



# INTERNATIONAL COURT OF JUSTICE

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## Summary

Unofficial

Summary 2023/5

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### *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

##### **History of the proceedings (paras. 1-24)**

The Court begins by recalling that, on 26 February 2022, Ukraine filed in the Registry of the Court an Application instituting proceedings against the Russian Federation concerning “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”). 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.

Together with the Application, Ukraine submitted a Request for the indication of provisional measures. By an Order dated 16 March 2022, the Court indicated certain provisional measures.

Following the filing of the Memorial of Ukraine on 1 July 2022, several States filed declarations of intervention under Article 63, paragraph 2, of the Statute of the Court. Thus, between 21 July 2022 and 15 December 2022, 33 States submitted 32 declarations of intervention (Canada and the Netherlands filed a joint declaration). The Russian Federation objected to the admissibility of all those declarations.

On 3 October 2022, the Russian Federation raised preliminary objections to the jurisdiction of the Court and the admissibility of the Application.

#### **I. INTRODUCTION (PARAS. 25-32)**

The Court recalls that intervention under Article 63 of the Statute involves the exercise of a right by a State party to a convention the construction of which is in question before the Court. The object of the intervention is limited to the construction of the convention concerned. 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. 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.

## **II. CONFORMITY OF THE DECLARATIONS OF INTERVENTION WITH THE REQUIREMENTS SET OUT IN ARTICLE 82 OF THE RULES OF COURT (PARAS. 33-40)**

The Court first examines whether the declarations of intervention comply with the formal requirements set out in Article 82 of its Rules, and concludes that such is the case.

## **III. OBJECTIONS OF THE RUSSIAN FEDERATION WITH RESPECT TO ALL THE DECLARATIONS OF INTERVENTION (PARAS. 41-85)**

The Court then turns to the objections raised by the Russian Federation with respect to the admissibility of all the declarations of intervention.

### **A. Objection based on the alleged intention behind the declarations of intervention (paras. 42-46)**

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.

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. 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.

The Court adds that while many of the declarant States in the present case 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.

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 (paras. 47-53)**

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 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 seeking to intervene in support of Ukraine.

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 an earlier case, that such an intervention did not affect the equality of the parties to the dispute.

The Court adds that it 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.

It also 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.

Finally, the Court states that it has taken note of the concerns of the Russian Federation and that, 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.

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 (paras. 54-60)**

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. 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.

The Court recalls that an 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. Only in exceptional circumstances should the Court reject a claim based on a valid title of jurisdiction on the ground of abuse of process. 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.

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 recalls that it has already concluded 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.

The Court considers that in the present case there are no exceptional circumstances that would render the declarations of intervention inadmissible. It 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 (paras. 61-71)**

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. It 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.

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]henever 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.

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.

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. The Russian Federation subsequently filed preliminary objections to the jurisdiction of the Court and the admissibility of the Application 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.

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.

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 (paras. 72-76)**

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.

The Court recalls that it has concluded that declarations of intervention may be admissible at the preliminary objections stage. 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.

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. For these 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 (paras. 77-81)**

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 Court recalls that it 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. 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. 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 (paras. 82-85)**

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 prejudice questions relating to the Court's jurisdiction *ratione materiae*.

The Court reiterates 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.

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 (PARAS. 86-89)**

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.

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.

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 (PARAS. 90-98)**

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 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.

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.

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.

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 (PARAS. 99-101)

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.

The Court recalls the content of Article 86 of its Rules. It explains that, 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.

### OPERATIVE CLAUSE (PARA. 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.

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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<sup>1</sup>.

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<sup>1</sup> The summaries of declarations and opinions drafted by Members of the Court in English are annexed to the English-language summary of the Order, while the summaries of declarations and opinions drafted in French are appended to the French-language summary.



## **Declaration of Vice-President Gevorgian**

Vice-President Gevorgian voted in favour of the Court's decision to admit 31 out of the 32 declarations of intervention. In his declaration, he explains that Article 63 of the Statute leaves no room for the Court to reject interventions that comply with the necessary procedural requirements. However, the Vice-President expresses his strong concern about the interveners' strategy of mass intervention and the impact this strategy may have upon the equality of parties in this case. While he welcomes the fact that the Court has recognized the necessity to organize the proceedings in a manner that ensures both "the equality of the parties and the good administration of justice", he nevertheless argues that the Court should have analysed more carefully whether, at least in theory, the equality of parties may be compromised to an extent that the sound administration of justice would require the rejection of otherwise admissible declarations of intervention.

In addition, the Vice-President notes that although he considers the circumstances of this case to be exceptional, he understands the reluctance of the Court to endorse the Respondent's argument based on an alleged "abuse of process" in light of the precedent it may set for future cases. Finally, the Vice-President highlights that many declarations of intervention contain remarks that go beyond the interpretation of the relevant articles of the Genocide Convention that are at issue at the present stage of the proceedings. He regrets that such remarks circumvent the limits prescribed by Article 63 of the Statute and put undue political pressure on the judges to decide this case in a certain way.

## **Dissenting opinion of Judge Xue**

1. While agreeing with the majority that all the declarations of intervention, except for the one of the United States, have met the conditions in Article 82 of the Rules and Article 63 of the Statute of the Court, Judge Xue regrets being unable to join the majority in finding these declarations admissible at the preliminary objections stage. She considers that it is for the Court to decide whether or not it has jurisdiction in the case and that, in dealing with such a massive number of declarant States, the Court should be mindful of the principle of equality of the parties to ensure good administration of justice. This is imperative for the present case as well as for the judicial practice of the Court in general.

2. By reference to the Court's jurisprudence, Judge Xue first opines that the Court must assess whether the object of each declaration is in fact the interpretation of the relevant convention. She recalls that intervention under Article 63 of the Statute is limited to submitting observations on the construction of the convention in question. Having noted that proceedings in the present case have been bifurcated following the Respondent's preliminary objections, there is the question whether an Article 63 intervention may deal with matters of jurisdiction and, consequently, whether an intervening State may be permitted to appear at the hearing on preliminary issues.

3. While acknowledging that Article 63 makes no distinction as to the type of provisions in respect of which a State party may be allowed to intervene, Judge Xue considers that it is for the Court to determine how the "right" of intervention should be exercised in the judicial proceedings. She points out that Article IX of the Genocide Convention is a clause that establishes the jurisdiction of the Court. As a preliminary matter, the Court shall, either at the request of any party or *proprio motu*, first adjudicate whether there exists a dispute that falls within the jurisdiction *ratione materiae* of the Court. That is to say, the matter forms parts of the judicial process. This explains why a compromissory clause normally does not give rise to a declaration of intervention under Article 63.

4. Judge Xue states that all declarations of intervention, even where identifying Article IX for construction, concern the merits of the case. As the proceedings on the merits are suspended, an intervener should not be allowed to address the merits of the case at the preliminary phase. In Judge Xue's view, this judicial policy bears on the good administration of justice.

5. Judge Xue considers that the reason for restricting Article 63 intervention to the merits has much to do with the nature of the Court's jurisdiction. In relation to the present case, interpretation of Article IX cannot be isolated from other provisions, totally detached from the interpretation of substantive articles and the facts of the case.

6. According to Judge Xue, by its nature, an Article 63 intervention should be neutral and objective, focusing on the meaning of the terms of the Convention, as the intervener is not a party to the proceedings. In constructing the provisions of the Convention, the intervener should not take sides with either of the Parties. Judge Xue doubts that interventions at the preliminary objections stage may maintain that objectivity.

7. Providing specific examples, Judge Xue notes that many declarant States address the issue of the existence of a dispute between the Parties. Many submissions extend far beyond the construction of the Genocide Convention, directly making arguments on the merits of the case. In Judge Xue's view, these statements are evidently not about the construction of the Convention; the declarant States act as parties to the dispute.

8. Judge Xue fully appreciates and endorses the Court's statement that it will not consider any arguments presented by the intervening States on the existence of a dispute between the Parties, the evidence, the facts, the application of the Convention in the present case, or rules and principles of international law unrelated to the construction of the Genocide Convention. She considers that this shows that the Court is also aware of the problems that she has addressed with regard to these declarations. This precaution, in her view, is nevertheless insufficient to prevent the interveners from dealing with other aspects of the case.

9. Judge Xue observes that the declarant States do not hide the purposes of their interventions, with virtually all of them making clear their pursuit of two findings by the Court. In her view, the "relief" sought by the declarant States is not the proper object of intervention. The matters they have raised must be examined and ascertained by the Court on the basis of facts and evidence in accordance with the provisions of the Convention; they are neither part of the construction of the Convention, nor for judicial settlement at the present phase.

10. Judge Xue agrees with the majority that the Respondent's objections to the admissibility of the declarations on the grounds of political motivation and abuse of process are unfounded but she believes that the Court should pay more attention to the application of the principle of equality of the parties. She considers that the overwhelming number of the declarations of intervention in the present case that all stand on one side of the Parties and argue for the same cause and the same purpose should not be taken lightly and treated as a normal situation of intervention under Article 63. Virtually all of the declarant States are among the States that issued certain "Joint Statements", explicitly indicating that they would mobilize political support to Ukraine against the Russian Federation by intervening in these proceedings and explore "all options to support Ukraine in its proceedings before the ICJ". Although their right to intervene under Article 63 remains intact notwithstanding the joint statements, the declarant States are in fact engaging in "an active

collaboration of litigation strategy”. These legal actions lend strong political support to the Applicant and at the same time exert political pressure on the Court to entertain the case.

11. Judge Xue emphasizes that good administration of justice and equality of the parties are two fundamental principles that must guide the judicial process. In considering the admissibility of the declarations of intervention, the Court should not lose sight of the imbalance between the Parties and the impact of the interventions on the judicial proceedings. Confining Article 63 intervention to substantive provisions at the merits phase would be a fair approach for both Parties and would not in any way prejudice the right of the States parties to intervene under Article 63 of the Statute. Judge Xue regrets that the present decision does not duly take relevant considerations into account. She stresses that it is not enough that justice is done. Justice must also appear to be done.

### **Declaration of Judge Bhandari**

In his declaration, Judge Bhandari addresses the timing of declarations of intervention under Article 63 of the Statute of the Court and Article 82 of the Rules of Court.

Judge Bhandari notes that the words “as soon as possible” in Article 82 of the Rules should be interpreted strictly. Judge Bhandari states that practical considerations, like those in the present case, support this reading. If these words are not interpreted strictly, he notes, the ongoing submission of declarations of intervention could strain the Court’s time and resources.

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