

INTERNATIONAL COURT OF JUSTICE

WRITTEN OBSERVATIONS OF THE CZECH REPUBLIC

ON THE ADMISSIBILITY OF THE DECLARATION OF INTERVENTION OF THE
CZECH REPUBLIC

of 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, compliance with the requirements of Article 63 of the Statute of the International Court of Justice

1. With reference to the letter of the Registrar of the International Court of Justice (hereinafter as the “Registrar”) No. 157778 of 16 December 2022, transmitting copies of the Written Observations of Ukraine of 16 December 2022 and the Written Observations of the Russian Federation of 16 December 2022 on the admissibility of the Declaration of Intervention of the Czech Republic of 21 October 2022 in the case of Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter as the “Declaration of Intervention”), and the Registrar’s letters No. 158449 of 31 January 2023, fixing 13 February 2023 as the time-limit for the Government of the Czech Republic to submit observations in reaction to objections of the Russian Federation to the admissibility of the Declaration of Intervention, the Government of the Czech Republic provides its following observations on the admissibility of its Declaration of Intervention.

2. According to Article 63 of the Statute of the International Court of Justice (hereinafter as the “Statute”), every state notified by the Registrar, when the construction of a convention to which states other than those concerned in the case are parties is in question, “*has the right to intervene in the proceedings*”. The Czech Republic, as one of the Contracting Parties to the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter as the “Genocide Convention”), received the notification by the Registrar, contemplated by Article 63, paragraph 1 of the Statute, on 30 March 2022, which gave rise to the right of the Czech Republic to intervene in the present case under Article 63, paragraph 2 of the Statute, if the specified conditions for the admissibility of such intervention are met.

3. Further, Article 82 of the Rules of Court provides, that a State which desires to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall file a declaration to that effect, and sets forth conditions as regards the timing, form and content of such declaration of intervention. The Declaration of Intervention of the Czech Republic meets all conditions set forth in this Article: The Czech Republic filed its Declaration of Intervention before the opening of the oral proceedings; specified the details of being a Contracting Party to the Genocide Convention; identified particular provisions of the Genocide Convention the construction of which it considers to be in question; provided a statement of the construction of those

provisions; and provided a list of documents in support its Declaration of Intervention and annexed them to it.

4. Therefore, the Declaration of Intervention of the Government of the Czech Republic under Article 63 of the Statute is submitted in the use of the right conferred by Article 63 of the Statute, and meets all the conditions set forth in Article 82 of the Rules of Court.¹

II. The object of the Declaration of Intervention is the construction of the Convention

5. In its Written Observations on Admissibility of the Declarations of Intervention submitted by Croatia and the Czech Republic, the Russian Federation first argues that the Declaration of Intervention of the Czech Republic is not genuine, since its real object is not the construction of the Genocide Convention, but pursuing a joint case with Ukraine.²

6. The Czech Republic submits that the motive underlying the decision to file the Declaration of Intervention is irrelevant for the exercise of the right to intervene in the proceedings under Article 63 of the Statute. The Czech Republic cannot legally pursue a joint case with Ukraine, since it does not advocate side-by-side with Ukraine as “*de-facto co-applicant*” in the proceedings. It filed the Declaration of Intervention on the basis of its status as one of the Contracting Parties to the Genocide Convention, and the Declaration of Intervention is limited to submitting observations on the construction of the Genocide Convention. The real interest of the Czech Republic lies indeed in the construction of the Genocide Convention, which protects the fundamental values of the international community as a whole, as will be commented on below.

III. Maintaining the principle of equality of the Parties before the Court

¹ *Whaling in the Antarctic (Australia v. Japan)*, Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, pp. 5-6, para. 8.

² The Russian Federation’s Written Observations of 16 December 2022 on Admissibility of the Declarations of Intervention submitted by Croatia and the Czech Republic, paras 11-30.

7. The Russian Federation further argues that conferring on the Declarants the status of interveners would seriously impair the principle of equality of the Parties before the International Court of Justice (hereinafter as the “Court”) and be contrary to the requirements of good administration of justice.³

8. In this regard, the Czech Republic would like to point to the jurisprudence of the Court according to which the proper interventions under Article 63 of the Statute are limited to submitting observations on the construction of the convention in question and are not allowed to deal with any other aspect of the case before the Court. When these conditions and limitations are met, Article 63 of the Statute confers a right of intervention on the intervening State.⁴ The Court confirmed that such interventions cannot affect the equality of the Parties to the dispute.⁵

9. At the same time, the Czech Republic, being aware of the administrative burden associated with these proceedings before the Court, expressed its willingness to coordinate its further action before the Court with other interveners, in order to contribute to an effective management of time of the Court and both Parties.⁶

IV. The admissibility of the Declaration of Intervention at the jurisdictional phase of proceedings before the Court

10. In its Written Observations, the Russian Federation further contests the admissibility of intervention at the jurisdictional phase of proceedings before the Court, i.e. in a stage of the proceedings in which the jurisdiction of the Court or the admissibility of an application are challenged on the basis of the preliminary objections by the other party to the proceedings.⁷ In this regard, the Russian Federation objects to the Declaration of Intervention of the Czech Republic also on the alleged ground that the Declaration of Intervention addresses in effect

³ Russian Federation’s Written Observations, paras. 31-48.

⁴ *Whaling in the Antarctic*, Order of 6 February 2013 (fn. 1), p. 5., para. 2.

⁵ *Whaling in the Antarctic*, Order of 6 February 2013 (fn. 1), p. 10, para. 18 and para 7.

⁶ Declaration of Intervention, para. 16.

⁷ Russian Federation’s Written Observations, paras. 49-68.

matters which presuppose that the Court has jurisdiction in this case and that Ukraine's application is admissible.⁸

11. The Government of the Czech Republic, in its Declaration of Intervention, contended that the general wording of Article 63 of the Statute implies that it is applicable in all phases of the proceedings in a given case, both at the jurisdictional stage and the stage of the dispute on the merits, and it still adheres to this interpretation of Article 63 of the Statute.⁹ The conclusion that it is possible for a third state to make a request to intervene under Article 63 of the Statute at the phase of the proceedings concerning the issues of jurisdiction and admissibility, is also supported by authoritative legal scholarship.¹⁰

12. Further, contrary to the allegations in the Written Observations of the Russian Federation,¹¹ the Declaration of Intervention concerns only the interpretation of Article IX as the jurisdictional clause of the Genocide Convention. Thus, the Declaration of Intervention does not presuppose *in effect* that the Court has jurisdiction in this case, or, in other words, it does not address itself "*in effect to matters ... which presuppose that the Court has jurisdiction to entertain the dispute*" between Ukraine and the Russian Federation, as pronounced by the Court in its Order on the Declaration of Intervention of the Republic El Salvador in the case of *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.¹² Also, the Declaration of Intervention does not prejudice any possible conclusion by the Court on the responsibility for a violation of the Convention, i.e. conclusion on the merits of the case. It appears that, in the case of *Military and Paramilitary Activities in and against Nicaragua*, the Court rejected El Salvador's declaration as inadmissible during the jurisdictional phase because and only insofar as the declaration did not contain any construction of the jurisdictional basis of the case. Therefore, the Government of the Czech Republic submits that the conclusions by the Court in *Military and Paramilitary Activities in and against Nicaragua* concerning the admissibility of El Salvador's intervention, referred to in the Russian Federation's Written Observations,¹³ are not applicable in this case.

⁸ Russian Federation's Written Observations, paras. 69-80.

⁹ Declaration of Intervention, para. 22.

¹⁰ A Miron, C Chinkin, 'Article 63', in A Zimmermann *et al* (eds), *The Statute of the International Court of Justice: A Commentary* (3rd edn; OUP 2019), p. 1763.

¹¹ Russian Federation's Written Observations, paras. 77-79.

¹² *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.

¹³ Russian Federation's Written Observations, paras. 49, 51, 62 and 68.

13. On the basis of these observations, the Government of the Czech Republic submits that under Article 63 of the Statute, a Contracting Party has the right to intervene also at the jurisdictional phase of the proceedings before the Court, when the construction of a convention's jurisdictional clauses are concerned. Therefore, the Government of the Czech Republic contends that the filing of a Declaration of Intervention of the Czech Republic pursuant to Article 63 is admissible at this stage of the proceedings before the Court.

V. Admissibility of the Declaration of Intervention in respect of Article IX of the Genocide Convention as a compromissory clause

14. In its further objection to the admissibility of the Declaration of Intervention, the Russian Federation argues that an intervention cannot relate to Article IX of the Genocide Convention as a compromissory clause *per se*, since such clause cannot be the object of a legal claim stemming from a dispute on its interpretation.¹⁴

15. The admissibility of the intervention (and the respective declaration of intervention) in relation to a compromissory clause is related to the issue of the admissibility of the (declaration of) intervention in the jurisdictional phase of the proceedings, which was dealt with in the previous paragraphs. In this regard, the Government of the Czech Republic submits that, in the jurisdictional phase of proceedings, when the issue of existence of a dispute and its scope is addressed on the basis of preliminary objections by a party to proceedings, compromissory clause is the object of a legal claim stemming from a dispute on its interpretation.

16. As regards the text of Article 63 of the Statute, it does not contain any such limitation of the admissibility of the intervention, that is, it does not exclude interventions in respect of compromissory clauses of conventions in question in a given case. Article IX of the Genocide Convention as a compromissory clause is an integral part of the Genocide Convention and is an indispensable provision for the fulfilment of the object and purpose of the Genocide Convention. Thus, disputes concerning the interpretation of Article IX of the Genocide Convention clearly fall within the scope of cases, in which “*the construction of*

¹⁴ Russian Federation's Written Observations, paras. 81-97.

a convention to which states other than those concerned in the case are parties is in question”, as provided for by Article 63 of the Statute.¹⁵

17. In addition, in this particular case, the interpretation of the compromissory clause is of paramount importance for the international community, despite its “*merely*” jurisdictional character. The Court already found and confirmed that the prohibition against genocide is a *ius cogens* norm of international law and that the provisions of the Genocide Convention impose obligations *erga omnes*. Thus, all States Parties to the Genocide Convention have a common interest in proper interpretation, application and fulfilment of the provisions of the Genocide Convention. The Czech Republic decided to exercise its right to intervene in the proceedings under Article 63 of the Statute in order to support the Court in upholding the integrity of the Genocide Convention, namely its Article IX on the peaceful settlement of disputes. This Article is a broad jurisdictional clause, allowing the Court to adjudicate upon disputes between Contracting States relating to all aspects of interpretation, application or fulfilment by a Contracting Party of its obligations under the Convention.

18. The Government of the Czech Republic, in its Declaration of Intervention, stated that Article IX of the Genocide Convention reflects and specifies fundamental and universal normative international law principle of peaceful settlement of disputes, enshrined in the Charter of the United Nations, for the purposes of the Genocide Convention. It also highlighted that whenever a Contracting Party believes that another Contracting Party acts in violation of any provision of the Genocide Convention, the only remedial action available, on a bilateral basis, to the former Contracting Party under the Genocide Convention would be the initiation of the dispute relating to the interpretation, application or fulfilment of the Genocide Convention under Article IX of the Genocide Convention.

19. Therefore, the Czech Republic focused in its Declaration of Intervention on the construction of Article IX of the Genocide Convention and argued that disputes concerning allegations by a Contracting Party whether another Contracting Party has engaged in conduct contrary to the Genocide Convention or not, where that applicant has requested the Court to make a finding that it has not committed such acts, fall within the scope of Article IX of the Genocide Convention as a dispute “*relating to the interpretation, application or fulfilment of the present*

¹⁵ For similar opinions in the legal scholarship see Hugh Thirlway, *The Law and procedure of the International Court of Justice: Fifty Years of Jurisprudence*, Volume I (2013), p. 1031.

Convention". The Government of the Czech Republic submits that such construction of Article IX of the Genocide Convention also contributes to the fulfillment of common interest of the international community in resolving international disputes by peaceful means, in accordance with Article 33 of the Charter of the United Nations. Such construction of Article IX of the Genocide Convention also supports good faith performance of the Genocide Convention, including the obligation of the peaceful settlement of disputes, reflected in Article IX of the Genocide Convention, and has a preventive effect in respect of possible other, illegal courses of action and abuses of the Genocide Convention's authority to justify a Contracting Party's action *vis-à-vis* another Contracting Party outside the framework of the Genocide Convention.¹⁶

20. Accordingly, the Czech Republic submits that the Declaration of Intervention relating to Article IX of the Genocide Convention as a compromissory clause is admissible.

VI. Other issues related to the construction of Article IX of the Genocide Convention

21. The Russian Federation also objects that the Declaration of Intervention allegedly addresses issues (such as the the existence or otherwise of a dispute between Ukraine and the Russian Federation, allegations of genocide, the application of the principle of good faith in the performance of the Convention, the notion of abuse of rights, or the use of force), which are allegedly unrelated to the construction of the Convention and the admission of which would prejudice questions relating to the Court's jurisdiction *ratione materiae*.¹⁷

22. The Government of the Czech Republic contends that the issues addressed in its Declaration of Intervention are relevant for the contextual construction of Article IX of the Genocide Convention at the jurisdictional phase of the present proceedings. Such a construction is necessary for the purpose of the assessment of the Court's jurisdiction under Article IX of the Genocide Convention over conduct contemplated by substantive provisions of the Convention.

¹⁶ Declaration of Intervention, paras. 29-31.

¹⁷ The Russian Federation's Written Observations, paras. 98 – 108.

23. The contextual interpretation of Article IX of the Genocide Convention, in accordance with Article 31 of the Vienna Convention on the Law of Treaties, and consideration of all issues relevant for such interpretation of compromissory clause need to be performed at the jurisdictional phase of the proceedings before the Court. Therefore, referring to these issues in the Declaration of Intervention, as already observed above, in no way means that the Declaration of Intervention prejudices questions relating to the Court's jurisdiction *ratione materiae*, or address matters which presuppose that the Court has jurisdiction in this case.

24. In light of the above, the Czech Republic submits that the issues, referred to in the Russian Federation's Written Observations as unrelated to the construction of the Convention, are in fact intrinsically related to and highly relevant for the construction of Article IX of the Genocide Convention.

VII. Conclusion

25. For the above reasons, the Czech Republic submits that its Declaration of Intervention under Article 63 of the Statute is admissible, and that it is admissible in relation to the jurisdictional phase of the proceedings in which the jurisdiction of the Court or the admissibility of an application are considered.

Respectfully,



Emil Ruffer

Director of the International Law Department
Ministry of Foreign Affairs of the Czech Republic
Agent of the Government of the Czech Republic

