⁴⁴ *Written Observations of Ukraine on the Declaration of Intervention of Italy*, 17 October 2022, para 7 (hereafter: “Ukrainian Written Observations”; quoting from *Preliminary Objections of the Russian Federation*, 3 October 2022, para 163.

⁴⁵ Italian Declaration, para 41, quoted in Russian Written Observations, para 81(c).

⁴⁶ Italian Declaration, para 17.

55. Accordingly, Italy respectfully requests the Court to reject the third objection to the admissibility of its intervention raised by the Russian Federation.

V. ITALY'S ARGUMENTS ARE RELEVANT TO THE CONSTRUCTION OF THE GENOCIDE CONVENTION

56. The fourth objection raised by the Russian Federation is based on allegations that the Italian Declaration contains references to issues unrelated to the construction of the Genocide Convention's provisions.⁴⁷

57. With special regard to the Italian Declaration, the Russian Federation refers to the fact that

Italy refers to questions relating to the existence of a dispute between the Russian Federation and Ukraine; good faith in the application of the Convention and the doctrine of abuse of rights; whether evidence that genocide has occurred or may occur in Ukraine exists; and issues relating to the use of force.⁴⁸

58. The Russian Federation tries to represent the Italian Declaration as one addressing issues of fact, as a Party to the proceedings would do. On the contrary, Italy's Declaration is drafted in terms addressing the construction of the Genocide Convention, taking into consideration the legal issues which are relevant to the case, without any reference to the relevant facts and evidence relating thereto.

59. In so doing, Italy has followed the customary rules on treaty interpretation,⁴⁹ including the principles of good faith and systemic integration.

60. This explains Italy's reference to the case law on the notion of "dispute" in paragraph 28 of its Declaration, as necessary for the construction of the term "disputes" contained in Article IX of the Genocide Convention.

⁴⁷ Russian Written Objections, para 85, referring to the Italian Declaration, paras 28, 31-34, 41 and 45-47.

⁴⁸ *Ibidem*, para 85(c).

⁴⁹ Italian Declaration, para 25.

61. The same applies to reference to the customary prohibition of the use of force (paragraph 41 of the Italian Declaration), as necessary for the assessment of the scope of Article IX of the Genocide Convention, i.e. of the Court's jurisdiction over conducts contemplated by substantive provisions of the Convention in combination with ancillary rules of customary international law.

62. Therefore, reference to rules and principles apparently outside the Convention has been made by the Italian Declaration exclusively to assist the Court in the construction of the Convention's material provisions. Therefore, Italy has acted within the boundaries set by Article 63 of the Statute, and thus respectfully requests the Court to reject the fourth and last objection to the admissibility of its intervention raised by the Russian Federation.

VI. CONCLUSIONS

63. For the above reasons, Italy respectfully requests that all the objections to the admissibility of its intervention raised by the Russian Federation are rejected and that the Declaration of Intervention under Article 63 of the Statute of the Government of Italy is declared admissible.

Respectfully,



Giorgio Novello

Co-Agent of the Government of Italy