



**WRITTEN OBSERVATIONS OF  
THE REPUBLIC OF LITHUANIA**

ADMISSIBILITY OF THE DECLARATION OF INTERVENTION PURSUANT TO  
ARTICLE 63 OF THE STATUTE OF THE INTERNATIONAL COURT OF  
JUSTICE

13 FEBRUARY 2023

1. On 17 October 2022, the Russian Federation filed written observations contesting the admissibility of Lithuania's declaration of intervention dated 19 July 2022 in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

2. Pursuant to the Court's decision communicated by the Registrar's letters n°158462 of 31 January 2023 and n°158517 of 2 February 2023, the Republic of Lithuania hereby submits its observations in writing on the admissibility of its declaration of intervention.

3. At the outset, Lithuania notes that in its written observations of 17 October 2022, the Russian Federation decided to address in one single document the admissibility of declarations of intervention made by eleven different States. It did so notwithstanding the fact that each of these declarations is a distinct procedural act by sovereign State, by which it exercised its "right to intervene" under Article 63 of the Statute. Lithuania therefore respectfully submits that the Court must assess the admissibility of each declaration on its own merits, in the light of its specific content and wording.

4. As the Court has made clear, the admissibility of a declaration of intervention made pursuant to Article 63 of the Statute is subject to two conditions: first, the Court must ascertain whether "the declaration concerned falls within the provisions of Article 63"<sup>1</sup>; secondly, the Court "also has to verify that the conditions set forth in Article 82 of the Rules of Court are met."<sup>2</sup> As the Russian Federation does not argue that Lithuania's declaration would not comply with the requirements set out in Article 82 of the Rules, the only question for the Court to resolve is whether Lithuania's declaration "falls within the provisions of Article 63". As Lithuania will demonstrate, this is squarely the case; none of the objections raised by the Russian Federation have any merit.

5. Lithuania addresses in turn each of the first five objections raised by the Russian Federation. Because the Russian Federation's sixth objection relates exclusively to the declaration of intervention filed by the United States, Lithuania will not address it.

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<sup>1</sup> *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.*

<sup>2</sup> *Ibid.*

## I. The Russian Federation's First Objection

6. The Russian Federation's first objection is that Lithuania's intervention is not "genuine", in that its real object is not the construction of provisions of the Genocide Convention but "to become *de facto* co-applicant[] and pursue a joint case with Ukraine".<sup>3</sup> This objection is based on a misreading of the Court's Statute and Rules, as well as the jurisprudence. Moreover, it misrepresents Lithuania's position, which is that of a "genuine" intervener.

7. Lithuania observes that the Russian Federation is making a political argument, not a legal one. The notion of "*de facto* co-applicant" has no basis in the Statute or the Rules, which set out different regimes of intervention. Lithuania's intervention dated 19 July 2022 leaves no doubt about the legal position: Lithuania has exercised its right to intervene under Article 63 of the Statute, not under Article 62. It does not purport to become a party to the case instituted by Ukraine. Accordingly, in its Declaration of 19 July 2022, Lithuania is not advancing any legal claim in these proceedings, nor seek to establish that its interests of a legal nature were affected by these proceedings against the Russian Federation. It only seeks to assist the Court by putting forward its own understanding of certain provisions of the Genocide Convention the construction of which is in question. This is clear from the very wording of Lithuania's declaration.

8. Drawing from the *Haya de la Torre* case, the Russian Federation contends that when assessing the admissibility of an intervention under Article 63 of the Statute, the Court would need to assess the "genuine intention"<sup>4</sup> of the intervening State, and in order "[t]o do so, the Court needs to consider the text of the declaration and the context within which it was filed".<sup>5</sup>

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<sup>3</sup> Written Observations of the Russian Federation 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 [RFWO], 17 October 2022, p. 13.

<sup>4</sup> RFWO, para. 14.

<sup>5</sup> *Ibid.*

9. The legal test proposed by the Russian Federation has no basis in law and cannot be traced back in the *Haya de la Torre* case. Indeed, nowhere in its judgment did the Court refer to the “genuine *intention*” of the intervener; nor did it assess such intention. Moreover, nowhere in that case did the Court assess the “object of the intervention of the Government of Cuba”<sup>6</sup> by taking into account “the *context* within which it was filed”,<sup>7</sup> as the Russian Federation suggests. In order to ascertain whether the object of the intervention of Lithuania is in fact the interpretation of the Genocide Convention—so as to be a “genuine intervention” within the meaning of the *Haya de la Torre* case—the Court must look at nothing more, and nothing less, than the very text of Lithuania’s declaration.

10. The Court has shown great reluctance to ascertain the intention of States engaged in legal proceedings. In the *Border and Transborder Armed Actions* case, the Court recalled that “it cannot concern itself with the political motivation which may lead a State at a particular time, or in particular circumstances, to choose judicial settlement”.<sup>8</sup> More recently, in the case instituted by The Gambia against Myanmar, the Court likewise asserted that “the question of what may have motivated a State ... to commence proceedings is not relevant for establishing the jurisdiction of the Court.”<sup>9</sup> It is also well-established that the broader context in which a dispute arose has no bearing on the Court’s jurisdiction when it exists.<sup>10</sup>

11. The same reasoning must apply in the present circumstances. Ascertaining the intention or motivation of a State that avails itself of a procedural possibility under the Statute would require the Court to evaluate the political preferences of that State, a task wholly beyond the judicial function of the Court and irrelevant for the purpose of deciding

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<sup>6</sup> *Haya de la Torre (Colombia v. Peru)*, Judgment of June 13th, 1951, I.C.J. Reports 1951, p. 71, p. 77.

<sup>7</sup> RFWO, para. 14.

<sup>8</sup> *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988, p. 91, para. 52.

<sup>9</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment of 22 July 2022, para. 44.

<sup>10</sup> *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, p. 576, para. 28; *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020, p. 101, para. 48.

whether the said declaration “falls within the provisions of Article 63”.<sup>11</sup> Likewise, the fact that the geopolitical situation resulting from Russia’s military aggression in Ukraine forms the broader context in which Lithuania has filed its declaration is irrelevant to the assessment of whether it genuinely is about the interpretation of the Convention.

12. While based on a misreading of the law, the Russian Federation’s “genuine intention” test, for a separate reason, does not affect the admissibility of Lithuania’s Declaration of Intervention of 19 July 2022.

13. The Russian Federation takes issue with two collective statements, in which Lithuania participated, i.e. the 20 May 2022 Joint Statement and the 13 July 2022 Joint Statement. Those two Statements, according to the Russian Federation, allegedly “show that the real purpose of the Declarants is not to submit their own views regarding the construction or interpretation of the relevant provisions of the Genocide Convention, as required by Article 63 of the Statute, but rather to side with, advocate for, or pursue a joint case with Ukraine”.<sup>12</sup> Lithuania cannot fail to note that Ukraine did not sign the two Joint Statements, nor participate in their elaboration. Quite apart from this, the Russian Federation’s reading of the two Statements is misguided, and its allegation baseless.

14. The 20 May 2022 Joint Statement expresses the legal opinion of the undersigned States concerning the military action undertaken by the Russian Federation in Ukraine and the case initiated by Ukraine before the Court on the basis of the Genocide Convention. By expressing their “joint intention to explore all options to support Ukraine in its efforts before the ICJ *and* to consider a possible intervention in these proceedings”,<sup>13</sup> the undersigned States indicated that their “joint intention” was, on the one hand, “to explore all options to support Ukraine in its efforts before the ICJ” and, on the other hand, “to consider a possible intervention in these proceedings”. Thus, the Joint Statement clearly draws a distinction between the fact of supporting Ukraine in its efforts before the Court and the fact of possibly intervening in the case brought by Ukraine, the latter not being part of the “options” to be explored in order “to support Ukraine” but a distinct

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<sup>11</sup> *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.

<sup>12</sup> RFWO, para. 15.

<sup>13</sup> Joint Statement 20 May 2022, *in* RFWO Annex 1 (underscored).

course of action about which the undersigned States expressed their “joint intention” to proceed with.

15. The 13 July 2022 Joint Statement provides no support for the Russian Federation’s allegation either. In fact, the Russian Federation ignores the clear and specific language of the Statement:

“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.”<sup>14</sup>

16. This language is self-explanatory and squarely contradicts the allegations of the Russian Federation. It leaves no doubt about the “genuine intention” of the undersigned States pledging to intervene in the proceedings instituted by Ukraine: they do so in order to protect the integrity of the Convention by sharing with the Court “*their* (respective) interpretation of some of its essential provisions”. As the Joint Statement makes it clear, the interventions would be strictly concerned with the correct interpretation of Convention which is “in the interest of all States Parties to the Genocide Convention, and more broadly of the international community as a whole”, and not in the interest of any specific contracting party.

17. Lithuania’s declaration precisely reflects this concern and intent:

“Lithuania shares with all the other contracting parties to the Genocide Convention a common interest in ensuring that the construction of its provisions—which contain obligations *erga omnes partes*—are properly interpreted, so as to avoid abusive interpretations and misuses of the Convention, whether in the present case or in the future. The integrity of the Convention requires its proper interpretation. For these reasons, and pursuant to Article 63 of the Statute, Lithuania has decided

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<sup>14</sup> Joint Statement 13 July 2022, *in* RFWO, Annex 2.

to exercise its right to intervene in this case in order to submit to the Court its views on the construction of particular provisions of the Convention which are at the heart of the pending dispute.”<sup>15</sup>

18. In addition to the two Joint Statements, the Russian Federation seeks to rely on a third statement, published on the website of Lithuania’s Ministry of Justice,<sup>16</sup> to reject the admissibility of Lithuania’s intervention in the present case. The Russian Federation takes issue with the fact that in its statement, Lithuania declares that it “hopes that Russia’s responsibility for the violation of international law is established and that reparation for the damage done to Ukraine will be guaranteed”, and that “Lithuanian lawyers are working hand-in-hand with Ukrainian lawyers seeking to strengthen Ukraine’s legal struggle.” Those comments do not come close to bearing out the Russian Federation’s allegations. The statement summarized comments made at a press conference, which outlined Lithuania’s expectations for the outcome of the case brought by Ukraine against Russia. It covered various legal issues raised by the “legal struggle” of Ukraine, including the “establishment of a Special Tribunal on Russia’s aggression against Ukraine”, emphasized the binding force of the Court’s provisional measures order of 16 March 2022, and gave voice to the hope that “solutions of international law do exist“. None of these aspects is noted in the Russian Federation’s written observations. Against this background, the Russian Federation’s attempt to deploy isolated passages to suggest that Lithuania’s declaration would not be genuinely and strictly about the interpretation of the Convention is baseless.

19. To summarize, the Russian Federation’s contention that Lithuania has sought, through the filing of its declaration of intervention to become a “*de facto* co-applicant” siding with Ukraine is a deliberate misrepresentation of Lithuania’s declaration. Lithuania has relied exclusively on Article 63 of the Statute,<sup>17</sup> and has nowhere asserted a legal right or interest in relation to the application or fulfilment of the relevant provisions of

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<sup>15</sup> Declaration of Lithuania, para. 17.

<sup>16</sup> Ministry of Justice of the Republic of Lithuania, Press release, Lithuania formally intervenes in a case at the International Court of Justice, 13 September 2022, available at: <https://tm.lrv.lt/en/news/lithuania-formally-intervenes-in-a-case-at-the-international-court-of-justice> (in RFWO, Annex 5).

<sup>17</sup> See, in particular, Declaration of Lithuania, paras. 18 *et seq.*

the Genocide Convention. Accordingly, this contention is without foundation and should be rejected.

20. Perhaps unsurprisingly, the Russian Federation, in its attempt to present Lithuania as a “co-applicant”, ascribes to Lithuania a number of statements that it never made, or never made in the way the Russian Federation now asserts. Five such attempts at deliberate or inadvertent misreading are noteworthy.

21. To begin with, the Russian Federation asserts that Lithuania, as one of “the Declarants”, inappropriately addressed the issue “of a dispute between the Russian Federation and Ukraine”<sup>18</sup> in its declaration. That is entirely wrong, and it is telling that its written observations do not refer to any specific language in Lithuania’s declaration in support of this contention—there is none. Lithuania’s declaration does not mention the issue of the existence of a bilateral dispute between the two Parties in the case, which it understands is a factual matter to be adjudicated by the Court.

22. Likewise, Russia has wrongly suggested that Lithuania addressed issues of “evidence that genocide has occurred or may occur in Ukraine”, that it affirmed that Russia would have failed to act in good faith or would have “abused a ‘right’ under the Convention”, or that Lithuania would “address matters that are governed by rules of international law other than the Convention”.<sup>19</sup> Again, not a single word in Lithuania’s declaration concerns such matters, and the Russian Federation did not support its assertions with references to actual statements found in Lithuania’s declaration.

23. The Russian Federation also complains about the fact that Lithuania recalled that the Court issued binding provisional measures that Russia failed to comply with. The impugned passage was not included in the sections of the declaration in which Lithuania set out its interpretation of the relevant provisions of the Genocide Convention, but formed part of a series of preliminary observations. As part of these preliminary observations, Lithuania, in paragraph 14 of its declaration, recalled the operative part of the order of the Court while paragraph 15 stated the obvious fact that the Russian Federation disregarded it. Neither of these statements deprives Lithuania’s declaration of its genuine character as an Article 63 declaration.

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<sup>18</sup> WORF, para. 21.

<sup>19</sup> *Ibid.*, para. 21.



24. The Russian Federation also asserts that “the express references to a ‘legal interest’ and *erga omnes* obligations” would “confirm the[] intention [of Lithuania] to act as *de facto* co-applicant[] alongside with Ukraine at the behest of the latter”.<sup>20</sup> Again, it is telling that the Russian Federation does not point to any “express reference[] to a ‘legal interest’” in Lithuania’s declaration—there is none because none is needed to act under Article 63 of the Statute. In contrast, while it is correct that Lithuania’s declaration refers to the *erga omnes (partes)* character of the obligations under the Convention, it is only to underscore *a fortiori* why the parties to the Convention have a “common interest in ensuring that the construction of its provisions [] are properly interpreted”, as paragraph 17 of Lithuania’s declaration reproduced above explains.

25. Finally, the Russian Federation devotes a number of paragraphs to challenging the statements of several Declarants in the light of their earlier justifications before the Court in the context of the *Legality of the Use of Force* cases.<sup>21</sup> Lithuania was not a party before the Court in those proceedings and is thus not concerned by these contentions, and thus sees no need to address these.

26. In sum, the Russian Federation’s first objection boils down to complaining about the fact that Lithuania would “effectively seek to side with the arguments that Ukraine may put forward”.<sup>22</sup>

- That contention is wrong as far as it alleges that Lithuania would, by its intervention, seek to argue factual issues concerning the application of the Convention in the present dispute—but nowhere does Lithuania’s declaration touch on any such application issue.
- That contention is irrelevant and inoperative in terms of admissibility in so far as it complains about the fact that Lithuania’s statement of the construction of Articles I, VIII and IX may converge with Ukraine’s views about the legal meaning of the same provisions. The right to intervention set out in Article 63 of the Court’s Statute concerns, by definition, the construction of provisions of multilateral conventions,

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<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*, paras. 25-30.

<sup>22</sup> RFWO, para. 19.

which by their very nature “enable a multiplicity of interests that may emerge in litigation”.<sup>23</sup> *A fortiori*, there will be multiple parties with convergent or similar interpretations of various provisions and their relationship to one another. The submission of the Russian Federation on this point would impose additional conditions on intervening States which exceed any reasonable interpretation of the terms of Article 63 of the Statute, and are without any legal foundation.

27. The first admissibility objection of the Russian Federation must be rejected.

## II. The Russian Federation’s Second Objection

28. In its second objection, the Russian Federation submits that the various declarations of intervention are incompatible with the principle of equality of the parties and the requirements of good administration of justice. It contends that a “coordinated mass intervention” damages the integrity of the judicial process,<sup>24</sup> suggesting that the number of States making declarations would require written and oral responses on its part and undermine its capacity to respond.<sup>25</sup> It asserts, without further elaboration, that these parties act “in the same interest” and that the scale of the interventions constitutes sufficient grounds to declare them inadmissible.<sup>26</sup>

29. Lithuania reiterates the importance of assessing each declaration of intervention individually, as the considered view of a sovereign State in respect of a multilateral convention the construction of which is in question. Therefore, the Russian Federation’s second objection should only be considered after the Court ascertains that each declaration “falls within the provisions of Article 63”.<sup>27</sup> Before such determination, the Russian Federation’s second objection remains abstract and is a rhetorical scarecrow based on the assumption that its first objection is correct. However, as the first objection

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<sup>23</sup> C. Chinkin, “Third-Party Intervention in International Adjudication” (1986) 80 *American Journal of International Law* 3, p. 502-503.

<sup>24</sup> RFWO, para. 32.

<sup>25</sup> *Ibid.*, para. 47.

<sup>26</sup> *Ibid.*, paras. 48-49.

<sup>27</sup> *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.

to Lithuania's declaration must be rejected, the second objection is devoid of any legal basis.

30. Indeed, even assuming that each and every declaration of intervention is found to fall within the provisions of Article 63, Russia's second admissibility objection would still need to be rejected. This is because Article 63 of the Court's Statute does not set limits on the number of interventions. By definition, Article 63 of the Statute concerns multilateral treaties, and the right of intervention recognized therein is not the privilege of certain States parties to those treaties. Each and every State party to a multilateral treaty, the construction of which is in question in a pending case and which is also bound by the Court's Statute, is entitled to avail itself of the right to intervene under Article 63. A State party to the Statute cannot be deprived of the exercise of its right simply because other States also file a declaration pursuant to Article 63. Being a party to the Statute, the Russian Federation—like any other litigant before the Court—is exposed to possible multiple interventions under Article 63 when the construction of a provision in a multilateral convention is in issue. This right of intervention is a specific feature of legal proceedings before the principal judicial organ of the United Nations. The Russian Federation's second objection has thus no basis in law and premised on a false equivalence between the equality between intervening States and the equality between the parties to the case.

31. Because a declaration of intervention that falls within the provisions of Article 63 is not "advocating for one of the parties against the other"<sup>28</sup> but—as is the case of Lithuania's declaration—is solely concerned with presenting the intervening State's observations on the construction of specific provisions of the convention in question in a case, the risk of inequality between the parties identified by the Russian Federation does not arise. As the Court has stated in *Whaling in the Antarctic*, "an intervention [under Article 63] cannot affect the equality of the Parties to the dispute".<sup>29</sup> In that regard, it is immaterial that the interpretation put forward by one or several intervening States is close to, or even identical to the interpretation advocated by one of the parties to the case. If such a situation were to arise, the task of the other party in rebutting similar interpretations

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<sup>28</sup> RFWO, para. 32.

<sup>29</sup> *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 9, para 18.*

might actually be eased. However, if the intervening States put forward diverging constructions, Article 63 does not provide a basis to claim that their declarations of intervention should be declared inadmissible because they would challenge the capacity of the parties to the case, or make their pleadings more cumbersome.

32. In any event, the Russian Federation's second objection is a mere pretext as it was demonstrably capable of addressing, in a timely fashion, the admissibility of the various declarations. There is no reason to believe, and none put forward, that it would not be able to cope with multiple declarations of intervention falling within the provisions of Article 63. This is all the more the case if the constructions of the Convention's provisions put forward by the intervening States converge.

33. As no Member of the Court is a national of Lithuania, it is not concerned by the argument put forward by the Russian Federation in paragraph 48 of its written observations and thus will not respond to it.

34. Lithuania thus submits that the second argument of the Russian Federation is without merit and must be rejected.

### **III. The Russian Federation's Third Objection**

35. The Russian Federation asserts that "the Declarations are not to be considered at the jurisdictional phase of these proceedings", as "the Court's practice is consistent in not allowing interventions at the jurisdictional phase of the proceedings".<sup>30</sup> As such, this objection does not concern the admissibility of Lithuania's declaration *per se*, but only its inadmissibility at a certain stage of the proceedings. Not without a certain paradox, the Russian Federation's third objection is thus an invitation addressed to the Court to defer the consideration of its own first objection (and, as a logical consequence, also of its second objection). Be that as it may, the Russian Federation's third objection ignores the clear wording of the Court's Statute and Rules and is based on an erroneous interpretation of the Court's jurisprudence.

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<sup>30</sup> RFWO, paras. 50-53.

36. The texts governing the right of State parties to intervene in proceedings concerning the construction of conventions to which they are a party do not distinguish between the different phases of proceedings. Article 63, paragraph 1, emphasizes that States parties can exercise their right to intervene “whenever the construction of a convention ... is in question”; paragraph 2 of the same provision refers, without any distinction, to “the proceedings”. Under Article 82, paragraph 1, of the Rules, “[s]uch a declaration shall be filed as soon as possible, and not later than the date fixed for the opening of the oral proceedings.” None of these provisions contains the slightest hint that States could not intervene at the jurisdictional stage, nor that their intervention could not concern the treaty provision on which the jurisdiction of the Court is asserted. Indeed, Article 82, paragraph 2, of the Rules only requires States exercising their right to intervene to “identif[y] ... the particular provisions of the convention the construction of which it considers to be in question”. The relevant provisions of the Statute and the Rules do not distinguish between provisions of a convention that might be implicated at different stages of proceedings before the Court. Contrary to the Russian Federation’s assertion, the provisions governing the State parties’ right to intervene in proceedings before the Court do not limit the scope of this right. The clear implication is that intervention must in principle be possible at all stages of the proceedings.

37. The object and purpose of Article 63 also dictate that declarations of intervention may concern the construction of the provision or provisions on which the jurisdiction of the Court is asserted to be based. As has been noted, interventions under Article 63 of the Statute intend to “foster uniform interpretation of a convention, and thus promote the harmonious development of international law”.<sup>31</sup> As commentators have noted, this objective is as significant for jurisdictional aspects of a convention as it is for the provisions bearing on substantive aspects: in the words of one commentator, “if for example a case is brought on the basis of a compromissory clause in a multilateral convention, the interpretation of that clause may be of interest to all the other State parties”.<sup>32</sup>

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<sup>31</sup>A. Miron & Chr. Chinkin, “Article 63”, in A. Zimmermann & Chr. Tams (eds.), *The Statute of the International Court of Justice: A Commentary* (3rd edn., Oxford, OUP 2019), p. 1763, MN 2.

<sup>32</sup>H. Thirlway, “The Law and Procedure of the International Court of Justice 1960-1989. Part Thirteen”, *BYIL* 74 (2003), p. 1, 28.

38. The third objection of the Russian Federation makes much of the words “in question” in Article 63 of the Statute: those words would indicate that as long as the Court has not determined that a dispute under the invoked convention exists, the intervention in support of any construction of that convention would be premature.<sup>33</sup> However, such reading of Article 63 is belied by the French version of the Statute which begins with the words: “*Lorsqu’il s’agit de l’interprétation d’une convention...*” (literally: “when it comes to the interpretation of a convention”). Surely, the jurisdictional stage “comes to the interpretation of a convention” when the latter includes a provision on the basis of which jurisdiction is asserted. This argument is particularly salient in respect of compromissory clauses in multilateral conventions.

39. In support of its third objection, the Russian Federation relies on the *Military and Paramilitary Activities in and against Nicaragua* case in which the declaration filed by El Salvador pursuant to Article 63 of the Statute was declared inadmissible.<sup>34</sup> However, that case is entirely inapposite as the basis of jurisdiction in that case rested on the respective declarations of Nicaragua and the United States accepting the jurisdiction of the Court.<sup>35</sup> El Salvador’s declaration did not (and, under Article 63, could not) concern the basis of jurisdiction in that case. In contrast, and pursuant to Article 82, paragraph 2 of the Rules, Lithuania has identified Article IX of the Genocide Convention among “the particular provisions of the convention the construction of which it considers to be in question” and has included in its declaration “a statement of the construction of [that] provision[] for which it contends.” In 1984, the Court declared El Salvador’s intervention inadmissible because it had mainly sought to address matters “which presuppose that the Court has jurisdiction ... and that Nicaragua’s Application ... is admissible”.<sup>36</sup> As indicated above, such is plainly not the case in Lithuania’s declaration of intervention.

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<sup>33</sup> RFWO, paras. 55 and 64.

<sup>34</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.

<sup>35</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Application Instituting Proceedings, cited in Declaration of Intervention, Order of 4 October 1984, I.C.J. Reports 1984, p. 216.

<sup>36</sup> *Ibid.*, operative paragraph (ii).

40. The other two decisions relied upon by the Russian Federation<sup>37</sup> concern intervention under Article 62, the terms of which require the intervening State to demonstrate that it has an interest of a legal nature which may be affected by the decision in the case, even if not seeking to become a party to the case.<sup>38</sup> These cases are not relevant, as the conditions for their application pertain to very different situations.

41. Looking at matters from a separate perspective, upholding the Russian Federation's third objection would produce a highly problematic outcome. It would enable a State raising preliminary objections to control the "right to intervene" afforded to States by the Statute. Such result would be "inadmissible".<sup>39</sup> Moreover, under Article 79*bis*, paragraph 3, of the Rules, the only procedural effect of the raising of preliminary objections is the suspension of "the proceedings on the merits". No other procedural consequence derives from the raising of preliminary objections; they certainly do not have the effect of rendering inadmissible declarations made pursuant to Article 63. Because Lithuania's declaration of intervention addresses the interpretation of one substantive provision of the Convention (Article I) in conjunction with one procedural provision (Article VIII), but also the construction of the Convention's compromissory clause (Article IX), it is fully relevant to the jurisdictional phase of these proceedings and is admissible at that stage. Lithuania fully understands that it is not called upon to address the interpretation of Articles I and VIII of the Convention at the jurisdictional phase of the proceedings and does not intend to do so, reserving for the merits phase any separate views on the construction of Article I in combination with Article VIII.<sup>40</sup> However, nothing justifies depriving Lithuania of its right under Article 63 of the Statute to share with the Court its views on the construction of Article IX of the Convention.

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<sup>37</sup> *Nuclear Tests (New Zealand v. France)*, Application to Intervene, Order of 12 July 1973, I.C.J. Reports 1973, p. 325; 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,

<sup>38</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 2011, p. 434, para. 37.

<sup>39</sup> See *mutatis mutandis* about the control of the competence of the Court: "The fact that a defence on the merits is cast in a particular form, cannot affect the competence of the tribunal or other organ concerned, — otherwise parties would be in a position themselves to control that competence, which would be inadmissible": *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, Judgment, I.C.J. Reports 1972, p. 61, para. 27, affirmed again in *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020, p. 101, para. 49.

<sup>40</sup> See RFWO, para. 54.

42. The Russian Federation's third objection must be rejected.

#### **IV. The Russian Federation's Fourth Objection**

43. Invoking the conclusions of the Court of El Salvador's declaration in *Military and Paramilitary Activities in and against Nicaragua*, the fourth argument of the Russian Federation is that the declarations of intervention presuppose "in effect" the jurisdiction of the Court and the admissibility of Ukraine's application and that admitting them "would essentially prejudge the preliminary objections that the Russian Federation raised".<sup>41</sup> However, no analysis or justification is given in support of this assertion.

44. In respect of Lithuania, the Russian Federation quotes, out of context and with no analysis, a line concerning issues that "appertain the merits of the case".<sup>42</sup> The context of that line is instructive. In paragraph 16 of Lithuania's declaration, the wider significance of the dispute between Ukraine and the Russian Federation was set out. Paragraph 17 then set out that "[w]hile those matters appertain to the merits of the case", Lithuania's declaration would not engage with the construction of provisions of the Genocide Convention pursuant to Article 63. In its substantive arguments (paragraphs 19 to 24), Lithuania sets out its interpretation of Article I in conjunction with Article VIII, and also its views on the interpretation of Article IX, the provision of the Genocide Convention which is invoked by Ukraine as the basis of the Court's jurisdiction.

45. Tellingly, when the Russian Federation contends at paragraphs 81 to 83 of its written observations that various declarations presuppose the existence of a dispute between the Parties under the Genocide Convention, the jurisdiction of the Court over that dispute and the admissibility of Ukraine's application, it does not cite to Lithuania's declaration. Given that this argument is not directed to its declaration, therefore, Lithuania considers it unnecessary to engage further with the Russian Federation's argument on this point.

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<sup>41</sup> *Ibid.*, para. 82.

<sup>42</sup> *Ibid.*, para.78 (b).



46. The Russian Federation’s argument according to which the Court must first address its preliminary objections on jurisdiction and admissibility, before it may turn to the declarations of States which seek to inform the construction of provisions on which the jurisdiction of the Court and the admissibility of the application is founded, has no merit and must be rejected.

## V. The Russian Federation’s Fifth Objection

47. The Russian Federation asserts that Lithuania’s declaration “seeks to address issues unrelated to the construction of the Genocide Convention whose admission would prejudice issues relating to the Court’s jurisdiction *ratione materiae*”.<sup>43</sup> This assertion is baseless.

48. As a threshold matter, Lithuania notes that—like in other sections of its written observations—the bulk of the Russian Federation’s comments offered in relation to this fifth objection do not relate to Lithuania’s declaration of intervention, but to declarations submitted by other States. Accordingly, these are without relevance in assessing Lithuania’s declaration. As described in paragraph 3 above, the admissibility of each declaration must be assessed separately. To illustrate, Lithuania’s declaration is silent on the “existence of a dispute”, on “whether genocide has occurred or may occur in Ukraine”, and does not address the “*jus in bello*, war crimes, territorial integrity, and territorial acquisition”.<sup>44</sup> Nor does Lithuania “intend to address the interpretation or application of several rules of international law other than the Genocide Convention”.<sup>45</sup> Irrespective of whether these aspects are, as the Russian Federation believes, material, they cannot affect the admissibility of Lithuania’s declaration of intervention, which comments exclusively on the construction of Articles I, VIII and IX of the Genocide Convention.

49. To the extent that the Russian Federation does comment on Lithuania’s declaration (as opposed to declarations submitted under Article 63 of the Statute by other States), its

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<sup>43</sup> *Ibid.*, E., p. 40.

<sup>44</sup> *Ibid.*, paras. 86, 88, 89.

<sup>45</sup> *Ibid.*, para. 92.

observations are both opaque and a misrepresentation of Lithuania's position. Paragraph 85(e) of the Russian Federation's observation—the only passage specifically to refer to Lithuania's declaration and listing “issues that [in the view of the Russian Federation] are unrelated to the construction of the provisions of the Convention”—is worth quoting in full:

“Lithuania refers to the Russian Federation's alleged violation of the Court's order on provisional measures; to the question whether evidence that genocide has occurred or may occur in Ukraine exists; to the alleged violation of the prohibition of the use of force under the UN Charter; and expressly admits that, in Lithuania's view, these matters ‘appertain to the merits of this case’”.

50. This passage is plainly based on a misreading of Lithuania's declaration, quoting selectively and out of context. As the Court is aware, in its declaration, Lithuania set out its “Construction of the Genocide Convention” in paragraphs 19-25, separately from a number of “Preliminary Observations”.<sup>46</sup> A quick glance is sufficient to clarify that none of the statements referenced in paragraph 85(e) of the Russian Federation's written observations is put forward by Lithuania as part of its “Construction of the Genocide Convention”.<sup>47</sup> For that reason alone, the Russian Federation's fifth argument must also fail.

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<sup>46</sup> In paragraph 6 of its declaration, Lithuania explicitly noted that “its statement of the construction of Articles I, VIII and IX of the Convention begins at paragraph 19 below. It is preceded by some preliminary observations.”

<sup>47</sup> The Russian Federation seems to recognize as much, as, in a footnote following para. 85(e), it primarily references paras. 15-17 of Lithuania's Declaration. While it also references para. 20 and para. 24, these passages remain closely focused on the Construction of Articles I and IX of the Convention.

For the above reasons, the Republic of Lithuania respectfully requests that the Court:

1. rejects the five objections raised by the Russian Federation to the admissibility of Lithuania's declaration of intervention made pursuant to Article 63 of the Statute; and
2. declares Lithuania's declaration of intervention admissible.

Respectfully submitted,



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13 February 2023