

INTERNATIONAL COURT OF JUSTICE

**SWEDEN'S WRITTEN OBSERVATIONS ON
THE ADMISSIBILITY OF ITS DECLARATION
OF INTERVENTION**

filed in the Registry of the Court
on 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)

COUR INTERNATIONALE DE JUSTICE

**OBSERVATIONS ÉCRITES DE LA SUÈDE SUR
LA RECEVABILITÉ DE SA DÉCLARATION
D'INTERVENTION**

enregistrée au Greffe de la Cour
le 13 février 2023
dans le cas de

ALLÉGATIONS DE GÉNOCIDE AU TITRE DE LA CONVENTION POUR
LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

(UKRAINE c. FÉDÉRATION DE RUSSIE)

I. LETTER FROM THE AMBASSADOR OF THE KINGDOM OF SWEDEN TO
THE KINGDOM OF THE NETHERLANDS TO THE REGISTRAR OF THE
INTERNATIONAL COURT OF JUSTICE

The Hague, 13 February 2023

Referring to the Court's letter, dated 31 January 2023 and signed by the Registrar, I have the honour to attach my Government's Observations in Reply to the Written Observations, filed in the Registry of the Court by the Russian Federation on 17 October 2022, questioning the admissibility of the Declaration of Intervention filed by Sweden in the present case on 9 September 2022.

I also attach an instrument signed by the Minister for Foreign Affairs appointing a new Agent of Sweden for the purposes of intervention in these proceedings. I certify that the signatures on the Observations in Reply are those of the newly appointed Agent, Ambassador Elinor Hammar skjöld, and the previously appointed Co-Agent, Deputy Director Daniel Gillgren.

Finally, I have the further honour to advise that the address for service, to which all communications in this matter should be sent, remains that of this Embassy.

Yours sincerely,

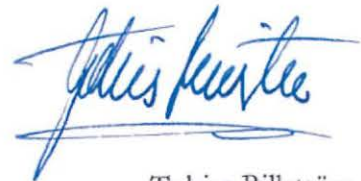


Johannes Oljelund
Ambassador of the Kingdom of Sweden to the Kingdom of the Netherlands

II. APPOINTMENT OF NEW AGENT

Stockholm, 10 February 2023

For the purposes of intervention pursuant to Article 63 of the Statute of the Court in the present case before the International Court of Justice, Allegations of Genocide under the Convention on Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), I hereby appoint Elinor Hammarskjöld, Director-General for Legal Affairs, Ministry for Foreign Affairs, as new Agent for Sweden replacing Carl Magnus Nesser in that position. Daniel Gillgren, Deputy Director at the Department for International Law, Human Rights and Treaty Law within said Ministry, remains the Co-Agent for Sweden.



Tobias Billström
Minister for Foreign Affairs

III. OBSERVATIONS IN REPLY TO THE RUSSIAN OBSERVATIONS

I. INTRODUCTION

1. On behalf of the Government of Sweden, and following your letter n°158473 of 31 January 2023, we have the honour to submit to the Court these Observations in Reply to the Written Observations, filed in the Registry of the Court by the Russian Federation on 17 October 2022 (“the Russian Observations”), questioning the admissibility of the Declaration of Intervention filed by Sweden on 9 September 2022 (“the Declaration”), in the present case concerning Allegations of Genocide under the Convention on Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation).

2. The Declaration was filed by the Government of Sweden, availing itself of the right conferred upon it by Article 63, paragraph 2, of the Statute of the Court (“the Statute”), to intervene in the proceedings that are ongoing in the above-mentioned case (“the Proceedings”). According to that provision, every State notified by the Registrar in accordance with Article 63, paragraph 1, of the Statute has the right to intervene in the proceedings to which the notification refers. The Registrar shall notify State Parties to a convention the construction of which is in question in a case between other States, in order for the notified States to have the opportunity to share their views on the issue of construction before the judgment of the Court is given in that particular case.

3. As shown by the documents annexed to its Declaration, Sweden has been duly notified of the Proceedings as a State Party to the Genocide Convention (“the Convention”). As will be demonstrated below, it has also complied with Article 82 of the Rules of Court (“the Rules”), stipulating the requirements for a State invoking Article 63 of the Statute as the legal basis for its intervention.

II. THE SWEDISH INTERVENTION IS ADMISSIBLE

4. From Article 82, paragraph 1, of the Rules it is clear that a State relying upon Article 63 of the Statute as a basis for intervention as soon as possible shall file a declaration to that effect, signed in the manner provided for in Article 38, paragraph 3, of the Rules. The declaration shall state the name of an agent, specify the case and the convention to which it relates and contain those further elements specified in Article 82, paragraph 2, of the Rules, all of which Sweden has already accounted for in some detail in its Declaration.¹

5. As Article 63, paragraph 2, of the Statute indicates, every Party to the Convention so notified by the Registrar has a right to intervene in the Proceedings. In line with Article 82, paragraph 2, of the Rules, this right may be exercised in the present case if the following objective criteria are fulfilled:

¹ The specific requirements of Article 82, paragraph 2, of the Rules are presented in the Declaration, in Section I, para. 2, at p. 4.

- (a) the declarant State must show that it has become a Party to the Convention;
- (b) the State must in its declaration of intervention identify the particular provisions of the Convention the construction of which it considers to be in question;
- (c) the declaration must contain a statement of the construction of these provisions of the Convention; and
- (d) the declaration must also contain a list of documents in support, which documents shall be attached to it.

6. In the Declaration submitted by Sweden, the case and convention to which it relates is clearly stated.² The Declaration also reveals particulars of the basis on which Sweden considers itself a Party to the Convention.³ It furthermore not only identifies the particular provisions of the Convention, the construction of which Sweden considers to be in question in the case, but also contains a statement of the construction of those provisions for which it contends, namely Articles I–III and VIII–IX.⁴ A list of documents in support of the Declaration is provided as well, and the documents themselves are attached to it.⁵

7. In the Declaration, signed and delivered to the Court in the proper manner, the name of the Government’s Agent and Co-Agent is stated.⁶ As described in it, the Declaration was filed by these Agents at the earliest opportunity reasonably open to them and the Government they represent, well in advance of the still future oral stage of the Proceedings.⁷ Sweden notes that the Court itself has not raised any question regarding its admissibility, either when acknowledging receipt of the Declaration or at any later point in time.

8. Against this backdrop, the Government of Sweden submits that the criteria in Article 82, paragraphs 1 and 2, of the Rules, stipulating the requirements to be fulfilled by a State seeking to exercise its right of intervention under Article 63, paragraph 2, of the Statute, have all been met by Sweden in the present case. Nothing in the Russian Observations prompts a different assessment. The fact that an intervening State puts forward positions that are in line with those of one of the Parties to the case, for example, does not in itself constitute grounds for inadmissibility.

9. There is furthermore no obstacle to a State referring to bodies of international law other than the Convention, in order for it to advance its construction of those provisions of the

² Declaration, Section IV, paras. 17–18, at p. 7–8.

³ Declaration, Section V, para. 19, at p. 8.

⁴ Declaration, Sections VI–VII, paras. 20–54, at p. 8–17.

⁵ Declaration, Section VIII, para. 55, at p. 17–18, and Annex, A and B.

⁶ Declaration, Section IX, para. 58, at p. 18.

⁷ Declaration, Section III, para. 15, at p. 7.

Convention for which it contends in its intervention.⁸ Moreover, the underlying political motivation of a State causing it to submit a declaration of intervention to the Court is not relevant to the issue of admissibility. There is thus no subjective test of the genuine intentions of the intervenor that needs to be performed.⁹

10. As long as each intervenor meets the objective criteria applicable to it, there is no upper limit to the number of interventions that the Court can admit in a single case. The assertion by the Russian Federation that the Court historically has admitted only one intervenor per case is misleading. To the best knowledge of Sweden, the Court has never refused a declaration of intervention because it had already allowed the intervention of another State. For the Court to declare an intervention inadmissible because another State had already intervened would be arbitrary and discriminatory.

11. As the Court is well aware, there are no circumstances under which intervention under Article 63 of the Statute can entail the intervenor becoming a Party to the proceedings in its own right. Therefore, in principle, such an intervention cannot affect the equality of the Parties to the dispute, since the role of the intervenor is limited to submitting observations on the construction of those provisions of a convention that is in question in a case.¹⁰

12. As Sweden has already elaborated upon in its Declaration, States are furthermore not prohibited from making interventions during the preliminary stage of these Proceedings. There is nothing that bars either Sweden or the other intervenors from addressing jurisdictional matters and the Court may choose to decide on admissibility of the interventions before considering Russia's preliminary objections.¹¹

13. Sweden therefore invites the Court to declare the Swedish intervention admissible, and reiterates its request to be provided with copies of all pleadings filed by the Parties, as well as any annexed documents, in line with Article 86, paragraph 1, of the Rules.

III. CONCLUSION

14. To conclude, the Government of Sweden, having appointed the undersigned as Agents for the purposes of intervention in the Proceedings, still avails itself of the right conferred upon it by Article 63, paragraph 2, of the Statute to intervene as a non-party in this case against the Russian Federation brought to the Court by Ukraine. No valid arguments have been presented, in the Russian Observations or otherwise, giving the Court reason to declare the Swedish intervention inadmissible. In fact, and on the contrary, no such reason exists.

⁸ On the contrary, such technique is not only permissible under international law, but also necessary. According to Article 31 of the Vienna Convention on the Law of Treaties, the interpretation of a treaty shall include "any relevant rules of international law applicable in the relations between the parties". Such operation does not, in other words, transcend the boundaries of Article 63 of the Statute, but stays within the requirement of constructing the Convention at issue in line with accepted rules of treaty interpretation.

⁹ Compare what is stated in the Russian Observations, Part II, Section A, p. 9–20.

¹⁰ See Russian Observations, Part II, Section B, p. 20–26.

¹¹ Russian Observations, Part II, Section C, p. 27–33.

15. As Agents of the Swedish Government, we wish to inform the Court that we are able and willing to assist the Court in grouping our intervention with similar interventions from other States for the upcoming stages of the Proceedings, should the Court deem such a move useful in the interest of good and expedient administration of justice.

16. For reasons of clarity, we would also like to underline that Sweden maintains all its statements in the Declaration, signed by the former Agent, and the submissions contained therein.

17. We remain at the Court's disposal and kindly asks that it continue to channel all communication through us at the following address:

Embassy of Sweden
Postbus 85601
2508 CH Den Haag

Respectfully,



Elinor Hammarskjöld
Agent of the Swedish Government



Daniel Gillgren
Co-Agent of the Swedish Government