

INTERNATIONAL COURT OF JUSTICE

THE PRINCIPALITY OF LIECHTENSTEIN'S WRITTEN OBSERVATIONS
ON THE ADMISSIBILITY OF ITS DECLARATION OF INTERVENTION

In the case of

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

(UKRAINE V. RUSSIAN FEDERATION)

1. On 15 December 2022, the Principality of Liechtenstein (“Liechtenstein”) submitted to the Court a Declaration of Intervention pursuant to Article 63 paragraph 2 of the Statute of the Court in the Case concerning *The Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)*. The Russian Federation has asked the Court to reject the Declaration as inadmissible, while Ukraine has argued that it is admissible.

2. With the present observations Liechtenstein wishes to share with the Court its understanding of Article 63 of the Statute first in order to demonstrate that it fully complied with all the requirements (I.) It then addresses Russia’s main arguments (II.) before concluding (III.).

I. The Declaration complies with the requirements of the Statute

3. A plain reading of Article 63(2) of the Statute of the International Court of Justice indicates that every State party to the Genocide Convention has a “right” to intervene, as confirmed by the Court.¹ In line with Article 82(2) of the Rules of Procedure of the Court, this right may be exercised if four objective criteria are fulfilled:

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

4. Liechtenstein considers that it has fully complied with these admissibility requirements under Article 63 of the Statute and 82 of the Rules of the Court. As indicated in para. 13 of its Declaration, Liechtenstein is a party to the Genocide Convention. Moreover, it has announced to the Court its intention to contribute to the interpretations of Articles I, II and IX of the Genocide Convention in para. 14 of the Declaration.

5. The Russian Federation puts forward five counter-arguments to the admissibility of Liechtenstein’s intervention. However, these arguments call upon the Court to import requirements for admissibility which are not based on the law.

¹ *Haya de la Torre (Colombia v Peru)*, Judgment, I.C.J. Reports 1951, p. 76 ; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 1981, p. 13, para 21.

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

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

6. The Russian Federation argues that Liechtenstein's intervention should be rejected as not being "genuine", on the basis that it was part of a concerted political strategy to assist Ukraine in the case. Russia contends this reveals an intention on the part of Liechtenstein to become a de-facto co-complainant.

7. This argument is not based on an accurate presentation of the law. When the Court used the expression "genuine intervention" in *Haya de la Torres*,² the Court was assessing whether the object of the intervention of Cuba was interpretation of the Havana Convention (a "genuine" intervention), or whether it was an attempt to re-litigate another case. This was an objective inquiry into whether the intervention was genuine, and not a subjective inquiry into whether the intervening government's intentions were "genuine". There is no basis in the case law for the importation of a subjective requirement. The motivations of Liechtenstein's Declaration of Intervention are accordingly not relevant to admissibility.

8. The question of whether an intervener would be "taking sides" is similarly not relevant to the question of admissibility. In *Wimbledon*, the Court accepted that Poland as an intervening party shared the arguments of the applicant.³ Moreover, Liechtenstein does not advocate side-by-side with Ukraine as "de-facto co-applicant", as alleged in the Russian observations. Liechtenstein did not submit a complaint against Russia, did not advance any facts and claims against Russia on which it asked the Court to hand down a judgment, and did not arrogate itself any other rights of a complainant. Russia's first argument is therefore entirely unfounded.

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

9. In its second argument, the Russian Federation contends that admitting the intervention would be incompatible with the equality of the Parties and the requirements of good administration of justice. Again, this argument is not supported by the law. The Court confirmed in *Whaling in the Antarctic* that a declaration of intervention under Article 63 of the Statute that is limited to submitted observations on the construction of a convention cannot affect the equality of the Parties.⁴

² *Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 71, at p. 77.

³ *Case of the SS Wimbledon*, judgment of 17 August 1923, P.C.I.J. Series A Nr., p. 12, at p. 18.

⁴ *Whaling in the Antarctic (Australia v Japan)*, Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 3, at p.9, paras 18-19.

10 The Russian Federation also raises several objections on the basis of the high number of interventions in this case. However, there is no legal basis for these objections

11. First, the Russian Federation suggests that admitting several interveners would be “entirely against the Court’s previous practice of admitting only one intervener per case” (para. 49). However, according to Article 63(2) of the Statute, all State parties have the right to intervene, irrespective of whether interventions are made by other State parties. To the best knowledge of Liechtenstein, the Court has never refused a declaration of intervention on the basis that another intervention had already been allowed. Rejecting the intervention of one State party because another State party has already made an intervention would be contrary to the “right of intervention” of every State party to a Convention whose construction is at issue.

12. Second, the Russian Federation asserts the number of interventions would raise an issue of representativeness in the bench under Article 31(5) of the Statute (paras. 39-43). However, the fact that some judges in the bench may hold the same nationality as an intervening State does not infringe the equality of the parties. As recalled by the Court in para. 18 of its order in the *Whaling* case, the interveners do not become party to the proceedings. Therefore, Articles 31(5) of the Statute, and Articles 32 and 36 of the Rules, as quoted by the Russian Federation, do not apply. Moreover, all judges are bound to uphold their neutrality and impartiality in accordance with Article 20 of the Statute.

13. Third, the Russian Federation expresses concerns that the number of interveners would become “unmanageable” for itself and the Court (para. 45). In line with Article 30(1) of the Statute, the Court enjoys large discretion to organize the proceedings. Liechtenstein welcomes procedural decisions by the Court intended to streamline the process. In order to help in the good administration of justice, it also reiterates its willingness to coordinate its further action before the Court with other interveners to contribute to the effective management of the time of the Court and both parties.

C. The Court may decide on admissibility of the intervention before considering Russia’s preliminary objections

14. In its third argument, the Russian Federation maintains that the Court has never allowed interventions at the preliminary stage of the proceedings in which jurisdiction or the admissibility of an application was challenged. There is, however, no legal bar to national interventions at this stage of the proceedings.

15. Article 63 of the Statute does not make any distinction between separate phases of proceedings before the Court. Rather, the opening word “whenever” indicates that a State is allowed to intervene in all phases

of the proceedings.⁵ Moreover, Article 82(1) of the Rules only imposes an outer time limit for interventions – being no later than the date fixed for the oral hearing. In addition, the invitation to file a declaration “as soon as possible” in that provision indicates that the filing of an Article 63 declaration is admissible at this stage of the proceedings.

D. Liechtenstein is entitled to address the Court’s jurisdiction

17. In its fourth argument, the Russian Federation criticizes that the declaration would in effect address matters which presuppose that the Court has jurisdiction and/or that Ukraine’s application is admissible. In particular, Russia notes that the declaration contains a construction of Article IX of the Genocide Convention on the jurisdiction of the Court, which in its argument presupposes that the Court has jurisdiction over the alleged dispute.

18. In Liechtenstein’s view, this line of reasoning is contrary to Article 63 of the Statute and the Court’s practice. According to Article 63(1) of the Statute, a State party may intervene on the “construction of a convention”. The plain wording refers to the entire Convention, including its compromissory clause, as the case may be. This construction is further strengthened by the object and purpose of Article 63 of the Statute. States have a legitimate interest in sharing with the Court their views on jurisdictional issues, in addition to substantive obligations, as this may affect their own position before the Court in future cases relating to themselves. An intervention under Article 63 of the Statute may accordingly cover both jurisdictional and substantive aspects.⁶

19. This interpretation is also supported by Court practice, as the Court has never dismissed an intervention on the basis that it was entirely or primarily directed to interpreting a compromissory clause.

20. It follows that Liechtenstein correctly exercised its right to intervene under Article 63 of the Statute.

E. Liechtenstein’s arguments are relevant to the construction of the Genocide Convention

21. Finally, the Russian Federation notes that Liechtenstein “somehow concludes that there is a ‘dispute’ between Ukraine and the Russian Federation concerning the Genocide Convention, and addresses issues relating to abuse of rights and the use of force” (at para. 104). It alleges that this observation does not relate

⁵ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Intervention of El Salvador, Dissenting Opinion of Judge Schwebel, I.C.J. Reports 1984, p. 223, at p. 234.

⁶ MN Shaw (ed), *Roseanne’s Law and Practice of the International Court 1920-2015* (5th ed, Vol III, Brill Nijhoff 2016), p. 1533; H. Thielway, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence* (Vol I, OUP 2013), p. 1031; A. Miron/C. Chinkin, “Article 63” in: Zimmerman/Tams/Oellers-Frahm/Tomuschat (eds), *The Statute of the International Court of Justice: A Commentary* (3rd ed. OUP 2019), p. 1741, at p.1753, note 46.

to the construction of the Genocide Convention and contains an impermissible incursion into the interpretation or application of other rules of international rules that are distinct from the treaty in question and derive from different sources.

22. This argument is based on a misrepresentation of Liechtenstein's intervention. Clearly, the statement did not introduce the doctrine of abuse of rights and the use of force as a self-standing matter. Rather, the references to "abuse of the law" and "use of military force" were part of the construction of Article IX of the Convention, in conjunction with Articles I and II.

III. Conclusion

23. For the reasons set out above Liechtenstein understands that its Declaration of Intervention fully complies with the requirements under Article 63 of the Statute and Article 82 of the Rules. Accordingly, the Court should decide that the intervention is admissible and allow Liechtenstein to present its written observations in good time in order to exercise its right to intervene as party to the Genocide Convention.

13 February 2023



Ambassador Pascal Schafhauser

Agent of the Government of the Principality of Liechtenstein