

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,  
AVIS CONSULTATIFS ET ORDONNANCES

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

(UKRAINE c. FÉDÉRATION DE RUSSIE)

RECEVABILITÉ  
DES DÉCLARATIONS D'INTERVENTION

**ORDONNANCE DU 5 JUIN 2023**

**2023**

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,  
ADVISORY OPINIONS AND ORDERS

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

(UKRAINE v. RUSSIAN FEDERATION)

ADMISSIBILITY  
OF THE DECLARATIONS OF INTERVENTION

**ORDER OF 5 JUNE 2023**

Mode officiel de citation :

*Allégations de génocide au titre de la convention  
pour la prévention et la répression du crime de génocide  
(Ukraine c. Fédération de Russie), recevabilité des déclarations  
d'intervention, ordonnance du 5 juin 2023, C.I.J. Recueil 2023, p. 354*

---

Official citation:

*Allegations of Genocide under the Convention  
on the Prevention and Punishment of the Crime of Genocide  
(Ukraine v. Russian Federation), Admissibility of the Declarations  
of Intervention, Order of 5 June 2023, I.C.J. Reports 2023, p. 354*

ISSN 0074-4441  
ISBN 978-92-1-003204-9  
e-ISBN 978-92-1-106590-9

N° de vente: Sales number	<b>1288</b>
------------------------------	-------------

© 2024 CIJ/ICJ, Nations Unies/United Nations  
Tous droits réservés/All rights reserved

IMPRIMÉ EN FRANCE/PRINTED IN FRANCE

5 JUIN 2023

ORDONNANCE

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

(UKRAINE c. FÉDÉRATION DE RUSSIE)

RECEVABILITÉ  
DES DÉCLARATIONS D'INTERVENTION

---

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

(UKRAINE v. RUSSIAN FEDERATION)

ADMISSIBILITY  
OF THE DECLARATIONS OF INTERVENTION

5 JUNE 2023

ORDER

## TABLE OF CONTENTS

	<i>Paragraphs</i>
CHRONOLOGY OF THE PROCEDURE	1-24
I. INTRODUCTION	25-32
II. CONFORMITY OF THE DECLARATIONS OF INTERVENTION WITH THE REQUIREMENTS SET OUT IN ARTICLE 82 OF THE RULES OF COURT	33-40
III. OBJECTIONS OF THE RUSSIAN FEDERATION WITH RESPECT TO ALL THE DECLARATIONS OF INTERVENTION	41-85
A. Objection based on the alleged intention behind the Declarations of intervention	42-46
B. Objection based on an alleged infringement of the equality of the Parties and the good administration of justice	47-53
C. Objection based on an alleged abuse of process	54-60
D. Objection based on the alleged inadmissibility of the Declarations of intervention at the preliminary objections stage	61-71
E. Objection based on the argument that the Declarations of intervention presuppose the Court's jurisdiction and the admissibility of Ukraine's Application	72-76
F. Objection based on the argument that intervention cannot concern the construction of compromissory clauses such as Article IX of the Genocide Convention	77-81
G. Objection alleging that the Declarations of intervention go beyond the construction of the Genocide Convention	82-85
IV. OBJECTION OF THE RUSSIAN FEDERATION WITH RESPECT TO THE JOINT DECLARATION OF INTERVENTION OF CANADA AND THE NETHERLANDS	86-89
V. OBJECTION OF THE RUSSIAN FEDERATION WITH RESPECT TO THE DECLARATION OF INTERVENTION OF THE UNITED STATES	90-98
VI. CONCLUSION	99-101
OPERATIVE CLAUSE	102

---

## INTERNATIONAL COURT OF JUSTICE

YEAR 2023

5 June 2023

2023  
5 June  
General List  
No. 182ALLEGATIONS OF GENOCIDE  
UNDER THE CONVENTION  
ON THE PREVENTION AND PUNISHMENT  
OF THE CRIME OF GENOCIDE

(UKRAINE v. RUSSIAN FEDERATION)

ADMISSIBILITY  
OF THE DECLARATIONS OF INTERVENTION

## ORDER

*Present: Judge* BENNOUNA, *Acting President; President* DONOGHUE;  
*Vice-President* GEVORGIAN; *Judges* TOMKA, ABRAHAM,  
YUSUF, XUE, SEBUTINDE, BHANDARI, SALAM, IWASAWA, NOLTE,  
CHARLESWORTH, BRANT; *Judge ad hoc* DAUDET; *Registrar*  
GAUTIER.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 48 and 63 of the Statute of the Court and to  
Articles 82, 83, 84 and 86 of the Rules of Court,

*Makes the following Order:*

1. On 26 February 2022, Ukraine filed in the Registry of the Court an  
Application instituting proceedings against the Russian Federation concern-  
ing “a dispute . . . relating to the interpretation, application and fulfilment of

the 1948 Convention on the Prevention and Punishment of the Crime of Genocide” (hereinafter the “Genocide Convention” or the “Convention”).

2. In its Application, Ukraine seeks to base the Court’s jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention.

3. Together with the Application, Ukraine submitted a Request for the indication of provisional measures with reference to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court.

4. The Registrar immediately communicated the Application to the Russian Federation, in accordance with Article 40, paragraph 2, of the Statute of the Court, and the Request for the indication of provisional measures, in accordance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing of the Application and the Request by Ukraine.

5. In addition, by a letter dated 2 March 2022, the Registrar informed all States entitled to appear before the Court of the filing of the Application and the Request for the indication of provisional measures.

6. Pursuant to Article 40, paragraph 3, of the Statute of the Court, the Registrar subsequently notified the Member States of the United Nations through the Secretary-General, and any other State entitled to appear before the Court, of the filing of the Application, by transmission of the printed bilingual text.

7. Since the Court included no judge of Ukrainian nationality upon the Bench, Ukraine proceeded to exercise the right conferred upon it by Article 31, paragraph 2, of the Statute of the Court to choose a judge *ad hoc* to sit in the case; it chose Mr Yves Daudet.

8. By letters dated 1 March 2022, the Registrar informed the Parties that, pursuant to Article 74, paragraph 3, of its Rules, the Court had fixed 7 and 8 March 2022 as the dates for the oral proceedings on the Request for the indication of provisional measures. By a letter dated 5 March 2022, the Ambassador of the Russian Federation to the Kingdom of the Netherlands stated that his Government had decided not to participate in the oral proceedings on the Request for the indication of provisional measures.

9. A public hearing was held on 7 March 2022, in which the Russian Federation did not participate. By a letter dated 7 March 2022, received in the Registry shortly after the closure of the hearing, the Ambassador of the Russian Federation to the Kingdom of the Netherlands transmitted a document setting out “the position of the Russian Federation regarding the lack of jurisdiction of the Court in th[e] case”.

10. By an Order dated 16 March 2022, the Court indicated the following provisional measures:

“(1) The Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine;

(2) The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point 1 above;

(3) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”

11. Pursuant to the instructions of the Court under Article 43, paragraph 1, of the Rules of Court, the Registrar addressed to States parties to the Genocide Convention the notification provided for in Article 63, paragraph 1, of the Statute. In addition, in accordance with Article 69, paragraph 3, of the Rules of Court, the Registrar addressed to the United Nations, through its Secretary-General, the notification provided for in Article 34, paragraph 3, of the Statute of the Court.

12. By an Order dated 23 March 2022, the Court fixed 23 September 2022 and 23 March 2023 as the respective time-limits for the filing of the Memorial of Ukraine and the Counter-Memorial of the Russian Federation. The Memorial of Ukraine was filed on 1 July 2022.

13. On 21 July 2022, the Republic of Latvia (hereinafter “Latvia”) filed in the Registry of the Court a Declaration of intervention under Article 63, paragraph 2, of the Statute of the Court. Subsequently, Declarations of intervention under the same provision were filed by the Republic of Lithuania (hereinafter “Lithuania”) on 22 July 2022, New Zealand on 28 July 2022 and the United Kingdom of Great Britain and Northern Ireland (hereinafter the “United Kingdom”) on 5 August 2022. In accordance with Article 83, paragraph 1, of the Rules of Court, the Registrar immediately transmitted certified copies of each Declaration of intervention to Ukraine and the Russian Federation, which were informed that the Court had fixed 15 September 2022 as the time-limit for the submission of written observations on these Declarations. In accordance with paragraph 2 of the same Article, the Registrar also transmitted copies of the Declarations to the Secretary-General of the United Nations, as well as to States entitled to appear before the Court.

14. By a letter dated 18 August 2022, the Russian Federation asked the Court to postpone the time-limit for the submission of written observations on the above-mentioned Declarations of intervention until after the time-limit set out in Article 79*bis*, paragraph 1, of the Rules of Court for the submission of preliminary objections and preferably no earlier than 17 October 2022. The Russian Federation also requested to be given at least two months for the submission of written observations on any further Declarations of intervention. Having ascertained the views of Ukraine, which opposed the request, the Court decided to postpone the time-limit for the submission of written observations on the Declarations of Latvia,

Lithuania, New Zealand and the United Kingdom from 15 September to 17 October 2022.

15. Declarations of intervention under Article 63, paragraph 2, of the Statute of the Court were filed by the Federal Republic of Germany (hereinafter “Germany”) on 5 September 2022, the United States of America (hereinafter the “United States”) on 7 September 2022, the Kingdom of Sweden (hereinafter “Sweden”) on 9 September 2022, Romania on 13 September 2022, the French Republic (hereinafter “France”) on 13 September 2022, the Republic of Poland (hereinafter “Poland”) on 15 September 2022 and the Italian Republic (hereinafter “Italy”) on 15 September 2022. In accordance with Article 83, paragraph 1, of the Rules of Court, the Registrar immediately transmitted certified copies of each Declaration of intervention to Ukraine and the Russian Federation, which were informed that the Court had fixed 17 October 2022 as the time-limit for the submission of written observations on these Declarations. In accordance with paragraph 2 of the same Article, the Registrar also transmitted copies of the Declarations to the Secretary-General of the United Nations, as well as to States entitled to appear before the Court.

16. On 17 October 2022, within the time-limit fixed by the Court (see paragraphs 14 and 15 above), Ukraine and the Russian Federation filed written observations on the Declarations of intervention submitted by Latvia, Lithuania, New Zealand, the United Kingdom, Germany, the United States, Sweden, Romania, France, Poland and Italy. The Registrar immediately transmitted to each Party a copy of the other Party’s observations, and copies of the observations of both Parties to the above-mentioned declarant States.

17. Declarations of intervention under Article 63, paragraph 2, of the Statute of the Court were filed by the Kingdom of Denmark (hereinafter “Denmark”) on 16 September 2022, Ireland on 19 September 2022, the Republic of Finland (hereinafter “Finland”) on 21 September 2022, the Republic of Estonia (hereinafter “Estonia”) on 22 September 2022, the Kingdom of Spain (hereinafter “Spain”) on 29 September 2022, Australia on 30 September 2022, the Portuguese Republic (hereinafter “Portugal”) on 7 October 2022, the Republic of Austria (hereinafter “Austria”) on 12 October 2022, the Grand Duchy of Luxembourg (hereinafter “Luxembourg”) on 13 October 2022 and the Hellenic Republic (hereinafter “Greece”) on 13 October 2022. In accordance with Article 83, paragraph 1, of the Rules of Court, the Registrar immediately transmitted certified copies of each Declaration of intervention to Ukraine and the Russian Federation, which were informed that the Court had fixed 15 November 2022 as the time-limit for the submission of written observations on these Declarations. In accordance with paragraph 2 of the same Article, the Registrar also transmitted copies of the Declarations to the Secretary-General of the United Nations, as well as to States entitled to appear before the Court.



Ukraine and the Russian Federation filed written observations within the time-limit thus fixed. The Registrar immediately transmitted to each Party a copy of the other Party's observations, and copies of the observations of both Parties to Denmark, Ireland, Finland, Estonia, Spain, Australia, Portugal, Austria, Luxembourg and Greece.

18. On 3 October 2022, within the time-limit prescribed by Article 79*bis*, paragraph 1, of the Rules of Court, the Russian Federation raised preliminary objections to the jurisdiction of the Court and the admissibility of the Application. Consequently, by an Order of 7 October 2022, having noted that, by virtue of Article 79*bis*, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended, the Court fixed 3 February 2023 as the time-limit within which Ukraine could present a written statement of its observations and submissions on the preliminary objections raised by the Russian Federation. Ukraine filed its written statement within the time-limit thus fixed.

19. The Republic of Croatia (hereinafter "Croatia") and the Czech Republic filed Declarations of intervention under Article 63, paragraph 2, of the Statute of the Court on 19 October 2022 and 31 October 2022, respectively. In accordance with Article 83, paragraph 1, of the Rules of Court, the Registrar immediately transmitted certified copies of each Declaration of intervention to Ukraine and the Russian Federation, which were informed that the Court had fixed 16 December 2022 as the time-limit for the submission of written observations on these Declarations. In accordance with paragraph 2 of the same Article, the Registrar also transmitted copies of the Declarations to the Secretary-General of the United Nations, as well as to States entitled to appear before the Court.

Ukraine and the Russian Federation filed written observations within the time-limit thus fixed. The Registrar immediately transmitted to each Party a copy of the other Party's observations and copies of the observations of both Parties to Croatia and the Czech Republic.

20. By letters dated 31 October 2022, the Court informed the States parties to the Genocide Convention that, taking into account the number of Declarations of intervention filed in the case, it considered that the interest of the sound administration of justice and procedural efficiency would be advanced if any State that intended to avail itself of the right of intervention conferred on it by Article 63 of the Statute of the Court would file its Declaration not later than 15 December 2022.

21. Declarations of intervention under Article 63, paragraph 2, of the Statute of the Court were filed by the Republic of Bulgaria (hereinafter "Bulgaria") on 18 November 2022, the Republic of Malta (hereinafter "Malta") on 24 November 2022, the Kingdom of Norway (hereinafter "Norway") on 24 November 2022, the Kingdom of Belgium (hereinafter "Belgium") on 6 December 2022, Canada and the Kingdom of the Netherlands (hereinafter "the Netherlands"), jointly, on 7 December 2022, the Slovak Republic (hereinafter "Slovakia") on 7 December 2022, the Repub-

lic of Slovenia (hereinafter “Slovenia”) on 7 December 2022, the Republic of Cyprus (hereinafter “Cyprus”) on 13 December 2022 and the Principality of Liechtenstein (hereinafter “Liechtenstein”) on 15 December 2022. In accordance with Article 83, paragraph 1, of the Rules of Court, the Registrar immediately transmitted certified copies of each Declaration of intervention to Ukraine and the Russian Federation, which were informed that the Court had fixed 30 January 2023 as the time-limit for the submission of written observations on these Declarations. In accordance with paragraph 2 of the same Article, the Registrar also transmitted copies of the Declarations to the Secretary-General of the United Nations, as well as to States entitled to appear before the Court.

Ukraine and the Russian Federation filed written observations within the time-limit thus fixed. The Registrar immediately transmitted to each Party a copy of the other Party’s observations and copies of the observations of both Parties to Bulgaria, Malta, Norway, Belgium, Canada, the Netherlands, Slovakia, Slovenia, Cyprus and Liechtenstein.

22. By letters dated 31 January 2023, the Registrar informed the Parties and the declarant States that, in light of the fact that the Russian Federation had filed objections to the admissibility of the Declarations of intervention, the Court was required, pursuant to Article 84, paragraph 2, of its Rules, to hear the Parties and the States seeking to intervene on the admissibility of the Declarations of intervention, and had decided to do so by means of a written procedure. The Registrar further stated that the Court had fixed 13 February 2023 as the time-limit within which the States seeking to intervene could furnish their written observations on the admissibility of their Declarations and 13 March 2023 as the time-limit within which Ukraine and the Russian Federation could furnish their written observations thereon.

The States seeking to intervene filed written observations within the time-limit thus fixed, and the Registrar immediately transmitted copies thereof to the Parties.

23. By a letter dated 27 February 2023, the Russian Federation requested that the Court extend from 13 March 2023 to 24 April 2023 the time-limit for the submission by the Parties of their written observations on the admissibility of the Declarations of intervention. By a letter dated 3 March 2023, Ukraine objected to such an extension. By letters dated 7 March 2023, the Parties and the States seeking to intervene were informed that the Court had extended the time-limit for the submission by the Parties of their written observations on the admissibility of the Declarations of intervention to 24 March 2023. Ukraine and the Russian Federation filed written observations within the time-limit thus extended by the Court. In its written observations, the Russian Federation requested that the Court hold oral proceedings on the admissibility of the Declarations of intervention. On 27 March 2023, the Registrar transmitted to each Party a copy of the other Party’s observations, and copies of the observations of both Parties to

the States seeking to intervene. He also recalled to the Parties and States seeking to intervene that the Court had already decided that it would hear them on the question of the admissibility of the Declarations of intervention by means of a written procedure, a decision duly communicated to them by letters dated 31 January 2023, and that the Court could therefore not accede to the request of the Russian Federation to hold oral proceedings on that question.

\*

24. President Donoghue, a national of one of the States seeking to intervene, considered it appropriate not to exercise the functions of the presidency in the proceedings relating to the admissibility of the Declarations of intervention submitted under Article 63 of the Statute. Article 13, paragraph 1, of the Rules of Court states that, in the event of the inability of the President to carry out the duties of the presidency, these shall be exercised by the Vice-President, or failing that, by the senior judge. Pursuant to Article 32, paragraph 1, of the Rules of Court, Vice-President Gevorgian was not in a position, as a national of one of the Parties to the case, to preside in respect of any phase of the case. Judges Tomka and Abraham, senior judges, declined to assume the functions of the presidency for the purposes of the proceedings relating to the admissibility of the Declarations of intervention on the ground that each of them is a national of a State seeking to intervene. It therefore fell to Judge Bennouna, next in seniority, to assume the functions of the presidency in these proceedings.

\* \* \*

## I. INTRODUCTION

25. Article 63 of the Statute of the Court provides that:

“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.”

26. The Court recalls that intervention under Article 63 of the Statute, which is an incidental proceeding, involves the exercise of a right by a State party to a convention the construction of which is in question before the Court (*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; *Haya de la Torre (Colombia v. Peru), Judgment, I.C.J. Reports 1951*, p. 76; *S.S. “Wimbledon”, Judgments, 1923, P.C.I.J., Series A, No. 1*, p. 12).

27. The object of the intervention under Article 63 of the Statute is limited to the construction of the convention concerned. In this context, the Court is not required to ascertain whether the State seeking to intervene has “an interest of a legal nature” which “may be affected by the decision [of the Court]” in the main proceedings, as it is obliged to do when it is seised of an application for permission to intervene under Article 62 of the Statute. The legal interest of the declarant State in the construction of the convention is presumed by virtue of its status as a party thereto.

28. When a declaration of intervention is filed, the Court must ensure that it falls within the provisions of Article 63 of the Statute and that it meets the requirements set forth in Article 82 of the Rules (*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; *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; *Haya de la Torre (Colombia v. Peru)*, *Judgment*, *I.C.J. Reports 1951*, pp. 76-77).

29. In the present case, the Declarations of intervention concern the construction of provisions of the Genocide Convention relating to the jurisdiction of the Court and, in some instances, of provisions relating to the merits of the case.

30. The States seeking to intervene and Ukraine submit that the Declarations of intervention are admissible, given that they meet all the requirements set out in Article 63 of the Statute and Article 82 of the Rules of Court.

31. The Russian Federation, for its part, considers that the Declarations are inadmissible. It raises a number of objections that are addressed to all the Declarations, and others that are addressed to only some of them, namely the Joint Declaration of Canada and the Netherlands and the Declaration of the United States.

32. Although the Declarations of intervention were presented separately, the Court, in accordance with the principle of the good administration of justice, will decide on their admissibility in a single Order.

## II. CONFORMITY OF THE DECLARATIONS OF INTERVENTION WITH THE REQUIREMENTS SET OUT IN ARTICLE 82 OF THE RULES OF COURT

33. The Court will first examine whether the Declarations of intervention comply with the requirements set out in Article 82 of its Rules.

34. The Court recalls that, under Article 82, paragraph 1, of the Rules, a State that 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, signed in the manner provided for in Article 38, paragraph 3, of the Rules, by the agent of

the State or by its diplomatic representative in the country where the Court has its seat, or by some other duly authorized person. In addition, Article 82, paragraph 1, of the Rules provides that a declaration of intervention shall be filed as soon as possible, and not later than the date fixed for the opening of the oral proceedings. The Court notes that all the Declarations of intervention comply with the above-mentioned requirements.

35. Under Article 82, paragraph 2, of the Rules, a declaration of intervention filed under Article 63 of the Statute 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.”

36. Turning to the requirement set out in Article 82, paragraph 2 (a), of the Rules, the Court observes that all the Declarations of intervention submitted in the case specify when the declarant State deposited its instrument of ratification of, or accession or succession to the Genocide Convention, and thus establish the basis on which the declarant State considers itself party to the Genocide Convention.

37. With respect to the particular provisions to be identified under Article 82, paragraph 2 (b), of the Rules, the Court notes that all the Declarations of intervention filed refer to Article IX of the Genocide Convention as a provision the construction of which is in question in the case. The Court notes that, in their Declarations, Austria, Bulgaria, Croatia, the Czech Republic, Germany, Greece, Malta, Slovakia, Slovenia and Spain limit their interventions to the construction of Article IX. The other Declarations refer, in addition to Article IX, to other articles of the Convention the construction of which the States consider to be in question in the case, in particular Articles I, II, III, IV and VIII. The Court concludes that all these Declarations, which concern at least one provision of the Genocide Convention, meet the requirement of Article 82, paragraph 2 (b), of the Rules.

38. Concerning the requirement set out in Article 82, paragraph 2 (c), of the Rules, namely that a declaration of intervention should contain a statement of the construction of the provisions in question for which the declarant State contends, the Court observes that all the Declarations of intervention filed in the case contain such a statement on the provisions identified.

39. Finally, the Court turns to the requirement contained in Article 82, paragraph 2 (d), of the Rules, namely that a declaration of intervention shall contain a list of documents in support, which documents shall be attached to

the declaration. The Court observes that, while the Declaration filed by Austria does not contain a “list of documents in support”, such documents, which are clearly identified as being in support of the Declaration, are however annexed thereto. The Court thus considers that Austria has complied with the requirement under Article 82, paragraph 2 (*d*), of the Rules. With respect to the Declaration of intervention filed by Lithuania, the Court notes that this declarant State refers to Article 82, paragraph 2 (*d*), of the Rules and states that “at this stage, its Declaration of Intervention only relies on readily available documents and that it has no specific document to submit in support of its Declaration”. In these circumstances, the Court considers that, by making reference to readily available documents, Lithuania has complied with the requirement of Article 82, paragraph 2 (*d*), of the Rules. The Court notes that all other Declarations filed in the case contain a list of documents in support, and that those documents are attached to each of the Declarations. The Court thus concludes that all the Declarations of intervention filed in the case meet the requirement set out in Article 82, paragraph 2 (*d*), of the Rules.

40. In light of the above, the Court concludes that the Declarations of intervention filed in the case meet all the requirements of Article 82 of its Rules. In the next section, it will examine the objections raised by the Russian Federation concerning the admissibility of all the Declarations of intervention filed under Article 63 of the Statute (Section III), before addressing the objections that relate exclusively to the Joint Declaration of Canada and the Netherlands (Section IV) and the Declaration of the United States (Section V).

### III. OBJECTIONS OF THE RUSSIAN FEDERATION WITH RESPECT TO ALL THE DECLARATIONS OF INTERVENTION

41. The Court will now examine the objections raised by the Russian Federation with respect to all the Declarations of intervention.

#### *A. Objection Based on the Alleged Intention behind the Declarations of Intervention*

42. The Russian Federation argues that the Declarations of intervention are not “genuine” since the real object of the interventions is not the construction of the Genocide Convention but the pursuit by the declarant States of a joint case with Ukraine, such that they become *de facto* co-applicants. Recalling the decisions of the Court in the case concerning *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)* and the case concerning *Haya de la Torre (Colombia v. Peru) (Judgment, I.C.J. Reports 1951, p. 71)*, the Russian Federation contends that a declaration of intervention under

Article 63 of the Statute must be “genuine”. In this regard, the Russian Federation asserts that the Court must consider the text of the declaration and the context within which it was filed in order to ascertain whether the real intention behind the intervention is the submission of observations on the construction of the convention in question. According to the Russian Federation, the circumstances in the present case show that the real intention of the declarant States is not to express their own views regarding the construction of the relevant provisions of the Genocide Convention but rather to side with and advocate for Ukraine in these proceedings.

43. Ukraine and the declarant States maintain that the Declarations of intervention concern the construction of relevant provisions of the Genocide Convention and that the intentions of the declarant States are irrelevant to the admissibility of the Declarations.

\* \*

44. The Court recalls that intervention under Article 63 of the Statute allows a third State not party to the proceedings, but which is party to a convention the construction of which is in question in those proceedings, to present to the Court its observations on the construction of that convention. In determining the admissibility of a declaration of intervention, the Court’s task is limited to ascertaining whether that declaration relates to the interpretation of a convention in question in the proceedings (*Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 77; *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). Thus, in the *Haya de la Torre (Colombia v. Peru)* case, the Court ascertained only whether the Declaration of intervention of Cuba related to the interpretation of a convention in question in those proceedings. It concluded that, for the most part, the Declaration concerned questions that had already been decided with the authority of *res judicata* in earlier proceedings, and for that reason did not satisfy the conditions of a genuine intervention (*Judgment, I.C.J. Reports 1951*, p. 77). The Court considers that the question of a State’s motivation when filing a declaration of intervention is not relevant for the purposes of the admissibility of that declaration.

45. Moreover, while many of the declarant States express similar views on the construction of the provisions of the Genocide Convention, which are close to the views of Ukraine, this does not constitute a reason to find that the Declarations are inadmissible, since, under the Rules of Court, each State may identify the provisions of the convention the construction of which it considers to be in question and set out its position thereon.

46. The Court therefore concludes that the objection to admissibility based on the alleged intention behind the Declarations of intervention cannot be upheld.



*B. Objection Based on an Alleged Infringement of the Equality of the Parties and the Good Administration of Justice*

47. The Russian Federation submits that allowing the declarant States to intervene would affect the equality of the Parties and the good administration of justice. It alleges that the States seeking to intervene align themselves with and represent the same interest as Ukraine, and that, if the Declarations of intervention are found admissible, the Russian Federation will be forced to respond not only to the arguments advanced by Ukraine but also to those of the 33 declarant States acting as *de facto* co-applicants. The Russian Federation maintains that Ukraine and the declarant States should be considered as “parties in the same interest” within the meaning of Article 31, paragraph 5, of the Statute. The Russian Federation also states that it is concerned that seven of the sixteen judges on the Bench in this case (including the President of the Court) are nationals of States “that have announced their intention to intervene to support Ukraine in these proceedings”.

48. Ukraine and the declarant States contend that the admissibility of the Declarations of intervention would not affect the equality of the Parties or the good administration of justice, since the intervening State only submits observations on the construction of the convention in question and does not become a party to the proceedings. Similarly, they consider that the fact that some judges on the Bench are nationals of States seeking to intervene does not affect the equality of the Parties.

\* \*

49. The Court recalls that intervention under Article 63 of the Statute has a limited scope, since the intervening State can only submit observations on the construction of the convention in question and does not become a party to the proceedings. The Court thus concluded in its Order in the case concerning *Whaling in the Antarctic (Australia v. Japan)* that such an intervention did not affect the equality of the parties to the dispute (*Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 9, para. 18*).

50. The Court cannot limit the number of intervening States in the present case, since this would encroach on the right of States to intervene under Article 63 of the Statute.

51. The Court observes that the fact that some judges on the Bench are nationals of States seeking to intervene cannot affect the equality of the Parties because intervening States do not become parties to the proceedings. In any event, all judges are bound by their duty of impartiality.

52. Finally, the Court has taken note of the concerns of the Russian Federation. It is incumbent on the Court to organize the proceedings in a manner which ensures the equality of the parties and the good administra-



tion of justice. Should any Declarations of intervention be found admissible at the present stage, the Court will ensure that each Party will have a fair opportunity and the necessary time to respond to the observations of the intervening States.

53. The Court therefore concludes that admitting the Declarations of intervention in the present case would not infringe the principles of equality of the parties or the good administration of justice, and that the objection raised by the Russian Federation in this regard cannot be upheld.

### *C. Objection Based on an Alleged Abuse of Process*

54. The Russian Federation submits that the Declarations of intervention are inadmissible because they constitute an abuse of process. In particular, it argues that the procedure of intervention is used by the declarant States in a manner wholly alien to its purpose, with the aim of causing harm to the Russian Federation. It recalls that several States filed Declarations of intervention after publicly stating their intention to support Ukraine's case before the Court, in some cases even "at the express request of the Ukrainian side". Thus, for the Russian Federation, those States do not seek in good faith to put before the Court their positions as to the proper construction of the Genocide Convention. Rather, they have filed their Declarations of intervention in pursuit of a collective strategy of supporting the Applicant against the Respondent.

\* \*

55. The Court observes that this objection was raised for the first time in the written observations of the Russian Federation on the admissibility of the Declarations of intervention filed on 24 March 2023 (see paragraph 23 above), to which neither Ukraine nor the States seeking to intervene have had the opportunity to respond. However, the Court considers that Ukraine and the States seeking to intervene have not suffered any prejudice as a result of this fact.

56. The Court recalls that "[a]n abuse of process goes to the procedure before a court or tribunal", in particular to the question of whether a State has misused that procedure to such an extent that its case should therefore be rejected at the preliminary stage (see *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 336, para. 150).

57. The Court has observed that only in exceptional circumstances should it reject a claim based on a valid title of jurisdiction on the ground of abuse of process (*Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, 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, I.C.J. Reports 2022 (II), p. 497, para. 49; *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 36, para. 93; *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). Similarly, the Court is of the view that a declaration of intervention should be found inadmissible on the ground of abuse of process only in exceptional circumstances.

58. With regard to the Russian Federation's contentions of abuse of process based on public statements by declarant States that they were acting in support of Ukraine, the Court has already concluded above that, in considering the admissibility of a declaration of intervention under Article 63 of the Statute, its task is not to look into the motivation or intention of the declarant State, but rather to ascertain whether the declaration of intervention relates to the interpretation of the convention in question (see paragraph 44 above).

59. The Court considers that in the present case there are no exceptional circumstances that would render the Declarations of intervention inadmissible.

60. The Court therefore concludes that the Russian Federation's objection to admissibility based on an abuse of process cannot be upheld.

#### *D. Objection Based on the Alleged Inadmissibility of the Declarations of Intervention at the Preliminary Objections Stage*

61. The Russian Federation submits that the Declarations of intervention are not admissible at the current stage of the proceedings because the Court must first rule on the preliminary objections to its jurisdiction and the admissibility of the Application of Ukraine. The Russian Federation argues that the practice of the Court militates against admitting declarations of intervention prior to the decision on the preliminary objections. In this connection, it refers in particular to: the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, where the Court found the Declaration of intervention of El Salvador inadmissible at the stage of the proceedings concerning the jurisdiction of the Court and the admissibility of the application instituting the proceedings; the *Nuclear Tests* cases (*Australia v. France and New Zealand v. France*), where the Court deferred consideration of Fiji's applications for intervention under Article 62 of the Statute until it had considered the questions of its jurisdiction and of the admissibility of the applications instituting the proceedings; and the case concerning the *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*

(*New Zealand v. France*), where the Court did not consider the Declarations of intervention before it had ruled on the admissibility of New Zealand's original request for an examination of the situation. The Russian Federation further submits that, since the Court has not yet ruled on the existence of a dispute in the present case, its subject-matter and the provisions of the Convention that may be in question, the declarant States cannot show that their intervention is directed at the construction of provisions in dispute.

62. Ukraine and the declarant States argue that the Declarations of intervention are admissible at the preliminary objections stage and that the Court need not first establish the existence and subject-matter of the dispute between the Parties. They contend that the Statute and Rules of Court do not restrict intervention to certain phases of the proceedings and that it does not follow from the practice of the Court that the Court must first rule on the preliminary objections before determining the admissibility of the Declarations of intervention.

\* \*

63. The Court observes that Article 63 of the Statute and Article 82 of the Rules do not restrict the right of intervention to a particular phase of the proceedings, or to a certain type of provision in a convention. Notably, Article 63 of the Statute provides that the right to intervene exists “[w]henver the construction of a convention to which States other than those concerned in the case are parties is in question”. This means that a State can intervene at the preliminary objections stage of the proceedings in respect of provisions that have a bearing on the question of the jurisdiction of the Court.

64. In the view of the Court, the decisions cited by the Russian Federation do not show that declarations of intervention are as a matter of principle inadmissible during the preliminary objections phase.

65. In the case concerning *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), El Salvador, in its Declaration of intervention, failed to identify the provisions of any convention the interpretation of which, in its view, would be in question at the stage of the proceedings concerning the jurisdiction of the Court and the admissibility of the application instituting the proceedings (see the Declaration of intervention the Republic of El Salvador filed on 15 August 1984). Moreover, this declaration referred to conventions that could only concern the merits of the case. It is in those circumstances that the Court decided that the Declaration of intervention of El Salvador was inadmissible at the stage of the proceedings concerning the jurisdiction of the Court and the admissibility of the application instituting the proceedings (*Declaration of Intervention, Order of 4 October 1984, I.C.J. Reports 1984*, p. 216).

66. In the *Nuclear Tests* cases (*Australia v. France* and *New Zealand v. France*), Fiji's applications for permission to intervene under Article 62 of the Statute related exclusively to the merits of the cases (see the two applica-

tions for permission to intervene in the cases submitted by the Government of Fiji on 16 and 18 May 1973). The Court thus found that Fiji's applications, by their very nature, presupposed that the Court had jurisdiction over the cases and that the applications instituting proceedings of Australia and New Zealand were admissible. For that reason, it deferred consideration of Fiji's applications to a later stage (*Nuclear Tests (Australia v. France), Application for Permission to Intervene, Order of 12 July 1973, I.C.J. Reports 1973*, p. 321; *Nuclear Tests (New Zealand v. France), Application for Permission to Intervene, Order of 12 July 1973, I.C.J. Reports 1973*, p. 325).

67. Finally, in the case concerning the *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 (New Zealand v. France)*, the Court dismissed New Zealand's request that the situation be examined in accordance with a previous judgment. It thus dismissed the incidental proceedings relating to that request, including the applications and declarations aimed at intervening under Articles 62 and 63 of the Statute (*Order of 22 September 1995, I.C.J. Reports 1995*, pp. 306-307, paras. 67-68).

68. The Court does not consider that it must decide on the existence and scope of the dispute between the Parties before ruling on the admissibility of the declarations of intervention. Article 63 of the Statute gives States a right to intervene whenever the construction of a multilateral convention is in question, and Article 82, subparagraph 2 (b), of the Rules of Court provides that a State seeking to intervene must identify "the particular provisions of the convention the construction of which it considers to be in question". If the construction of certain provisions is in question at the stage of the preliminary objections, States will be allowed to intervene at that stage to present their construction of those provisions.

69. In the case at hand, the construction of Article IX and of other provisions of the Genocide Convention concerning the Court's jurisdiction *ratione materiae* is in question at the present stage of the proceedings. Indeed, in its Application, Ukraine seeks to base the Court's jurisdiction on Article IX of the Genocide Convention (see paragraph 2 above). The Russian Federation subsequently filed preliminary objections to the jurisdiction of the Court and the admissibility of the Application (see paragraph 18 above) and it stated in its written observations on the admissibility of the Declarations of intervention that the Court's jurisdiction *ratione materiae* was among the questions raised in its preliminary objections.

70. The Court considers that all the Declarations of intervention at least partly concern certain provisions of the Genocide Convention the construction of which is in question at the present stage of the proceedings.

71. The Court therefore concludes that the objection based on the alleged inadmissibility of the Declarations of intervention at the preliminary objections stage cannot be upheld.

*E. Objection Based on the Argument that the Declarations of Intervention Presuppose the Court's Jurisdiction and the Admissibility of Ukraine's Application*

72. The Russian Federation argues that even if the Declarations of intervention ostensibly concern, partly or entirely, issues of jurisdiction, they in effect address matters that presuppose that the Court has jurisdiction or that Ukraine's Application is admissible. In the Respondent's view, if the Court allows the declarant States to intervene at this stage, it will, in substance, be prejudging the preliminary objections. Relying on the Court's rejection of El Salvador's Declarations of intervention in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, the Russian Federation contends that the presence in a declaration of intervention of arguments relating to the merits or presupposing that the Court has jurisdiction renders the said declaration wholly inadmissible at the jurisdictional stage of the proceedings.

73. Ukraine and the declarant States argue that the Declarations of intervention do not presuppose the Court's jurisdiction or the admissibility of the Application. They contend that the Declarations concern the construction of the compromissory clause contained in Article IX of the Convention. They add that a declaration of intervention that encompasses questions relating to jurisdiction and to the merits is not necessarily inadmissible in its entirety.

\* \*

74. The Court has already stated that declarations of intervention may be admissible at the preliminary objections stage (see Section III.D above). It is of the view that the construction of provisions relating to the jurisdiction of the Court, such as the compromissory clause and provisions that are relevant to determining jurisdiction *ratione materiae* in a given case, may be in question in the preliminary objections phase. Such a construction may thus constitute the subject-matter of an intervention at this stage. However, the Court cannot take into consideration, at the preliminary objections stage, observations on the construction of provisions of a convention relating to the merits of the case. When a declaration of intervention concerns both the jurisdiction of the Court and the merits of the case, the Court will only take into account, at the preliminary objections stage, the elements relevant to determining jurisdiction.

75. The Court thus concludes that the Declarations of intervention are admissible at the current stage in so far as they concern the construction of the provisions relating to its jurisdiction.

76. For the foregoing reasons, the Court cannot uphold the objection raised by the Russian Federation.

*F. Objection Based on the Argument that Intervention  
Cannot Concern the Construction of Compromissory Clauses  
such as Article IX of the Genocide Convention*

77. The Russian Federation contends that intervention under Article 63 of the Statute cannot concern the construction of compromissory clauses such as Article IX of the Genocide Convention, because that provision, which does not concern a substantive right, cannot constitute the subject-matter of a dispute. The Russian Federation considers that, under the guise of the construction of Article IX of the Convention, the declarant States “advocate for the existence of a dispute in this case” or comment on its scope, but these are matters relating to the application rather than the interpretation of a treaty. The Russian Federation argues that, in any event, it cannot be asserted that the construction of Article IX of the Convention is in question until after the jurisdictional phase of the proceedings, and the mere filing of preliminary objections does not attest to the existence of a dispute on the construction of that provision. Further, the Russian Federation maintains that the *travaux préparatoires* of Article 63 (in particular the report of the French representative to the Council of the League of Nations on the draft Statute of the Permanent Court of International Justice) and the Judgment in the *Haya de la Torre (Colombia v. Peru)* case show that Article 63 does not envisage intervention in respect of compromissory clauses such as Article IX of the Genocide Convention, but only in respect of substantive provisions.

78. According to Ukraine and the declarant States, it follows from Article 63 of the Statute and Article 82 of the Rules of Court that intervention under these provisions may concern the construction of any provision of a convention in question, including compromissory clauses such as Article IX of the Genocide Convention.

\* \*

79. The Court has already concluded that intervention under Article 63 of the Statute may concern any provision the construction of which is in question at a specific stage of the proceedings. In particular, compromissory clauses such as Article IX of the Genocide Convention may be the subject-matter of an intervention under Article 63 of the Statute, and such an intervention may be admitted at the preliminary objections stage (see Section III.D above). In the Court’s view, the construction of Article IX is in question at the current stage of the proceedings and the declarant States are entitled to present their construction of that provision.

80. The Court considers that the excerpt from the *travaux préparatoires* of Article 63 of the Statute of the Permanent Court of International Justice cited by the Russian Federation does not reveal an intention to exclude the construction of compromissory clauses from the purview of interventions, but only states that

“[t]he observations in the draft project of The Hague by one of our Colleagues draw attention to the following case: it might happen that a case appearing unimportant in itself might be submitted to the jurisdiction of the Court, and that the Court might take a decision on this case, laying down certain principles of international law which, if they were applied to other countries, would completely modify the principles of the traditional law of this country, and which might therefore have serious consequences. The question has been raised whether, in view of such an alternative, the States not involved in the dispute should not be given the right of intervening in the case in the interest of the harmonious development of the law, and otherwise after the closure of the case, to exercise, in the same interest, influence on the future development of the law.” (League of Nations, Permanent Court of International Justice, *Documents concerning the Action Taken by the Council of the League of Nations under Article 14 of the Covenant and the Adoption by the Assembly of the Statute of the Permanent Court* (1921), p. 50.)

In addition, the requirement that an intervention under Article 63 must relate to the subject-matter of the proceedings (*Haya de la Torre (Colombia v. Peru)*, *Judgment*, *I.C.J. Reports 1951*, p. 76) does not mean that the right to intervene is confined to substantive provisions of the relevant convention.

81. The Court therefore cannot uphold this objection of the Russian Federation.

*G. Objection Alleging that the Declarations of Intervention Go beyond the Construction of the Genocide Convention*

82. The Russian Federation submits that the Declarations of intervention should be found inadmissible because they seek to address issues unrelated to the construction of the Genocide Convention, and that their admission would prejudge questions relating to the Court’s jurisdiction *ratione materiae*. In particular, the Russian Federation contends that the Declarations refer to the existence of a dispute between the Parties, whereas this is an evidentiary question that must be determined by taking into account the facts of the case. Similarly, the Russian Federation states that the Declarations should not be concerned with the question of whether genocide has occurred in Ukraine, as this is a question for the merits. According to the Russian Federation, other references in the Declarations that go beyond the construction of the Genocide Convention concern rules of international law related to the doctrine of abuse of rights, the use of force, *jus in bello*, war crimes, territorial integrity and territorial acquisition, as well as alleged violations by the Russian Federation of the Court’s Order on provisional measures. The Russian Federation concludes that, at the very least, the Declarations should be found inadmissible at the jurisdictional stage, or their consideration postponed until the Court has determined the scope of its jurisdiction *ratione materiae*.



83. Ukraine and the declarant States consider that the Declarations of intervention relate solely to questions of construction of the Genocide Convention. In particular, if the Declarations sometimes refer to rules and principles of international law outside the Genocide Convention, it is only in the context of interpreting the provisions of that instrument.

\* \*

84. The Court has already stated that intervention under Article 63 of the Statute is limited to the construction of the provisions in question at the relevant stage of the proceedings. The Court is of the view that the Declarations of intervention at issue generally concern the construction of the provisions of the Genocide Convention. However, to the extent that some Declarations also address other matters, such as the existence of a dispute between the Parties, the evidence, the facts or the application of the Convention in the present case, the Court will not consider them. Further, while some of the Declarations also refer to other rules and principles of international law outside the Genocide Convention, such references will only be considered by the Court in so far as they concern the construction of the Convention's provisions, in accordance with the customary rule of interpretation reflected in Article 31, paragraph 3 (c), of the Vienna Convention on the Law of Treaties.

85. The Court therefore cannot uphold this objection of the Russian Federation.

#### IV. OBJECTION OF THE RUSSIAN FEDERATION WITH RESPECT TO THE JOINT DECLARATION OF INTERVENTION OF CANADA AND THE NETHERLANDS

86. The Russian Federation raises an additional objection with respect to the admissibility of the Joint Declaration of intervention of Canada and the Netherlands. It argues that this Declaration is inadmissible because joint declarations of intervention are not envisaged by Article 63, paragraph 2, of the Statute and Article 82 of the Rules of Court, since these provisions refer to the intervention of a State in the singular.

87. Ukraine, Canada and the Netherlands contend that there is no obstacle to the filing of a joint declaration of intervention under Article 63 of the Statute.

\* \*

88. The Court considers that there is nothing in the Statute or the Rules preventing States from filing a joint declaration of intervention. While Article 63, paragraph 2, of the Statute and Article 82 of the Rules of Court refer to the right of a State to file a declaration of intervention, the use of the



generic singular simply means that every State party to the relevant convention can intervene in the proceedings, but it does not prohibit the filing of a joint declaration by those States. In fact, the joint presentation of shared views can advance the good administration of justice.

89. The Court therefore cannot uphold this objection of the Russian Federation.

#### V. OBJECTION OF THE RUSSIAN FEDERATION WITH RESPECT TO THE DECLARATION OF INTERVENTION OF THE UNITED STATES

90. The Russian Federation raises an additional objection with respect to the admissibility of the Declaration of intervention of the United States, contending that this Declaration is inadmissible as a result of the reservation of the United States to Article IX of the Genocide Convention. The Russian Federation makes three arguments in support of this objection. First, it submits that the term “convention” in Article 63 of the Statute must be taken to mean a convention whose provisions to be interpreted and whose compromissory clause affording jurisdiction to the Court are in force between the State seeking to intervene and the parties to a case. According to the Russian Federation, a State that has made a reservation to a compromissory clause has in effect “immunized” itself from any effect of a judicial interpretation of a treaty by the Court and thus has no special interest to be protected through Article 63 of the Statute. Secondly, the Russian Federation asserts that Article 63 implies the existence of a jurisdictional link between the parties to the main case and the State seeking to intervene, and that such a link is missing when the State seeking to intervene has made a reservation to the compromissory clause. Thirdly, the Russian Federation takes the view that intervention under Article 63 must conform to the principle of reciprocity, and that a State that could not be brought before the Court as a respondent by another State should not be permitted to intervene against that same State.

91. The United States takes the view that its reservation to Article IX of the Genocide Convention has no bearing on its right to intervene under Article 63 of the Statute. It considers that the Russian Federation is attempting to add conditions to the requirements of Article 63 and that the arguments it advances should therefore be rejected. The United States first contends that the “special interest” requirement asserted by the Russian Federation is not to be found in the text of Article 63, according to which the interest of a State party in the interpretation of a treaty does not depend on whether that State party has accepted the jurisdiction of the Court. The United States submits that, in the event that its Declaration of intervention is deemed admissible, the construction of the provisions of the Convention to be given by the Court in this case will be binding on it under Article 63, paragraph 2. It adds that such will be the case regardless of whether any other State is able to invoke the jurisdiction of the Court in a future case involving it.

The United States further contends that Article 63 of the Statute does not require the existence of a “jurisdictional link” between the parties and the State seeking to intervene, as such a requirement is not reflected in that provision, in the practice of the Court or in the drafting history of Article 63. Finally, the United States maintains that the Russian Federation erroneously invokes the principle of reciprocity by conflating intervention under Article 63 with the status of party to the proceedings.

92. Ukraine considers that the fact that the United States maintains a reservation to Article IX of the Genocide Convention does not affect that State’s right to intervene under Article 63 of the Statute.

\* \*

93. The Court has already concluded that the Declarations of intervention may be admissible at the current stage of the proceedings in so far as they concern the construction of Article IX and of other provisions of the Genocide Convention that are relevant for the determination of the jurisdiction *ratione materiae* of the Court (see Sections III.D and III.F above). However, it must now ascertain whether the United States’ reservation to Article IX of the Convention renders that State’s Declaration of intervention inadmissible in so far as the current stage of the proceedings is concerned.

94. The Court notes that the United States has entered the following reservation to Article IX of the Genocide Convention, which reservation is currently in force:

“That with reference to Article IX of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case.”

The Court has found that that reservation “had the effect of excluding that Article from the provisions of the Convention in force” between the United States and another party to a dispute (*Legality of Use of Force (Yugoslavia v. United States of America), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 924, para. 24). Consequently, by virtue of that reservation, the United States is not bound by Article IX of the Convention.

95. The Court considers that the United States may not intervene in relation to the construction of Article IX of the Convention while it is not bound by that provision. The reservation of the United States excludes the legal effect of that Article in relation to that State. Consequently, the legal interest that the United States is presumed to have in the construction of the Genocide Convention, as a party to that instrument, does not exist in respect of Article IX. Moreover, by declaring that it “recognizes that, by availing itself of the right to intervene under Article 63 of the Statute, the construction of the Convention given by the judgment in this case will be equally binding

upon [it]”, the United States cannot overcome the fact that it has entered a reservation to Article IX of the Convention, which is thus not binding upon it.

96. In the Court’s view, the Declaration of intervention of the United States, in so far as it concerns the construction of Article IX, does not fall within the scope of Article 63 of the Statute, which permits States parties to a convention to intervene in relation to the construction of any of its provisions in question before the Court, provided that they are bound by the provision in question. Therefore, when a State seeks to intervene under Article 63 but is not bound by a provision of the convention due to a reservation, its declaration under Article 63 cannot be found admissible in respect of the construction of that provision. Thus, the Court finds that the Declaration of the United States is inadmissible in so far as it concerns Article IX of the Genocide Convention.

97. The Court notes that the United States also seeks to intervene to present its construction of other provisions of the Convention that could be in question at this stage of the proceedings, in particular provisions that may be relevant for the determination of the scope of the Court’s jurisdiction *ratione materiae* in the present case. The Court emphasizes that at the preliminary objections stage, the construction of any other provision of the Convention may only be relevant in so far as it concerns the construction of Article IX and the determination of the Court’s jurisdiction *ratione materiae* thereunder. Since the United States has entered a reservation to that Article, the Court considers that it cannot intervene at the current stage to present its construction of other provisions of the Convention that could be relevant to the Court’s jurisdiction *ratione materiae* under Article IX.

98. The Court concludes that the Declaration of intervention of the United States is inadmissible in so far as it concerns the preliminary objections stage of the proceedings. The Court upholds the objection of the Russian Federation in so far as it relates to that phase.

## VI. CONCLUSION

99. The Court concludes that the Declarations of intervention filed in this case, except for the Declaration submitted by the United States, are admissible at the preliminary objections stage in so far as they concern the construction of Article IX and other provisions of the Genocide Convention that are relevant for the determination of the Court’s jurisdiction *ratione materiae* in the present case. Accordingly, the Court will not, at this stage, have regard to any part of the written or oral observations of the declarant States going beyond the scope thus fixed.

100. The Court further recalls that Article 86 of its Rules provides as follows:

“1. If an intervention under Article 63 of the Statute is admitted, the intervening State shall be furnished with copies of the pleadings and documents annexed, and shall be entitled, within a time-limit to be fixed by the Court, or by the President if the Court is not sitting, to submit its written observations on the subject-matter of the intervention.

2. These observations shall be communicated to the parties and to any other State admitted to intervene. The intervening State shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention.”

101. In accordance with this provision, the States whose Declarations of intervention are admissible at the current stage will be furnished with copies of the Memorial of Ukraine, the Preliminary Objections of the Russian Federation and the Written Statement of Ukraine on those preliminary objections. Further, the Court will set a time-limit for the declarant States to file their written observations on the subject-matter of their intervention as admitted at the current stage.

\* \* \*

102. For these reasons,

THE COURT,

(1) By fourteen votes to one,

*Decides* that the Declarations of intervention under Article 63 of the Statute submitted by Australia, the Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, Canada and the Kingdom of the Netherlands, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Republic of Finland, the French Republic, the Federal Republic of Germany, the Hellenic Republic, Ireland, the Italian Republic, the Republic of Latvia, the Principality of Liechtenstein, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Malta, New Zealand, the Kingdom of Norway, the Republic of Poland, the Portuguese Republic, Romania, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland are admissible at the preliminary objections stage of the proceedings in so far as they concern the construction of Article IX and other provisions of the Convention on the Prevention and Punishment of the Crime of Genocide that are relevant for the determination of the jurisdiction of the Court;

IN FAVOUR: *Acting President* Bennouna; *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Abraham, Yusuf, Sebutinde,

Bhandari, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge ad hoc* Daudet;

AGAINST: *Judge Xue*;

(2) Unanimously,

*Decides* that the Declaration of intervention under Article 63 of the Statute submitted by the United States of America is inadmissible in so far as it concerns the preliminary objections stage of the proceedings;

(3) By fourteen votes to one,

*Fixes* 5 July 2023 as the time-limit for the filing, by the States whose Declarations of intervention have been deemed admissible at the preliminary objections stage of the proceedings, of the written observations referred to in Article 86, paragraph 1, of the Rules of Court.

IN FAVOUR: *Acting President* Bennouna; *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Abraham, Yusuf, Sebutinde, Bhandari, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge ad hoc* Daudet;

AGAINST: *Judge Xue*.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this fifth day of June, two thousand and twenty-three, in thirty-six copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of Ukraine, the Government of the Russian Federation, and the Governments of Australia, the Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, Canada, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Republic of Finland, the French Republic, the Federal Republic of Germany, the Hellenic Republic, Ireland, the Italian Republic, the Republic of Latvia, the Principality of Liechtenstein, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Malta, the Kingdom of the Netherlands, New Zealand, the Kingdom of Norway, the Republic of Poland, the Portuguese Republic, Romania, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, respectively.

(*Signed*) Mohamed BENNOUNA,  
Acting President.

(*Signed*) Philippe GAUTIER,  
Registrar.

Vice-President GEVORGIAN appends a declaration to the Order of the Court; Judge ABRAHAM appends a declaration to the Order of the Court; Judge XUE appends a dissenting opinion to the Order of the Court; Judge BHANDARI appends a declaration to the Order of the Court.

*(Initialed)* M.B.

*(Initialed)* Ph.G.

---