

INTERNATIONAL COURT OF JUSTICE

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

(UKRAINE v. RUSSIAN FEDERATION)

**OBSERVATIONS OF THE REPUBLIC OF SLOVENIA ON THE
ADMISSIBILITY OF ITS DECLARATION OF INTERVENTION**

13 February 2023

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**OBSERVATIONS OF THE REPUBLIC OF SLOVENIA ON THE
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Introduction

1. On 24 November 2022, the Republic of Slovenia availed itself of its right to intervene in the case concerning *Allegation of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* and submitted a Declaration of Intervention in accordance with Article 63 of the Statute of the Court and Article 82 of the Rules of Court.

2. In accordance with Article 83, paragraph 1, of the Rules of Court, Ukraine filed its Written Observations on Slovenia's Declaration of Intervention on 30 January 2023 concluding that the Declaration of Intervention is admissible. On the same day, the Russian Federation submitted its Written Observations in respect of declarations of intervention made by several States¹, including the Republic of Slovenia, raising several objections. These Written Observations were transmitted by the Registrar to the Republic of Slovenia by letter no. 158433 dated 30 January 2023.

3. By letter no. 158471 dated 31 January 2023, the Registrar informed the Republic of Slovenia that, pursuant to Article 84, paragraph 2, of the Rules of Court, the Court will hear the Republic of Slovenia and the Parties and that it will do so by means of a written procedure. Accordingly, the Court has fixed deadlines for the observations in writing on the admissibility by the Republic of Slovenia, and by the Parties, respectively.

4. The present Observations are submitted accordingly within the time-limit fixed by the Court. The Republic of Slovenia will exclusively address the question of the admissibility of its Declaration of Intervention. It is not object of the present Observations to comment on the construction and interpretation of the relevant

¹ The Written Observation of the Russian Federation relate to the declarations of intervention made by the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Cyprus, the Principality of Liechtenstein, the Republic of Malta, Canada and the Kingdom of the Netherlands, the Slovak Republic, and the Republic of Slovenia. For the avoidance of doubt, in the present Observations, the Republic of Slovenia will only comment and address the question of the admissibility of its own Declaration of Intervention. This does not imply, however, that the Republic of Slovenia considers the arguments and allegations made by the Russian Federation in respect of the admissibility of the declarations of intervention made by other parties to the Genocide Convention as well-founded.

provisions of the Genocide Convention for which the Republic of Slovenia contends.

5. The Declaration of Intervention of the Republic of Slovenia is admissible, because it satisfies the conditions of Article 63, paragraph 2, of the Statute and respects the formal requirements of Article 82 of the Rules of Court (I). Slovenia's Declaration of Intervention is not premature (II) and does not jeopardize the principle of equality of the Parties (III). Furthermore, the intervention does not constitute an abuse of process in light of the right of the Republic of Slovenia to intervene in the case at hand (IV).

I. Slovenia's Declaration of Intervention fulfils the conditions set out in the Statute and in the Rules of Court

6. It is well established that intervention under Article 63 of the Statute is a right². The Court has also confirmed that the exercise of this right, and the admissibility of a declaration of intervention, is only subject to the conditions set out in Article 63 of the Statute³, on the one hand, and to the formal requirements and conditions set forth in Article 82 of the Rules of Court⁴, on the other hand.

² *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 5, para. 7; Territorial and Maritime Dispute (Nicaragua v. Colombia), Application by Honduras for Permission to Intervene, Judgment, I.C.J. Reports 2011 (II), p. 434, para. 36; Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application for Permission to Intervene, Judgment, I.C.J. Reports 1981, p. 15, para. 26; Haya de la Torre (Colombia v. Peru), Judgment, I.C.J. Reports 1951, p. 76; S.S. "Wimbledon", Judgment, 1923, P.C.I.J., Series A, No. 1, p. 12. See also Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Declaration of Intervention, Separate Opinion of Judges Ruda, Mosler, Ago, Sir Robert Jennings and de Lacharrière, I.C.J. Reports 1984, p. 219, para. 1. See, in addition, Article 82, paragraph 1, of the Rules of Court: "A State which desires to avail itself of the right of intervention conferred upon it by Article 63 of the Statute ..." (emphasis added).*

³ *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 6, para. 8; Haya de la Torre (Colombia v. Peru), Judgment, I.C.J. Reports 1951, pp. 76-77. See also 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.*

⁴ *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 6, para. 8.*

A. THE DECLARATION OF INTERVENTION SATISFIES THE SUBSTANTIVE
CONDITIONS OF ARTICLE 63 OF THE STATUTE

7. Article 63 of the Statute establishes two conditions for interventions: *first*, the State seeking to intervene is a party to the convention the construction (*interprétation*) of which is in question; and, *second*, that the intervention addresses the interpretation of the convention in question⁵. The Declaration of Intervention of the Republic of Slovenia satisfies both conditions.

8. *First*, it is not contested that Slovenia is a party to the Genocide Convention⁶. In accordance with Article 82, paragraph 2 (*a*), of the Rules of Court, Slovenia has submitted the “particulars of the basis on which [it] considers itself a party to the convention”⁷. It has annexed to the Declaration of Intervention its notification of succession to several multilateral conventions, including the Genocide Convention, and the confirmation of deposit by the United Nations Secretary-General⁸.

9. *Second*, the object of the Declaration of Intervention is plainly limited to the construction of the Genocide Convention which is in question in the case⁹. As set out clearly in the Declaration of Intervention, the intention of the Republic of Slovenia is to “present its interpretation of the relevant Articles of the Genocide Convention”¹⁰. The Republic of Slovenia further explains that it “focuses on the construction of Article IX of the Convention on the jurisdiction of the Court”¹¹. Accordingly, and pursuant to Article 82, paragraph 2 (*b*) and (*c*) of the Rules of Court, the Republic of Slovenia has not only identified the particular provisions of the convention the construction of which it considers to be in question, but has also included in its Declaration of Intervention a statement of its interpretation of Article IX of the Genocide Convention in line with customary rules of interpretation as reflected in the Vienna Convention on the Law of Treaties¹². It has further reserved its right to amend or supplements its Declaration of Intervention and to file a further declaration if this becomes necessary and appropriate¹³.

⁵ *Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 77.

⁶ Written Observations of Ukraine, para. 4.

⁷ Declaration of Intervention, para. 16.

⁸ *Ibid.*, Annex.

⁹ See also Written Observations of Ukraine, para. 4.

¹⁰ Declaration of Intervention, para. 12.

¹¹ *Ibid.*, para. 13.

¹² *Ibid.*, paras. 17-30.

¹³ *Ibid.*, para. 49.

10. The Republic of Slovenia confirmed in its Declaration of Intervention that it is mindful of the inherent limitations in an intervention under Article 63 of the Statute. It reiterates that it does not have any intention to seek to become a party to the case or to deal with any other aspect of the case beyond the scope of the intervention¹⁴. The Declaration of Intervention attests that the Republic of Slovenia is not seeking to address issues unrelated to the interpretation of the Genocide Convention. Contrary to the assertions made by the Russian Federation¹⁵, the Republic of Slovenia has opined only on the question of the scope of jurisdiction conferred upon the Court under the Genocide Convention's compromissory clause. This is plainly a question of construction and interpretation, and not one of application of the provisions of the Convention in and to the present case.

11. Moreover, there cannot be any doubt about the fact that the construction and interpretation of Genocide Convention, and in particular its Article IX, "is in question" in the sense of Article 63, paragraph 1, of the Statute.

12. It bears repeating that neither the text of Article 63 of the Statute, nor the text of Article 82 of the Rules of Court limit the right to intervene to the question of interpretation of substantive provisions of a convention only¹⁶. Contending otherwise, as does the Russian Federation¹⁷, constrains significantly the legitimate interest of third States to address the Court on issues of interpretation in respect of conventions to which they are parties. There is no reason for States not to be able to comment on the interpretation of compromissory clauses and their scope if such clauses are in question in a case before the Court. Indeed, the Court does not make any difference, for the purpose of the application of Article 63 of the Statute, between conventions and provisions containing substantive obligations, and conventions and provisions concerning procedural and dispute settlement issues¹⁸.

¹⁴ Declaration of Intervention, para. 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. 9, para. 18.*

¹⁵ Written Observations of the Russian Federation, paras. 103-113, and, in particular, para. 104 (i).

¹⁶ Declaration of Intervention, para. 12.

¹⁷ Written Observations of the Russian Federation, paras. 91-102.

¹⁸ *See, e.g., the notifications under Article 63 of the Statute sent by the Registrar to the State parties to the General Act for the Pacific Settlement of International Disputes, 1928, in relation to the Nuclear Tests cases (I.C.J. Pleadings, Nuclear Tests, vol. II, p. 384 (No. 99)). See also the notifications under Article 63 of the Statute sent by the Registrar to the State parties of the Pact of Bogotá in the cases concerning Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia) (Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 9, para. 6), Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*

13. Article IX of the Genocide Convention and its interpretation are in question in the present case. Indeed, the Russian Federation admits that “in this case, serious questions arise regarding the Court’s jurisdiction *ratione materiae* under the Genocide Convention”¹⁹, and refers to the “central question of the scope of jurisdiction *ratione materiae* in this case”²⁰. Yet, the Court’s jurisdiction is defined and delimited by the Genocide Convention’s compromissory clause, i.e., Article IX. It entrusts the Court with jurisdiction in respect of “[d]isputes between the Contracting Parties *relating to the interpretation, application or fulfilment of the present Convention*, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III” (emphasis added). In order to determine the scope of jurisdiction of the Court it is therefore necessary and indispensable to interpret Article IX in good faith in accordance with the ordinary meaning to be given to its terms in their context, including the text of the Genocide Convention as a whole and relevant rules of international law applicable in the relations between the parties to the Convention, and in the light of the object and purpose of the Convention. As the Permanent Court of International Justice put it:

“In the first place, the meaning and scope of paragraph 1 of Article 23 [i.e., the compromissory clause] must be considered, for it is upon this clause – and upon this clause only – that the Court’s jurisdiction in the present case rests.”²¹

(*Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 107, para. 6), *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile) (Preliminary Objection, Judgment, I.C.J. Reports 2015*, p. 597, para. 7), *Maritime Dispute (Peru v. Chile) (Judgment, I.C.J. Reports 2014*, p. 10, para. 3), *Territorial and Maritime Dispute (Nicaragua v. Colombia) (Application for Permission to Intervene, Judgment, I.C.J. Reports 2011*, p. 353, para. 3), and *Territorial and Maritime Dispute (Nicaragua v. Colombia) (Application for Permission to Intervene, Judgment, I.C.J. Reports 2011*, p. 425, para. 3). See also the notifications under Article 63 of the Statute sent by the Registrar of the Permanent Court of International Justice specifically in respect of the jurisdictional provision in question in *Appeals from certain judgments of the Hungaro-Czechoslovak mixed arbitral tribunal (P.C.I.J., Series C, No. 68*, pp. 264-265 (No. 47) and p. 272 (No. 59)).

¹⁹ Written Observations of the Russian Federation, para. 110.

²⁰ *Ibid.*, para. 111.

²¹ *Factory at Chorzów (Claim for Indemnity), Jurisdiction, Judgment, 1927, P.C.I.J., Series A, No. 9*, p. 20. Article 23, paragraph 1, of the Germano-Polish Convention concerning Upper Silesia (Geneva, 15 May 1922) provided: “Si des divergences d’opinion résultant de l’interprétation et de l’application des articles 6 à 22 s’élevaient entre le Gouvernement allemand et le Gouvernement polonais, elles seraient soumises à la décision de la Cour permanente de Justice internationale.” See also *Appeal from a Judgment of the Hungaro-Czechoslovak Mixed Arbitral Tribunal (The Peter Pázmány University), Judgment, 1933, P.C.I.J., Series A/B, No. 61*, p. 220 (“The Court will examine in the first place whether it has jurisdiction to entertain the present suit. ... The answer to

14. The Parties in the present case have also confirmed that the interpretation, the construction and the meaning of Article IX of the Genocide Convention are in question in the proceedings. Ukraine has referred to the question of the meaning of Article IX in its Application²². The Russian Federation has also raised the question whether a dispute within the meaning of Article IX exists²³. This question was already discussed partially during the proceedings concerning Ukraine’s request for the indication of provisional measures²⁴. In its Order of 16 March 2022 indicating provisional measures, the Court confirmed that it “must therefore first determine whether those provisions [i.e., Article 36, paragraph 2, of the Statute and Article IX of the Genocide Convention] *prima facie* confer upon it jurisdiction to rule on the merits of the case”²⁵.

15. In addition, the notification sent by the Registrar of the Court to the State parties to the Genocide Convention explains that it appears on the basis of the Application, that the construction of the Genocide Convention, including its compromissory clause, “will be in question in the case”²⁶.

16. For all these reasons, the Declaration of Intervention submitted by the Republic of Slovenia satisfies the conditions set forth in Article 63 of the Statute.

B. THE DECLARATION OF INTERVENTION SATISFIES THE FORMAL CONDITIONS OF ARTICLE 82 OF THE RULES OF COURT

17. It is not contested that the Declaration of Intervention filed by the Republic of Slovenia respects the formal requirements and conditions set forth in Article 82 of the Rules of Court.

18. In accordance with the provisions of Article 82, paragraph 2, of the Rules of Court, the Declaration of Intervention:

the question under consideration depends upon the interpretation of Article X of Agreement II of Paris in relation to the Statute of the Court.”).

²² Application, para. 7. *See also* Declaration of Intervention, para. 5.

²³ Document from the Russian Federation setting out its position regarding the alleged “lack of jurisdiction” of the Court in the case, paras. 7-8. *See also, ibid.*, para. 21.

²⁴ Request for the indication of provisional measures, paras. 6 ff.; CR 2022/5, 7 March 2022, pp. 19-20, para. 12, p. 27, para. 40, and pp. 29–30, paras. 50 and 52 (Thouvenin).

²⁵ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures*, Order of 16 March 2022, para. 25. *See also ibid.*, para. 45.

²⁶ Letter of the Registrar to the States parties to the Genocide Convention, 30 March 2022, p. 1 (Declaration of Intervention, Annex). *See also* Declaration of Intervention, para. 9.

- (a) states the name of the Agent and the Co-agent of the Republic of Slovenia ²⁷;
- (b) specifies the case and the convention, i.e., the Genocide Convention, to which it relates ²⁸;
- (c) contains particulars of the basis on which the Republic of Slovenia considers itself a party to the Genocide Convention ²⁹;
- (d) identifies the particular provisions of the Genocide Convention, i.e., Article IX, the construction of which the Republic of Slovenia considers to be in question ³⁰;
- (e) sets out the construction of this provisions for which the Republic of Slovenia contends ³¹; and
- (f) encloses a list of the documents in support which are attached to the Declaration of Intervention ³².

19. In accordance with Article 82, paragraph 1, of the Rules, the Declaration of Intervention was filed “as soon as possible and no later than the date fixed for the opening of the oral proceedings”. As far as the Republic of Slovenia understands, no date for the opening of the oral proceedings has been fixed by the Court. In any event, the Declaration of Intervention was filed well before the deadline determined by the Court “in the interest of the sound administration of justice and procedural efficiency” ³³. The Declaration of Intervention has been signed in accordance with the provisions of Article 38, paragraph 3, of the Rules of Court.

*

20. For these reasons, the Declaration of Intervention submitted by the Republic of Slovenia satisfies the conditions and requirements of Article 63 of the Statute and Article 82 of the Rules of Court. It is therefore admissible, and the Republic of Slovenia is entitled to fully enjoy its right to intervene.

²⁷ Declaration of Intervention, para. 50.

²⁸ *Ibid.*, paras. 1 and 12.

²⁹ *Ibid.*, para. 16. *See also above*, para. 8.

³⁰ Declaration of Intervention, para. 13.

³¹ *Ibid.*, paras. 17-30. *See also above*, para. 9.

³² Declaration of Intervention, para. 47 and Annexes.

³³ Letter of the Registrar to the Ambassador of the Republic of Slovenia to the Kingdom of the Netherlands, No. 157450, 31 October 2022.

II. Slovenia's Declaration of Intervention is not untimely or premature

21. It has been alleged that the Court could not decide upon the admissibility of the Declaration of Intervention until after having dealt with the preliminary objections raised by the Russian Federation and until after having established the existence of a dispute between the Parties, its subject-matter and the provisions of the Convention that are in question³⁴.

22. These assertions are unfounded. Neither the Statute, nor the Rules of Court limit the right to intervene under Article 63 of the Statute to any particular stage of the proceedings. This right is also not subject to a prior determination by the Court concerning the existence of a dispute, its scope and the provisions relevant for its determination.

23. Indeed, such a condition would make no sense at all, render the right to intervene without any object, and deprive Article 63 of the Statute of any *effet utile*. In particular, in circumstances in which the determination of a case is not divided into separate phases, either by way of preliminary objections filed by one of the parties, or by a decision of the Court, the Court would only be in a position to establish the existence of a dispute, its scope and the relevant provisions of the legal instrument in question after the end of the oral proceedings in its final judgment³⁵. Of course, no declaration of intervention could be submitted, on the basis of such a determination and in full knowledge of the Court's decision on these issues, once the case is decided and terminated. In other terms, the right to intervene and the possibility to protect the legitimate interest in the construction of a convention to which a third State is also a party would depend exclusively on the procedural choices made by the parties and the Court.

24. The same holds true in respect of preliminary objections proceedings concerning the jurisdiction of the Court. If, as in the present circumstances, a third State wishes to exercise its right to intervene in respect of the construction of jurisdiction provisions of a convention to which it is a party, it simply does not make sense to postpone any decision on the admissibility of its declaration of intervention until after the decision on the preliminary objection. In a later stage on the merits, the question of construction and interpretation of the jurisdictional provision might not be in question anymore. Again, the right to intervene and its efficiency would be subject to the procedural choices and decisions of the parties only. Yet, the mere fact that the Russian Federation decided to file preliminary

³⁴ Written Observations of the Russian Federation, para. 54-72. *See also, ibid.*, para. 90.

³⁵ The Russian Federation itself seems to accept this point. *See ibid.*, para. 90.

objections in the present case is not a cogent reason to delay any decision on the Declaration of Intervention which, precisely, raises and addresses issues of construction of Article IX of the Genocide Convention and the scope of the Court's jurisdiction *ratione materiae* under that Convention. If the case were to proceed to the merits, the Court would have interpreted the provision, and there would be simply no reason anymore to exercise the right to intervene at such a stage in this regard.

25. For these reasons alone, the assertions submitted by the Russian Federation are wrong. In fact, nothing prevents the Court from deciding upon the admissibility of the Declaration of Intervention before, and for the purpose of the preliminary objection proceedings. Indeed:

“several arguments plead in favour of the possibility for a third State to make a request to intervene at the phase of jurisdiction and admissibility, at least under Article 63. The wording of Article 63 is unqualified in asserting ‘[w]henever the construction of a convention ... is in question’ which implies that it is applicable in all phases of the case. Article 63 does not differentiate between types of treaty provisions, or types of treaty. The purpose of Article 63 is to allow parties to a multilateral convention to put their construction of the convention to the Court in proceedings to which they are not parties.”³⁶

26. The Court's case law does not suggest otherwise. It is simply wrong to rely on the *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* case to suggest that the Court does not admit interventions under Article 63 in preliminary objection or jurisdictional phases. The Court declined to admit El Salvador's declaration of intervention not because it was submitted at the jurisdictional phase of the proceedings, but simply because the intervention did not relate to issues of jurisdiction that were in question at this particular phase of the proceedings³⁷. The *Request for Examination* case is equally inconclusive and inapposite; indeed, there simply was no case in the sense of the

³⁶ A. Miron and, Ch. Chinkin, “Article 63”, in A. Zimmermann *et al.* (eds.), *The Statute of the International Court of Justice: a Commentary*, Oxford University Press, 2019, 3rd ed., p. 1763, MN 46 (footnotes omitted).

³⁷ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Declaration of Intervention, Order of 4 October 1984, *I.C.J. Reports 1984*, p. 216, para. 2. See also *ibid.*, Separate Opinion of Judges Ruda, Mosler, Ago, Sir Robert Jennings and de Lacharrière, *I.C.J. Reports 1984*, p. 219, para. 3; Separate Opinion of Judge Oda, *I.C.J. Reports 1984*, p. 220, para. 2.

Statute of the Court because the request did not fall within paragraph 63 of the 1974 judgment³⁸.

27. The practice of the Court does indeed confirm that a third State can exercise its right to intervene under Article 63 of the Statute at any phase of proceedings and before the Court has rendered a decision on the existence of the dispute, its scope, and the relevance of the provisions of a convention in question. The notifications provided for in Article 63, paragraph 1, of the Statute are sent by the Registrar, on the instruction of the Court, independently of preliminary objections proceedings and before any decision on the existence of the dispute, its scope, and the relevance of provision of the convention in question³⁹, and indeed, once preliminary objections have already been filed⁴⁰. The practice of the Permanent Court of International Justice was similar. Indeed, in the *Appeals from certain judgments of the Hungaro-Czechoslovak mixed arbitral tribunal*, the Registrar, relying on Article 63 of the Statute of the Permanent Court and Article 60 of the Rules of Court, specifically informed the parties to the 1930 Agreement (No. II) for the settlement of questions relating to the agrarian reforms and mixed arbitral tribunals that preliminary objections had been filed and these preliminary objections concerned Article X of said Agreement:

³⁸ *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case*, I.C.J. Reports 1995, p. 306, paras. 66 and 67.

³⁹ For some recent examples, see *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 838, para. 3; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015, p. 673, para. 5; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 15, para. 4; *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment, I.C.J. Reports 2014, p. 234, para. 3; *Maritime Dispute (Peru v. Chile)*, Judgment, I.C.J. Reports 2014, p. 10, para. 3; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 2011, p. 353, para. 3; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 2011, p. 425, para. 3; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 76, para. 10.

⁴⁰ For some recent examples, see *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Preliminary Objections, Judgment, I.C.J. Reports 2017, p. 9, para. 6; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 9, para. 6; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 107, para. 6; *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Preliminary Objection, Judgment, I.C.J. Reports 2015, p. 597, para. 7.

“J’ai aujourd’hui l’honneur de porter à votre connaissance que, le 24 octobre 1932, chacune des deux affaires introduites comme il est dit plus haut par le Gouvernement tchécoslovaque a fait l’objet d’une exception préliminaire, déposée au Greffe de la Cour au nom du Gouvernement hongrois, par application de l’article 38 du Règlement de la Cour. Conformément à la coutume, le Secrétaire général de la Société des Nations vient d’être prié de transmettre le texte de ces deux exceptions au Gouvernement de Votre Excellence.

Les exceptions du Gouvernement hongrois ont trait à l’interprétation de l’article X de l’Accord (n° II) de Paris. Dans ces conditions, le nom de votre Gouvernement figurant sur la liste ci-jointe des gouvernements ayant signé et ratifié cet accord, j’ai l’honneur, afin de satisfaire aux dispositions précitées du Statut et du Règlement de la Cour, de faire parvenir sous ce pli à Votre Excellence copie certifiée conforme des exceptions préliminaires du Gouvernement hongrois.”⁴¹

28. For these reasons, the Declaration on Intervention of the Republic of Slovenia is not premature and not untimely. As explained above⁴², it relates to issues of construction of Article IX of the Genocide Convention that are in question, and are indeed very relevant, in the preliminary phase on jurisdiction. Therefore, a decision on the admissibility of the Declaration of Intervention should be rendered in good time in order to provide the Republic of Slovenia with the opportunity to usefully present its construction and interpretation of Article IX of the Genocide Convention.

⁴¹ *Appeals from certain judgments of the Hungaro-Czechoslovak mixed arbitral tribunal, P.C.I.J., Series C, No. 68*, p. 265 (No. 47). See also *Pajzs, Csáky, Esterházy case, P.C.I.J., Series C, No. 80*, p. 1382 (No. 38).

⁴² See above, paras. 9-13.

III. The question of the equality of the Parties does not affect the admissibility of the Declaration of Intervention

29. The procedural consequences, as well as any difficulties arising out of the admission of one or more interventions in a particular case cannot constitute a bar to a third State's right to intervene under Article 63 of the Statute of the Court. As recalled by Judges Ruda, Mosler, Ago, Sir Robert Jennings and de Lacharrière in the *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* case:

“Article 63 of the Statute of the Court provides for a right of intervention in proceedings before it, ‘Whenever the construction of a convention to which States other than those concerned in the case are parties is in question’. Where those conditions are fulfilled, a State wishing to intervene has a right to do so, and it is not for the Court to grant or withhold permission.”⁴³

30. The Republic of Slovenia is aware and mindful that the equality of the Parties is a fundamental principle of international adjudication and an integral part of the principle of sound administration of justice. Yet, in light of the fact that Article 63 of the Statute grants a right for Slovenia to intervene, the exercise of this right cannot be jeopardized by procedural difficulties. Indeed, the Court held in response to Japan's procedural concerns in respect of New Zealand's declaration of intervention:

“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”⁴⁴.

⁴³ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Declaration of Intervention*, Separate Opinion of Judges Ruda, Mosler, Ago, Sir Robert Jennings and de Lacharrière, *I.C.J. Reports* 1984, p. 219, para. 1.

⁴⁴ *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.

And the Court continued:

“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 raised no objection to the admissibility of the Declaration; and whereas it follows that New Zealand’s Declaration of Intervention is admissible”⁴⁵.

31. The Republic of Slovenia recognizes that the number of interveners in the present case is unprecedented and may indeed present new organizational challenges to the Court. It recalls in this regard that, in line with Article 48 of the Statute, the Court enjoys large discretion to organize the proceedings and to do so in order to guarantee the sound administration of justice, procedural efficiency and the equality of the Parties. The Court has already proven that it is willing and able to tailor the procedure to account for the great number of interveners in the present case. In this respect, the Republic of Slovenia recalls and welcomes the decision of the Court to hear the parties on the question of the admissibility of the declaration of intervention by means of a written procedure and to fix an identical deadline for the interveners in order to streamline the process.

32. Furthermore, the Republic of Slovenia reiterates its willingness to assist the Court in the interest of the sound administration of justice and procedural efficiency.

IV. The intervention is not an abuse of process

33. Slovenia categorically rejects the groundless allegations and insinuation that it intends to abuse its right to intervene under Article 63 of the Statute.

34. The Court has emphasized on several occasions that recourse to its jurisdiction in accordance with the provisions of its Statute cannot, in principle, be equated to an abuse of process. In *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, the Court noted that:

“the Application by Nauru has been properly submitted in the framework of the remedies open to it. At the present stage, the Court is not called upon to weigh the possible consequences of the conduct of Nauru with respect to

⁴⁵ *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. 19.*

the merits of the case. It need merely note that such conduct does not amount to an abuse of process.”⁴⁶

In the case concerning the *Arbitral Award of 31 July 1989*, the Court held in the same vein:

“The Court considers that Guinea-Bissau’s Application has been properly presented in the framework of its right to have recourse to the Court in the circumstances of the case. Accordingly, it does not accept Senegal’s contention that Guinea-Bissau’s Application, or the arguments used in support of it, amount to an abuse of process.”⁴⁷

In the *Ambatielos (Greece v. United Kingdom)* case, the Court also did:

“not consider that the Hellenic Government did anything improper in instituting proceedings against the United Kingdom on April 9th, 1951, in conformity with the relevant provisions of the Statute and Rules of Court”⁴⁸.

35. The same considerations apply in respect of the Declaration of Intervention of the Republic of Slovenia. As explained above, this Declaration respects the substantive and formal conditions and requirements set forth in the Statute and the Rules of Court⁴⁹. The Republic of Slovenia has decided to exercise its right to intervene in the present case in order to safeguard its interest in the proper construction of the Genocide Convention, to which it is a party, and in particular its Article IX, and to assist usefully the Court in the accomplishment of its mission. No evidence has been presented that the intervention of the Republic of Slovenia of its duly established right under Article 63 of the Statute is improper. As recalled by the Court:

“In this case, the Court does not consider that Equatorial Guinea, having established a valid title of jurisdiction, should be barred at the threshold without clear evidence that its conduct could amount to an abuse of process. Such evidence has not been presented to the Court. It is only in exceptional

⁴⁶ *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 1992*, p. 255, para. 38.

⁴⁷ *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, *Judgment*, *I.C.J. Reports 1991*, p. 63, para. 27.

⁴⁸ *Ambatielos case (Greece v. United Kingdom)*, *Merits, Judgment*, *I.C.J. Reports 1953*, p. 23.

⁴⁹ See above, paras. 6-20.

circumstances that the Court should reject a claim based on a valid title of jurisdiction on the ground of abuse of process.”⁵⁰

The intervention of the Republic of Slovenia on the basis of Article 63 of the Statute is not one of those circumstances.

36. Pursuant to Article 82, paragraph 2, of the Rules of Court, the Republic of Slovenia has set out its position on the proper interpretation of Article IX of the Genocide Convention in accordance with the customary rules of interpretation of treaties. It might indeed be the case that this construction is similar or comparable to the interpretation proposed and upheld by other interveners and the Applicant. Yet, this does not mean that the Republic of Slovenia is or intends to be a co-applicant in the case. This also does not mean that the Republic of Slovenia wishes to argue before the Court issues and questions beyond the limits of Article 63 of the Statute, or that it seeks to bolster the case of the Applicant. At best, this suggests that the construction of Article IX of the Genocide Convention for which the Republic of Slovenia and, indeed, other interveners contend is sound, whereas the interpretation of the compromissory clause proposed by the Russian Federation is too narrow. In any event, the admissibility of a Declaration of Intervention is not subject to the content of the construction proposed, to the question of whether it is the proper interpretation of the provisions in question, or to the issue of whether any Party or other interveners share this construction or not. These questions and issues can by necessity and in pure logic only be assessed at a later stage of the proceedings on the basis of the written observations on the subject-matter of the intervention provided for in Article 86, paragraph 1, of the Rules of Court, and, if appropriate, on the observations made by the intervening State in the course of the oral proceedings.

37. The political motivations that have led the Republic of Slovenia to exercise its right to intervene under Article 63 of the Statute are irrelevant for the purpose of the admissibility of its Declaration of Intervention. As the Court has recently recalled:

⁵⁰ *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018, p. 336, para. 150. See also *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. 49; *Jadhav (India v. Pakistan)*, Judgment, I.C.J. Reports 2019, p. 433, para. 49; *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2019 (I), pp. 42-43, para. 113.

“[T]he question of what may have motivated a State such as The Gambia to commence proceedings is not relevant for establishing the jurisdiction of the Court.”⁵¹

Indeed, the Court had the occasion to explain that:

“The purpose of recourse to the Court is the peaceful settlement of disputes; the 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.”⁵²

38. Therefore, the reasons that have motivated the Republic of Slovenia to submit a Declaration of Intervention under Article 63 or the Statute and to avail itself of its right to explain to the Court its construction of Article IX of the Genocide Convention are irrelevant. For the purpose of establishing the admissibility of Slovenia’s Declaration of Intervention, it is sufficient to determine whether this Declaration satisfies the conditions and requirements under the Statute and the Rules of Court. As a former registrar of the Court put it:

“[D]ans le système du Statut, la bonne administration de la justice internationale par la Cour internationale de Justice exige que si une requête à fin d’intervention ou une déclaration d’intervention est conforme *quant au fond* à l’article 62 ou à l’article 63 du Statut, elle doit être admise ou accueillie par la Cour, selon le cas, car il appartient aux États tiers, dans l’exercice de leur souveraineté, de décider comment ils entendent protéger leurs intérêts juridiques dans le cadre du Statut de la Cour.”⁵³

⁵¹ *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.

⁵² *Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 91, para. 52. See also *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; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Preliminary Objections*, Separate opinion of Judge Kooijmans, *I.C.J. Reports 1998*, p. 55, para. 4; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Preliminary Objections*, Separate opinion of Judge Kooijmans, *I.C.J. Reports 1998*, p. 145, para. 4.

⁵³ S. Torres Bernárdez, “L’intervention dans la procédure de la Cour internationale de Justice”, *Recueil des cours*, vol. 256, p. 253.

V. Conclusions

39. For the reasons set out in these observations, the Republic of Slovenia respectfully requests the Court to:

- (a) declare that the Declaration of Intervention of the Republic of Slovenia, dated 24 November 2022, is admissible and, therefore, to admit the Declaration of Intervention;
- (b) reject the submissions and objections formulated by the Russian Federation in so far as they concern and are related to the Declaration of Intervention of the Republic of Slovenia;
- (c) fix the time-limit for the filing by the Republic of Slovenia of the written observations referred to in Article 86, paragraph 1, of the Rules of Court.

The Hague, 13 February 2023

Jožef Drogenik

Ambassador of the Republic of Slovenia to the
Kingdom of the Netherlands and Co-Agent of
the Republic of Slovenia