

INTERNATIONAL COURT OF JUSTICE

WRITTEN OBSERVATIONS OF THE SLOVAK REPUBLIC ON THE
ADMISSIBILITY OF ITS DECLARATION OF INTERVENTION

13 February 2023

in the case of

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

(UKRAINE V. RUSSIAN FEDERATION)

I. INTRODUCTION

1. On 7 December 2022, the Slovak Republic (“**Slovakia**”) submitted to the Court its Declaration of Intervention pursuant to Article 63, paragraph 2 of the Statute of the Court (“**Statute**”) (“**Declaration of Intervention**”) in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*. The Court further set 30 January 2023 as the time-limit within which the Governments of Ukraine and the Russian Federation may furnish their written observations on the Declaration of Intervention.¹
2. On 30 January 2023, Ukraine submitted its written observations on Slovakia’s Declaration of Intervention (“**Ukraine’s Written Observations**”). On the same day, the Russian Federation submitted its written observations in respect of declarations of intervention submitted by Belgium, Bulgaria, Cyprus, Liechtenstein, Malta, Canada and Netherlands, Norway, Slovakia and Slovenia (“**RF’s Written Observations**”).
3. In the letter of the Registrar of the Court No. 158470 of 31 January 2023, in the light of the fact that the Russian Federation has filed objections to the admissibility in the form of RF’s Written Observations, the Court invited Slovakia to submit its additional written observations on the admissibility of its Declaration of Intervention by 13 February 2023.
4. On behalf of Slovakia, I have the honour to submit to the Court the Written Observations of Slovakia on the Admissibility of its Declaration of Intervention (“**Written Observations**”).
5. Provided that Ukraine’s Written Observations confirm the view of the Government of Ukraine that Slovakia’s Declaration of Intervention is admissible, Slovakia does not wish to make any further observations or comments in respect of Ukraine’s Written Observations.
6. These Written Observations, therefore, address the objections to admissibility raised in RF’s Written Observations. As a preliminary matter, Slovakia notes that a considerable portion of RF’s Written Observations addresses issues and makes arguments that are unrelated to the admissibility of Slovakia’s Declaration of Intervention. Accordingly, these Written Observations only address those arguments of the Russian Federation that directly pertain to Slovakia and the issue of admissibility of its Declaration of Intervention.
7. As demonstrated in **Section II** and **Section III** of these Written Observations, respectively, Article 63 of the Statute confers a “right to intervene in the proceedings” to a State notified of a case involving the construction of a convention to which the State is a party. This right may be exercised in accordance with the objective criteria set

¹ See Letter from the Registrar of the International Court of Justice to the Agent of Slovakia, No. 157704, 7 December 2023.

forth in Article 82, paragraph 2 of the Rules of Procedure of the Court (“**Rules of Court**”). Slovakia has demonstrated that the Declaration of Intervention fulfils the straight-forward requirements of Article 63 of the Statute and Article 82 of the Rules of Court.

8. Contrary to the Russian Federation’s contentions, in determining the admissibility of an intervention under Article 63 of the Statute, there is no test that would require the Court to establish a “genuine intention” of the intervener or examine potential effects of the intervention on the proceedings. To impose any additional criteria would be contrary to Slovakia’s right to intervene under Article 63 of the Statute.
9. As explained in **Section IV**, nothing prevents the Court from deciding on the admissibility of Slovakia’s intervention, before considering the preliminary objections of the Russian Federation. An intervention under Article 63 of the Statute is admissible both at the jurisdictional and merits phases of the proceedings.
10. Moreover, as established in **Section V** and **Section VI**, despite the Russian Federation’s assertions, Slovakia is entitled to submit an intervention under Article 63 of the Statute on the issue of the Court’s jurisdiction and, in particular, it has a right to intervene on the construction of Article IX *per se*.
11. Furthermore, **Section VII** demonstrates that Slovakia’s Declaration of Intervention does not address issues unrelated to the construction of the Genocide Convention. Finally, **Section VIII** states in conclusion that Slovakia’s Declaration of Intervention has met the applicable requirements, and is, accordingly, admissible.

II. SLOVAKIA’S DECLARATION OF INTERVENTION PLAINLY MEETS THE REQUIREMENTS OF ARTICLE 63 OF THE STATUTE AND ARTICLE 82 OF THE RULES OF COURT; THERE IS NO TEST OF A “GENUINE INTENTION” OF THE INTERVENER

12. As Slovakia established in the Declaration of Intervention, Article 63, paragraph 2 of the Statute confers a “right of intervention”. As Article 63 of the Statute provides for intervention as of right, where a State seeking to intervene has met the conditions provided under Article 63 of the Statute and Article 82 of the Rules, the declaration of intervention should be deemed admissible.
13. Article 63 of the Statute provides:
 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.

14. The Declaration of Slovakia satisfies all the necessary requirements. The present case puts in question the construction of the Genocide Convention. Slovakia is a State Party to the Genocide Convention and thus has a right to intervene under Article 63. Based on the text of the Declaration of Intervention, which identifies Slovakia's interpretation of specific provisions of the Genocide Convention, namely Article IX thereof, the object of the Declaration of Intervention is the construction of the Genocide Convention.
15. Article 82, paragraph 2 of the Rules of Court provides that a declaration of a State's desire to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall state the name of an agent and 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.
16. Also all of these requirements have been met. The Declaration of Intervention provides the basis on which Slovakia considers itself a party to the Genocide Convention, identifies "particular provisions" of the Genocide Convention it considers to be in question and provides a statement regarding the "construction of those provisions". Finally, the Declaration includes "a list of the documents in support and attaches those documents". Moreover, in accordance with Article 82, paragraph 1 of the Rules of Court, Slovakia has filed its Declaration of Intervention well before the opening of oral proceedings, which have not been set.
17. Accordingly, as Slovakia has met fully the straight-forward requirements of Article 63 of the Statute and Article 82 of the Rules, its intervention should be deemed admissible.
18. However, the Russian Federation attempts to misrepresent the applicable legal standard by seeking to introduce further subjective requirements. The Russian Federation argues that Slovakia's Declaration of Intervention is not "genuine" as its real object is not the construction of the Genocide Convention but that it seeks to pursue a joint case with Ukraine.² It proposes that when determining the admissibility of Slovakia's intervention, the Court must establish a "genuine intention"³ or "real intention"⁴ of the intervener.

² See *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Written Observations of the Russian Federation, 30 January 2022 ("**RF's Written Observations**"), Section II.A.

³ See RF's Written Observations, paragraph 25.

⁴ RF's Written Observations, paragraph 14.

19. The Russian Federation's attempts at introducing additional criteria of admissibility of intervention under Article 63 of the Statute find no support in law. Slovakia submits that they are unsubstantiated and should be rejected by the Court.
20. The Russian Federation recalls *Haya de la Torres* for support.⁵ However, the Court in *Haya de la Torre* case did not seek to establish the "real" or "genuine" intention of Cuba's intervention. Rather, the Court made it clear 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".⁶ The Court was thus concerned whether the object of the intervention was the interpretation of the Havana Convention (and it was therefore a "genuine intervention") or an attempt to appeal a decision that had already been determined by the Court.
21. Notably, the Court in that case used the term "genuine *intervention*" as opposed to "genuine *intention*" (emphasis added) as the Russian Federation seeks to propose. The Russian Federation entirely fails to substantiate this shift from an objective test to a subjective one. This case fails to support the Russian Federation's argument.
22. The Russian Federation further relies on the Court's holding in *Whaling in the Antarctic*.⁷ Also this reference lends little support to its arguments. Rather, in this case the Court declared New Zealand's declaration of intervention admissible as it "met the requirements set out in Article 82 of the Rules of the Court [and] falls within the provisions of Article 63 of the Statute".⁸ The Court never sought to establish New Zealand's "real" or "genuine" intention when deciding on the admissibility of its intervention.
23. RF's Written Observations further proceed to list a mix of sources in an attempt to show that the "real intention" of some of the intervening States is "to side with, advocate for, or pursue a joint case with Ukraine".⁹ A vast majority of these references concerns statements made by other States and are thus irrelevant to Slovakia's position. The same applies with respect to arguments of the Russian Federation made in relation to the *Legality of Use of Force* cases.¹⁰ Slovakia did not participate in these proceedings. It was not even a member of NATO at the time these cases were brought before the Court. Accordingly, in the interest of expediency, Slovakia will refrain from addressing those arguments.

⁵ See RF's Written Observations, paragraphs 13-14. See also *Haya de la Torre Case*, Judgment of 13 June 1951, I.C.J. Reports 1951, p. 71, at p. 77.

⁶ *Haya de la Torre Case*, Judgment of 13 June 1951, I.C.J. Reports 1951, p. 71, at p. 77.

⁷ See RF's Written Observations, paragraph 11. See also *Whaling in the Antarctic (Australia v. Japan)*, Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 3, at pp. 5-6, paragraph 8.

⁸ *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, paragraphs 18-19.

⁹ RF's Written Observations, paragraph 15. See also paragraphs 16-21.

¹⁰ See RF's Written Observations, paragraph 29 *et seq.*

24. Only one instance invoked by the Russian Federation mentions Slovakia – the joint statements made on 20 May 2022 and 13 July 2022, respectively.¹¹ The Russian Federation alleges that the States that co-signed these declarations acted as part of a “collective political strategy”.¹² As the Court has recently considered in its decision on jurisdiction in *Gambia v. Myanmar*:

Court’s judgment is a legal pronouncement, and 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. So far as the objection ... is based on an alleged political inspiration of the proceedings, it therefore cannot be upheld.¹³

25. In that case, the Court thus expressly considered that while there may be political aspects in any dispute brought before it, the underlying political motivation of the State party is not a relevant consideration for the Court and cannot be a ground to mount a jurisdictional challenge. This applies by extension to any form of participation in the proceedings, including an intervention.
26. It follows that, in any event, the Court could not deprive a State of its legal right to submit an intervention pursuant to Article 63 of the Statute, provided that all other requirements are met. The Russian Federation has failed to prove the opposite.
27. The Russian Federation further argues that the intervening States “effectively seek to side with the arguments that Ukraine may put forward” and that their aim is to become “*de facto* co-applicants and pursue a joint case with Ukraine”.¹⁴ As a preliminary matter, the Court’s predecessor accepted previously in *Wimbledon* that Poland as an intervening State “declared itself in agreement with the submissions of the applicants”.¹⁵ However, Slovakia has not endorsed the Ukraine’s submissions or arguments.
28. As Slovakia made clear in its Declaration of Intervention, it does not seek to become a co-applicant or a party to the proceedings.¹⁶ In particular, Slovakia did not submit a complaint or application against the Russian Federation, did not advance any facts or claims against the Russian Federation on which it asked the Court to hand down a judgment, neither did it arrogate itself any other rights of a party to the proceedings. Moreover, as confirmed by the Court in *Whaling in the Antarctic*, Article 63 of the

¹¹ See RF’s Written Observations, paragraph 15 *et seq.*

¹² RF’s Written Observations, paragraph 21.

¹³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gambia v. Myanmar)*, Judgment on Preliminary Objections of 22 July 2022, paragraph 44.

¹⁴ RF’s Written Observations, paragraph 21.

¹⁵ *Wimbledon*, Judgment of 17 August 1923, P.C.I.J. Series A Nr. 1, p. 12 at p. 18.

¹⁶ See *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Declaration of Intervention of the Slovak Republic, dated 1 December 2022 (“**Declaration of Intervention**”), paragraph 18.

Statute does not, in fact, afford an intervening party the status of a party to the proceedings.¹⁷

29. As Slovakia has demonstrated, by intervening in this case, it wishes to reaffirm its commitment to upholding the rights and obligations contained in the Genocide Convention, including by supporting the crucial role of the Court and emphasising that international cooperation is required to prevent, adjudicate on and punish acts of genocide.¹⁸
30. The Russian Federation argues that a reference in their declarations of interventions to *erga omnes* obligations under the Genocide Convention should somehow demonstrate that the intervening States fail to possess a “genuine intention” and that they seek to act as “*de facto* co-applicants”.¹⁹ This argument is a *non sequitur*. All States Parties to the Genocide Convention have an interest in “the accomplishment of those high purposes which are the *raison d’être* of the [Genocide] Convention”.²⁰ However, a simultaneous exercise of the *erga omnes* obligations by a number of States Parties to ensure proper construction of the Genocide Convention does not make interventions automatically less “genuine”, intervening States “*de facto* co-applicants” or declarations of intervention inadmissible. Slovakia submitted its Declaration of Intervention in its own name, as a Party to the Statute of the Court and a State Party to the Genocide Convention.
31. Similarly, the argument that intervening States willing to assist the Court in grouping their interventions together for future stages of the proceedings, if the Court deems such move to be useful “further confirms that they act at the behest of Ukraine”²¹ must also be dismissed. Slovakia has made such proposal in the interest of an expedient administration of justice and remains fully in the hands of the Court in that respect.
32. As explained above, the Court should not countenance Russian Federation’s unsubstantiated attempts at misrepresenting the applicable legal standard. When determining the admissibility of Slovakia’s intervention under Article 63, the Court’s consideration should be restricted to the simple test set forth in the clear and unequivocal language of Article 63 of the Statute and Article 82 of the Rules of Court. The Court should not employ any additional subjective criteria. In particular, there is no test that would require the Court to enquire whether the Slovakia has a “genuine intention” or “real intention” in intervening in this case. As the Declaration of Intervention meets fully the relevant requirements, it is thus admissible.

¹⁷ *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, paragraphs 18-19 and 21.

¹⁸ See Declaration of Intervention, paragraph 17. See also Genocide Convention, Preamble: „Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required“.

¹⁹ RF’s Written Observations, paragraph 25.

²⁰ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, p. 23.

²¹ RF’s Written Observations, paragraph 27.

III. A POTENTIAL EFFECT OF THE INTERVENTION ON THE PROCEEDINGS CANNOT DEPRIVE SLOVAKIA OF ITS RIGHT OF INTERVENTION

33. The Russian Federation further argues that conferring on Slovakia the status of an intervener “would seriously impair the principle of equality of the parties before the Court and be contrary to the requirements of good administration of justice”.²² It alleges that, accordingly, the Court should find the Declaration of Intervention inadmissible. These arguments remain largely unfounded and should be rejected. To give them any credence would impair Slovakia’s right of intervention under Article 63 of the Statute.
34. Slovakia’s Declaration of Intervention was submitted as a separate and individual submission in its own right, in accordance with the Statute, Rules of Court and the Genocide Convention. An exercise of a right of intervention under Article 63 of the Statute by a number of States Parties to the Genocide Convention cannot limit the right to intervene of any individual State Party and thus render it inadmissible.
35. Moreover, the arguments of the Russian Federation find no support in law. There is no test that would require the Court to enquire about the effect of an intervention on the proceedings. RF’s Written Observations cite a declaration of Judge Owada in *Whaling in the Antarctic*.²³ Although Judge Owada in his declaration expressed certain reservations in respect of the effects of an intervention on the proceedings, he remained isolated with his position in the bench. The Court in *Whaling in the Antarctic* held unanimously that New Zealand’s declaration was admissible.²⁴
36. In doing so, the majority dismissed the very idea that an intervention would affect the equality of parties if it stays within the limits drawn by Article 63 of the Statute. The Court considered:

Whereas the concerns expressed by Japan relate to certain procedural issues regarding the equality of the Parties to the dispute, rather than to the conditions for admissibility of the Declaration of Intervention, as set out in Article 63 of the Statute and Article 82 of the Rules of Court; whereas intervention under Article 63 of the Statute is limited to submitting observations on the construction of the convention in question and does not allow the intervenor, which does not become a party to the proceedings, to deal with any other aspect of the case before the Court; and *whereas such an intervention cannot affect the equality of the Parties to the dispute*; (emphasis added)

Whereas New Zealand has 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; whereas, moreover, the Parties

²² RF’s Written Observations, paragraph 36.

²³ See RF’s Written Observations, paragraphs 38-41.

²⁴ *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. 10, paragraph 23.

raised no objection to the admissibility of the Declaration; and whereas it follows that New Zealand's Declaration of Intervention is admissible,²⁵

37. The Court confirmed that a declaration of intervention under Article 63 of the Statute which is limited to the matters of construction of the convention in question cannot, without further, affect the equality of Parties.
38. The Russian Federation then proceeds to argue that Slovakia and other States that submitted their declarations of intervention in this case constitute "parties in the same interest".²⁶ This argumentation is also misguided. The Court's case law²⁷ as well as the provisions of the Statute and Rules of Court²⁸ that the Russian Federation invokes, clearly pertain to fully-fledged parties to the dispute. As demonstrated above, by intervening in these proceedings, neither does Slovakia seek to become a party to dispute, nor does Article 63 of the Statute afford it such position.
39. This Court in *Whaling in the Antarctic* expressly rejected this argument when it held that:

since the *intervention* of New Zealand does not confer upon it the status of party to the proceedings, Australia and New Zealand cannot be regarded as being "parties in the same interest" within the meaning of Article 31, paragraph 5, of the Statute;²⁹ (emphasis added)
40. The Russian Federation further argues that conferring the status of interveners to Slovakia and other intervening States would create an "extremely anomalous situation" when the Russian Federation would need to respond to multiple submissions.³⁰ It claims that this would result in an "unmanageable procedure"³¹ for both the Russian Federation and the Court that would "unduly overwhelm[] the Russian Federation, undermining its capacity to properly discharge its duties to the Court, and severely impairing the equality of arms between the Parties".³²
41. While the number of interveners may indeed pose certain organisational challenges to the Court, in accordance with Article 30, paragraph 1 of the Statute, the Court enjoys considerable discretion to organise the proceedings, including those that involve multiple participants. The Court's decision to ask interveners to submit their declarations of intervention within a specified deadline in order to streamline the

²⁵ *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, paragraphs 18-19.

²⁶ RF's Written Observations, paragraph 43.

²⁷ See RF's Written Observations, paragraphs 45-46.

²⁸ See RF's Written Observations, paragraphs 43-45.

²⁹ *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, paragraphs 18-19.

³⁰ RF's Written Observations, paragraph 49.

³¹ RF's Written Observations, paragraph 50.

³² RF's Written Observations, paragraph 51.

process is a good example. Also RF's Written Observations responding to multiple declarations of intervention in one submission aim at streamlining the process. Slovakia has every faith that the Court will conduct the proceedings pursuant to the Rules of Court and the Statute to ensure that the procedure is indeed a manageable one and ensure the equality of arms between the Parties.

42. The Russian Federation then appears to put into question the impartiality and neutrality of the judges of the Court. It argues that 7 out of 16 Judges of the Court (including the President of the Court) are nationals of the States that have announced their intention to intervene. It then alleges that, accordingly, "concerns regarding conflicts of interests may ... arise".³³
43. Slovakia is fully confident that in conducting these proceedings and deciding matters before them, the Judges uphold their impartiality and neutrality in accordance with Article 20 of the Statute, irrespective of their nationality. The Judges of the Court also include a national of the Russian Federation. Slovakia trusts that this Judge too maintains his impartiality and neutrality in these proceedings.
44. Finally, the Russian Federation alleges in its Written Observations that admitting multiple interveners would be "running entirely against the Court's previous practice of admitting only one intervener per case, and rarely at that".³⁴ This argument is unfounded. Rather, the Court has never before rejected a declaration of intervention as inadmissible on the ground that it had already allowed an intervention of another State.
45. Such an approach would be arbitrary and would directly interfere with the right of intervention of all States parties to a convention the construction of which is at issue.
46. The applicable rules confirm that all States parties of the convention in question have the right to intervene under Article 63 of the Statute simultaneously, if they so choose. Pursuant to Article 63, paragraph 2 of the Statute, every State notified by the Court of the construction of a convention in question "has the right to intervene in the proceedings". Under the Genocide Convention, all States Parties have a common interest in compliance with the relevant obligations thereunder.
47. In the present case, the fact that multiple States Parties have considered it important to submit their observations on the construction of the Genocide Convention is barely surprising. However, this fact alone cannot deprive Slovakia of its right to intervene pursuant to Article 63 of the Statute. While the number of interveners may indeed pose certain organisational challenges, Slovakia trusts that the Court's conduct of the proceedings will ensure the equality of arms between the Parties.

³³ RF's Written Observations, paragraph 52.

³⁴ RF's Written Observations, paragraph 53.

IV. THE COURT MAY DECIDE ON THE ADMISSIBILITY OF SLOVAKIA'S INTERVENTION BEFORE CONSIDERING PRELIMINARY OBJECTIONS OF THE RUSSIAN FEDERATION

48. The Russian Federation contends that the Court in its long practice “never ... allowed intervention at the preliminary stage of the proceedings in which its jurisdiction or the admissibility of an application was challenged”.³⁵ In support of this sweeping statement the Russian Federation invokes six cases, only one of which is of potential relevance.
49. Based on this limited number of cases, the Russian Federation appears to suggest that the Court has a duty to refrain from deciding on the admissibility of interventions before considering its preliminary objections. These allegations do not find any support in either the applicable rules or the Court’s jurisprudence.
50. Article 63 of the Statute does not make any distinction between separate phases before the Court. Rather, the wording “whenever” indicates that a State is allowed to intervene in all phases of the proceedings. Similarly, Article 82, paragraph 1, second sentence, of the Rules of Court contains only one restriction – that the State submits its intervention “no later than the date fixed for the oral hearing”. There is no mention as to whether the “oral hearing” is one set for jurisdictional or admissibility phase or the merits. Moreover, the option to submit the declaration of intervention “as soon as possible” confirms that intervention is admissible at an early stage of the proceedings.
51. The case law cited by the Russian Federation fails to support its argument that interventions are not admissible at the jurisdictional phase of the proceedings.
52. In the last three cases cited (*Haya de la Torre*, *Whaling in the Antarctic* and *Wimbledon*), as the Russian Federation acknowledges, the Court admitted intervention in the main phase of the proceedings because the jurisdiction was not challenged in a separate stage.³⁶ These cases are thus inapposite.
53. In the first two cases (*Military and Paramilitary Activities* and *Nuclear Tests*), the Court has decided to bifurcate the proceedings in separate phases before examining the admissibility of the subsequent interventions. This was unlike in the present case. In these proceedings, the Court did not issue an order pursuant to Article 79, paragraph 1 of Court to separate the proceedings to jurisdiction and merits after the filing of the preliminary objections of the Russian Federation.³⁷ Therefore, *Military and Paramilitary Activities* and *Nuclear Tests* are not instructive on this point. In those cases, there were separate jurisdictional phases, in the present case there is none.

³⁵ RF’s Written Observations, paragraph 27.

³⁶ See RF’s Written Observations, paragraph 55.

³⁷ See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Provisional Measures, Order of 10 May 1984, I.C.J. Reports 1984, p. 169, at p. 187, Point D (separating jurisdiction and admissibility from the merits phase); *Nuclear Tests (New Zealand v. France)*, Interim Protection, Order of 22 June 1973, I.C.J. Reports 1973, p. 135, at p. 142.

54. Moreover, in the *Nuclear Tests* and *Nuclear Tests (Request for Examination)*, as the Russian Federation itself acknowledges, the States submitted their interventions pursuant to Article 62 of the Statute, not Article 63. The fact that Article 63, unlike Article 62, confers the “right to intervene”, renders these situations incomparable. What is more, neither in the *Nuclear Tests* nor in the *Nuclear Tests (Request for Examination)* cases were the applications of intervention rejected due to their purported inadmissibility at the jurisdictional stage.
55. In *Nuclear Tests* case, the Court ordered a jurisdictional phase in June 1973. It then declared Fiji’s intervention of May 1973 admissible in July 1973. However, it deferred the consideration thereof to the merits i.e. “until it has pronounced upon the questions to which the pleadings mentioned in its Order ... are to be addressed”.³⁸ Therefore, while the Court was able to decide about the admissibility of the intervention during the ongoing jurisdictional phase, it decided to defer it to the merits phase, as the intervention only dealt with issues relating to the merits.³⁹
56. In *Nuclear Tests (Request for Examination)*, the Court, instead of separating the proceedings, dismissed New Zealand’s application together with four declarations of intervention submitted by Samoa, Solomon Islands, the Marshall Islands and the Federated States of Micronesia as it found that the conditions for the request for examination had not been met.⁴⁰ The Court was not concerned whether the declarations of intervention had been filed at the jurisdictional phase. The Court considered that since the main proceedings were removed from the Court’s docket, it was no longer necessary to address the interventions.
57. The Russian Federation’s interpretation of the Court’s decision in *Military and Paramilitary Activities* is also misleading. Similar to *Nuclear Tests*, the Court considered El Salvador’s declaration of intervention during a jurisdictional phase as inadmissible because it did not address provisions pertaining to the jurisdiction of the Court, but only to the merits.⁴¹ In that case, the Court’s jurisdiction depended on an understanding of Article 36, paragraphs 2 and 5 of the Statute. El Salvador’s declaration of intervention addressed mainly the issues of the merits and did not contain any statement on how it would construe the jurisdictional provisions.

³⁸ *Nuclear Tests (New Zealand v. France)*, Application to Intervene, Order of 12 July 1973, I.C.J. Reports 1973, p. 324, at p. 325.

³⁹ See J. Sztucki, “Intervention under Article 63 of the Statute in the Phase of Preliminary Proceedings: The ‘Salvadoran Incident’” (1985) 79 AJIL 1005, 1012.

⁴⁰ See *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*, Order of 22 September 1995, I.C.J. Reports 1995, p. 288, at p. 306, paragraphs 65-67.

⁴¹ See *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, paragraphs 1-2.

58. Accordingly, the Court dismissed the application “inasmuch as it relates to the current phase of the proceedings”.⁴² As Judge Singh expressed in his separate opinion, the declaration was “*in effect* ... directed to the merits of the case”.⁴³ Judges Ruda, Mosler, Ago, Jennings and De Lacharrière confirmed 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”.⁴⁴ Also Judge Oda explained that El Salvador’s declaration was mainly directed to the merits of the case, was vague and did not meet the requirements of Article 82 of the Rules of Court.⁴⁵ Finally, Judge Schwebel, while stressing that nothing in Article 63 prevents an intervention at the jurisdictional stage,⁴⁶ agreed with the majority that El Salvador’s declaration “did not adequately meet the specifications set forth in Article 82, paragraph 2, of the Rules of Court”.⁴⁷
59. Therefore, the Court rejected El Salvador’s declaration of intervention as inadmissible during the jurisdictional phase because it did not contain any construction of the jurisdictional base of the case. The Court did not find that no intervention under Article 63 of the Statute could ever be admissible during a jurisdictional phase, as the Russian Federation seems to argue.
60. The very essence of Slovakia’s Declaration of Intervention is to address the construction of the compromissory clause in Article IX of the Genocide Convention. This provision is key to the present stage of the proceedings where the Court decides on the matter of jurisdiction of the Court. In fact, if the Court deferred its assessment of the admissibility of Slovakia’s intervention after its decision on preliminary objections, it would render Slovakia’s intervention mute, thus interfering with its right of intervention stemming from Article 63.
61. Furthermore, the argument of the Russian Federation that the Court must first establish the existence of a dispute for a State to enjoy the right of intervention⁴⁸ is untenable.

⁴² *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Intervention of El Salvador, Order of 4 October 1984, I.C.J. Reports 1984, p. 215, at p. 216.

⁴³ *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. 215, at p. 218.

⁴⁴ *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 Robert Jennings and de Lacharrière), I.C.J. Reports 1984, p. 215, at p. 219, paragraph 3.

⁴⁵ *See 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), I.C.J. Reports 1984, p. 215, at p. 220, paragraph 2.

⁴⁶ *See 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), I.C.J. Reports 1984, p. 215, at p. 223, pp. 235-236.

⁴⁷ *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, at p. 224.

⁴⁸ RF’s Written Observations, Section II.C(ii).

First, the role of the Court in respect of Article 63 of the Statute is limited to a determination whether the intervention meets the conditions set forth in Article 63 of the Statute and Article 82, paragraph 2 of the Rules of Court. Second, for a dispute to exist, no determination by the Court is necessary. In fact, as Slovakia established in its Declaration of Intervention, the threshold is set much lower.⁴⁹ In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other”.⁵⁰ A dispute between States exists “where they hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations”.⁵¹

62. The Russian Federation relies on *Haya de la Torre* to support its argument. However, the Court in that case did not first determine the subject matter of the dispute. The Court merely ascertained whether the object of the intervention of Cuba was in fact the interpretation of the Havana Convention in respect of the question whether Colombia is under an obligation to surrender the refugee to the Peruvian authorities.⁵²
63. In conclusion, as demonstrated above, nothing in Article 63 of the Statute or the Court’s jurisprudence supports the argument of the Russian Federation that the Court should refrain from deciding on the admissibility of an intervention in a jurisdictional phase of proceedings before deciding on preliminary objections of the Russian Federation.

V. SLOVAKIA IS ENTITLED TO INTERVENE ON THE ISSUE OF THE COURT’S JURISDICTION

64. The Russian Federation further argues that Declaration of Intervention addresses matters that “presuppose that the Court has jurisdiction and/or that Ukraine’s application is admissible”.⁵³ It claims that the intervening States “either claim to address issues of jurisdiction only or allege that they seek to intervene to interpret provisions of the Convention that in their view relate not only to merits, but also to the Court’s jurisdiction”.⁵⁴ The Russian Federation thus effectively contends that a State may not

⁴⁹ See Declaration of Intervention, paragraphs 32 *et seq.*

⁵⁰ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment of 21 December 1962, I.C.J. Reports 1962, p. 328. See also *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment of 5 October 2016, I.C.J. Reports 2016, p. 850, paragraph 41.

⁵¹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, p. 406, at p. 414, paragraph 18. See also *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment of 17 March 2016, I.C.J. Reports 2016, p. 26, paragraph 50 and *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)*, Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017, p. 115, paragraph 22, both citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, First Phase, Advisory Opinion of 30 March 1950, I.C.J. Reports 1950, p. 74.

⁵² *Haya de la Torres Case*, Judgment of June 13th 1951, I.C.J. Reports 1951, p. 71, at p. 77.

⁵³ See RF’s Written Observations, Section II. D.

⁵⁴ See RF’s Written Observations, paragraph 74.

intervene on questions of jurisdiction, as taking a position on that point would “presuppose” that the Court has jurisdiction.

65. This runs counter to Article 63 of the Statute and the Court’s practice. Pursuant to Article 63, paragraph 1 of the Statute, a State party may intervene on the “construction of a convention”. The plain wording of this provision refers to the convention in its entirety, including its compromissory clause. Accordingly, nothing in the text of Article 63 suggests that a State may not offer its construction of Article IX of the Genocide Convention to the Court.
66. That is further supported by the object and purpose of Article 63 of the Statute. States not only have a legitimate interest to share with the Court their construction of the substantive provisions of the convention. It is just as important to convey their construction of the jurisdictional provisions, especially as this may affect their own standing before the Court in the future. Accordingly, an intervention under Article 63 of the Statute may concern both substantive and jurisdictional provisions of a convention.
67. This view is further supported by the Court’s jurisprudence. The Court has yet to reject as inadmissible an intervention merely because it was directed at interpreting a compromissory clause. In *Military and Paramilitary Activities*, which the Russian Federation invokes, the Court did not take an issue with the fact that the intervention was submitted at the jurisdictional phase. Rather, the Court considered El Salvador’s declaration of intervention during the jurisdictional phase as inadmissible because it did not address provisions pertaining to the jurisdiction of the Court, but only to the merits.⁵⁵ Judge Schwebel also considered that the Court and the Registrar have acted consistently “with the conclusion that intervention in the jurisdictional phase of the proceedings is within the scope of the right with which the States are endowed by the terms of Article 63”.⁵⁶
68. In any event, Slovakia did not presuppose the existence of a dispute prior to the determination by the Court. The Russian Federation refers to the following passages from Slovakia’s Written Observations to allege that they “address matters, which presuppose that the Court has jurisdiction”:

[A]ssuming that a dispute between the States Parties exists, the dispute must, at the same time, ‘relat[e] to the interpretation, application or fulfilment of the Convention’ in order for the Court to be able to exercise its jurisdiction under Article IX of the Genocide Convention.

...

Article IX thus also covers disputes that relate to situations in which one State Party of the Genocide Convention alleges that another State Party is

⁵⁵ *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, paragraphs 1-2.

⁵⁶ *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), I.C.J. Reports 1984, p. 223, at pp. 235-236.

committing or has committed acts of genocide in its territory and where, relying on such accusations, the former State Party then uses military force against the latter.⁵⁷

69. This argument is disingenuous. When read in full and in their proper context, it becomes abundantly clear that these statements were made neither as self-standing arguments nor do they presuppose the existence of a dispute in these proceedings. Rather, these were general statements made in the context of Slovakia's construction of the relevant provision of the Genocide Convention. The term "States Parties" clearly refers to States Parties to the Genocide Convention in general terms. It does not make any assessment of the existence of dispute or the Court's jurisdiction in this case.
70. Moreover, Slovakia's decision to intervene on the issue of the Court's jurisdiction at this stage of the proceedings is entirely proper, given the circumstances. Firstly, the Court needs to settle its own jurisdiction as a preliminary issue before it proceeds to consider the case on the merits. Second, the lack of formal participation of the Russian Federation in the present proceedings from the outset, and, later, the filing of its preliminary objections confirmed, that the Court will first need to make a determination of its jurisdiction. Accordingly, Slovakia as a State Party to the Genocide Convention exercised its right to intervene on the construction of the compromissory clause at the present stage.
71. For reasons stated above, an intervention under Article 63 of the Statute may concern both substantive and jurisdictional provisions of a convention. It follows that Slovakia's intervention addressing the issue of the Court's jurisdiction is admissible.

VI. SLOVAKIA IS ENTITLED TO INTERVENE ON THE CONSTRUCTION OF ARTICLE IX AS SUCH

72. The Russian Federation further complains that the Declaration of Intervention contains a construction of Article IX of the Genocide Convention on the jurisdiction of the Court. It alleges that Slovakia "cannot intervene on Article IX of the Genocide Convention *per se*".⁵⁸ This argument must fail as a matter of law.
73. As established in Section V above, it is entirely proper that the Declaration of Intervention focuses on the issue of the Court's jurisdiction and, more precisely, its construction of the compromissory clause in Article IX of the Genocide Convention.
74. Pursuant to plain wording of Article 63, paragraph 1 of the Statute, a Party may intervene on the entire convention, including its compromissory clause. It is also apparent that the compromissory provision of Article IX is in dispute in the present case.

⁵⁷ RF's Written Observations, paragraph 83(h). *See also* Declaration of Intervention, paragraphs 36 and 45.

⁵⁸ *See* RF's Written Observations, Section II.E.

75. In its Application, Ukraine seeks to found the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention.⁵⁹ While the Russian Federation failed to participate formally in the initial phase of these proceedings, in its “Document” of 7 March 2022, the Russian Federation alleges that Article IX of the Genocide Convention does not establish the Court’s jurisdiction in the present case.⁶⁰ The scope of Article IX is thus at issue between the Parties. This is all the more relevant as the Russian Federation subsequently filed preliminary objections to the jurisdiction of the Court.
76. The Russian Federation further argues that “under the guise of the construction of Article IX” Slovakia advocates for the existence of a dispute in this case or “seek to represent the concept of claim for a ‘negative declaration’ as part of such a dispute” and that these issues are a matter of application rather than interpretation of a treaty.⁶¹ This thinly veiled attempt at misinterpreting the Declaration of Intervention must be rejected. These general statements were not made as self-standing arguments. Rather, they were made in the context of Slovakia’s construction of the Genocide Convention. Slovakia has not made any statements that could be regarded as an attempt to apply the Convention to certain facts that occurred between Ukraine and the Russian Federation.
77. It follows that Slovakia properly exercised its right to intervene under Article 63 of the Statute. The fact that the Declaration of Intervention addresses the compromissory clause under Article IX does not render the intervention inadmissible.

VII. THE DECLARATION OF INTERVENTION DOES NOT ADDRESS ISSUES UNRELATED TO THE CONSTRUCTION OF THE CONVENTION

78. The final argument of the Russian Federation is that Slovakia in its Declaration of Intervention seeks to address issues unrelated to the “construction” of the Genocide Convention and that the Declaration should thus be considered inadmissible.⁶²
79. Specifically, the Russian Federation alleges that:
- Slovakia intends to address issues such as the Russian Federation’s breach of the provisional measures order, the existence of dispute between the Parties, good faith in the application of the Convention, abuse of rights, and the use of force.⁶³
80. Again, its argument is based on a misstatement of Slovakia’s submissions. When read in context, it is clear that none of those aspects were addressed as a self-standing

⁵⁹ See *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Application instituting proceedings, 26 February 2022, paragraphs 4-12.

⁶⁰ Document (with annexes) from the Russian Federation setting out its position regarding the alleged “lack of jurisdiction” of the Court in this case, 7 March 2022, paragraph 24.

⁶¹ RF’s Written Observations, paragraph 89.

⁶² See RF’s Written Observations, Section II.F.

⁶³ RF’s Written Observations, paragraph 105(h).

argument. Slovakia does not seek to argue issues of fact as a party to the proceedings would do. Its Declaration of Intervention is limited to the central issue of construction of Article IX of the Genocide Convention.

81. In accordance with applicable rules of treaty interpretation, Slovakia at times refers to legal issues that are pertinent to the case but refrains from addressing these as self-standing arguments. Instead, the notions of good faith, the existence of a dispute, abuse of rights and others are merely introduced as rules and principles circumstantial to the principal issue of the construction of Article IX of the Genocide Convention. Accordingly, Slovakia's Written Observations remain well within the bounds of Article 63 of the Statute.

VIII. CONCLUSION

82. In its Written Observations, Slovakia has established that its Declaration of Intervention fully complies with the requirements under Article 63 of the Statute and Article 82 of the Rules of Court.
83. For the above reasons, Slovakia respectfully requests that the objections to the admissibility of its intervention presented in RF's Written Observations are rejected.
84. Accordingly, Slovakia respectfully requests that the Court declare Slovakia's intervention admissible and allow Slovakia to present its written observations in good time in order to exercise its right to intervene as a State Party to the Genocide Convention.

Respectfully,



Metod Špaček
Agent of the Slovak Republic