

**JOINT WRITTEN OBSERVATIONS
BY THE REPUBLIC OF AUSTRIA, THE CZECH REPUBLIC AND
THE SLOVAK REPUBLIC**

5 July 2023

To the Registrar, International Court of Justice, the undersigned, being duly authorized by the Governments of the Republic of Austria (“**Austria**”), the Czech Republic (“**Czechia**”) and the Slovak Republic (“**Slovakia**”):

1. On behalf of the Governments of Austria, Czechia and Slovakia (“**the intervening States**”), we have the honour to submit to the International Court of Justice (“**the Court**”) the following Joint Written Observations in the Case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (“**the Proceedings**”) in accordance with the Court’s Order of 5 June 2023 on the admissibility of the declarations of intervention (“**the Order**”).¹

I. Introduction

2. On 5 June 2023, the Court decided that the declarations of intervention under Article 63 of the Statute of the Court (“**the Statute**”) submitted by, among others, Austria, Czechia and Slovakia in the Proceedings were admissible.² The Court fixed 5 July 2023 as the time limit for the filing of the Written Observations referred to in Article 86, paragraph 1, of the Rules of Court (“**the Rules**”).

3. The intervention by Austria, Czechia and Slovakia 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. As determined by the Court in its Order, the construction of Article IX and of other provisions of the Convention on the Prevention and Punishment of the Crime of Genocide (“**Genocide Convention**” or “**Convention**”) concerning the Court’s jurisdiction *ratione materiae* is in question at the present stage of the Proceedings. In accordance with the Court’s Order, the Joint Written Observations will solely 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 Proceedings. References to other rules and principles of international law outside the Genocide Convention in the Joint Written Observations will only concern the construction of the Genocide Convention’s provisions, in accordance with the customary rule of interpretation reflected in Article 31 of the 1969 Vienna Convention on the Law of Treaties (“**VCLT**”). The intervening States will not address other matters, such as the existence of a dispute between the Parties, the evidence, the facts or the application of the Genocide Convention in the present case.

¹ *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.

² Order, para. 102.

4. In its Order, the Court considered that there is nothing in the Statute or the Rules preventing States from filing a joint declaration of intervention.³ In addition, the Registrar noted in his letter of 6 June 2023 that the joint presentation of shared views can advance the good administration of justice.⁴ Moreover, in his communication of 23 June 2023, the Registrar reiterated that he “strongly encourages the intervening States to present joint written and oral observations to the extent possible.”⁵ Having in mind these concerns, Austria, Czechia and Slovakia hereby submit their Joint Written Observations.

II. The Construction of Article IX of the Genocide Convention

5. Article IX of the Genocide Convention reads as follows:

“Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”

6. Article IX of the Genocide Convention is a broad jurisdictional clause, allowing the Court to adjudicate upon disputes between Contracting States relating to all aspects of interpretation, application or fulfilment of a Party’s obligations under the Genocide Convention. In particular, Article IX vests the Court with the jurisdiction *ratione materiae* to adjudge and declare (a) the absence of acts of genocide, i.e. a non-violation of the Genocide Convention, as well as (b) a violation of the Genocide Convention through false or abusive allegations of genocide that contradict the letter and spirit of the Convention and are used to justify acts that negate the object and purpose of the Genocide Convention.

7. “Negative declarations” establishing the non-violation of international obligations are as much part of the Court’s competence as declaratory relief for the violation of obligations. For instance, in the case concerning *Rights of Nationals of the United States of America in Morocco*, the applicant requested the Court to declare that it had acted “in conformity with the treaty provisions which are ... binding on France and the United States”.⁶ The Court, which has to verify its jurisdiction *proprio motu*,⁷ did not see any jurisdictional issues with France’s request for a negative declaration and went on to consider the merits of the claim. Likewise, in its *Lockerbie* judgment, the Court confirmed its jurisdiction over the applicant’s request for a negative declaration establishing that it had *not* violated the Montreal Convention.⁸

8. Consequently, the intervening States conclude from the Court’s case law that the Court is competent to grant declaratory relief concerning the non-violation of international obligations.

³ Order, para. 88.

⁴ Letters from the Registrar of the International Court of Justice n° 159463, 159481 and 159468, 6 June 2023.

⁵ Letters from the Registrar of the International Court of Justice n° 159655, 159636 and 159642, 23 June 2023.

⁶ *Rights of Nationals of the United States of America in Morocco* (France v. United States of America), Judgment of 27 August 1952, I.C.J. Reports 1952, p. 176, at p. 182.

⁷ *Appeal Relating to the Jurisdiction of the ICAO Council* (India v. Pakistan), Judgment of 18 August 1972, I.C.J. Reports 1972, p. 46, at p. 52, para. 13.

⁸ *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie* (Libyan Arab Jamahiriya v. United Kingdom), Preliminary Objections, Judgment of 27 February 1998, I.C.J. Reports 1998, p. 8, at p. 13, para. 12 and p. 18, at p. 23, para. 38.

1. The Rules of Interpretation applied to Article IX of the Convention

9. As a preliminary matter, the construction of Article IX of the Genocide Convention is governed by the customary international law of treaty interpretation, as reflected in the VCLT.⁹ The general rule of interpretation, reflected in Article 31 of VCLT, provides that:

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
 - (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
 - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
 - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
 - (c) any relevant rules of international law applicable in the relations between the parties.
4. [...]

2. Ordinary Meaning of the Terms of Article IX

10. The point of departure of the general rule of interpretation is an interpretation of the terms of the treaty by their ordinary meaning.¹⁰

11. According to the plain wording of Article IX of the Genocide Convention, the Court has jurisdiction over “disputes” that relate to the interpretation, application or fulfilment of the Convention. This notion of a dispute – “a disagreement on a point of law or fact, a conflict of legal views or of interests”¹¹ – takes centre stage in the construction of Article IX.

12. A dispute exists if the two Parties “hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations.”¹² In this connection, “the positive opposition ... need not necessarily be stated *expressis verbis*”,¹³ or formally declared,¹⁴ as long as “the respondent was aware, or could not have been unaware, that its views

⁹ See, e.g., *Arbitral Award of 3 October 1899* (Guyana v. Venezuela), Jurisdiction of the Court, Judgment of 18 December 2020, I.C.J. Reports 2020, p. 455, at p. 475, para. 70.

¹⁰ E.g. *Territorial Dispute* (Libyan Arab Jamahiriya/Chad), Judgment of 3 February 1994, I.C.J. Reports 1994, p. 6, at p. 22, para. 41.

¹¹ *Mavrommatis Palestine Concessions* (Greece v. United Kingdom), Preliminary Objections, Judgment of 30 August 1924, P.C.I.J. Series A, No. 2, at p. 11.

¹² *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea* (Nicaragua v. Colombia), Preliminary Objections, Judgment of 17 March 2016, I.C.J. Reports 2016, p. 3, at p. 26, para. 50.

¹³ *Land and Maritime Boundary between Cameroon and Nigeria* (Cameroon v. Nigeria), Preliminary Objections, Judgment of 11 June 1998, I.C.J. Reports 1998, p. 275, at p. 315, para. 89.

¹⁴ *Alleged Violations of Sovereign Rights and Maritime Space in the Caribbean Sea* (Nicaragua v. Colombia), Preliminary Objections, Judgment of 17 March 2016, I.C.J. Reports 2016, p.3, at p. 32, para. 72.

were ‘positively opposed’ by the applicant.”¹⁵ Likewise, the Court has emphasized that a dispute under a specific treaty may exist despite the absence of

“a specific reference to the treaty or to its provisions in public statements by the parties, provided that those statements refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to identify that there is, or may be, a dispute with regard to that subject-matter.”¹⁶

13. Moreover, the existence of a dispute must be determined objectively. One Party’s unilateral denial that a dispute has arisen is not determinative of whether or not a dispute for the purposes of Article IX of the Genocide Convention.¹⁷

14. Evidence of a dispute derives from opposing positions attributable to the relevant States. The States’ positions may not only originate from the highest State organs but could also emanate from other sources; it suffices that the conduct is attributable to the State and that it reflects the position of the State.¹⁸ Such conduct also includes statements of organs that enjoy independence such as domestic courts or quasi-judicial organs.¹⁹

15. Accordingly, acts by independent State entities²⁰ are attributable to the State. Therefore, if such entities make statements that are opposed to another State’s legal position concerning the interpretation, application or fulfilment of the Genocide Convention, such statements are relevant to determine whether a dispute exists.

16. The dispute must in principle exist on the date on which the application is submitted to the Court.²¹ However, “[c]onduct subsequent to the application (or the application itself)” can also be used “to confirm the existence of a dispute [or] to clarify its subject-matter”.²²

17. Following this construction of the term “dispute”, the ensuing paragraphs construe the ordinary meaning of the remaining terms of Article IX of the Convention.

¹⁵ See, e.g., *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament* (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment of 5 October 2016, I.C.J. Reports 2016, p. 833, at p. 850, para. 41; concerning the Court’s observation that *conduct* of the Parties may suffice to establish the existence of a dispute, “especially when there have been no diplomatic exchanges” between the Parties or in the context of an ongoing armed conflict, see also *ibid.*, paras. 40, 54.

¹⁶ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Judgment of 22 July 2022, p. 27, para. 72, citing *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011(1), p. 85, para. 30

¹⁷ See, e.g., *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment of 5 October 2016, I.C.J. Reports 2016, pp. 849-851, paragraphs 39-43.

¹⁸ ILC, Draft Articles on the Responsibility of States for Internationally Wrongful Acts with commentaries (2001) p. 41, para. 4.

¹⁹ *Jurisdictional Immunities of the State* (Germany v. Italy: Greece intervening), Judgment of 3 February 2012, I.C.J. Reports 2012, p. 99, at p. 118, para 44. (“The “facts or situations” which have given rise to the dispute before the Court are constituted by Italian judicial decisions that denied Germany the jurisdictional immunity which it claimed, and by measures of constraint applied to property belonging to Germany.”)

²⁰ Which include committees established by the State for the investigation for the purpose of criminal prosecution and deriving their authority from and answering to the Head of State.

²¹ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament* (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment of 5 October 2016, I.C.J. Reports 2016, p. 833, at p. 851, paras. 42-43.

²² *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament* (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment of 5 October 2016, I.C.J. Reports 2016, p. 833, at p. 851, para. 43.

18. The ordinary meaning of the phrase “relating to the interpretation, application or fulfilment of the Convention” may be divided into two parts. The first part “relating to” establishes a link between the dispute and the Genocide Convention. The subject matter of the dispute thus must concern the Genocide Convention itself. As for the second part “interpretation, application or fulfilment”, the wording is intentionally broad, “opening the seizing of the Court as largely as possible”.²³ In particular, the inclusion of the word “fulfilment”, in addition to “interpretation and application” which are commonplace in compromissory clauses, manifests that the scope of Article IX must be construed broadly. Where one State Party to the Genocide Convention accuses another of genocidal acts, the “fulfilment” of the Genocide Convention is clearly at stake. This also includes situations where the Court is asked to make “negative declarations” after false or abusive allegations of violations of the Genocide Convention to justify unilateral acts that negate the object and purpose of the Genocide Convention.

19. This interpretation is confirmed by the fact that the wording of Article IX expressly provides that the Court has jurisdiction “at the request of *any of the parties* to the dispute”.²⁴ This language suggests that a State accused of committing genocide has the same rights to have the dispute heard by the Court as the State making the accusation. Indeed, there is no reason why a State facing what it considers to be an unfounded allegation of a breach of the Genocide Convention cannot, on its own accord, bring the matter before the Court. Such a State may thus bring a “non-violation” complaint and seek a “negative declaration” from the Court.

20. Moreover, disputes under Article IX “includ[e] those relating to the responsibility of a State for genocide or for any of the acts enumerated in article III”. The use of the word “include” signifies that such disputes “are comprised within a broader group of disputes relating to the interpretation, application or fulfilment of the Convention”.²⁵ There is nothing in this clause that limits the Court’s jurisdiction to the determination of the responsibility of a respondent State, as opposed to the responsibility of an applicant State.

21. Further, as the Court has noted, this clause “does not exclude any form of State responsibility”.²⁶ Thus, the Court’s jurisdiction under the Convention covers State responsibility for any form of conduct, including false or abusive allegations of genocide to justify unilateral acts that negate the object and purpose of the Convention. In the same vein, the Court has confirmed that Article IX also pertains to disputes concerning obligations that are “not expressly imposed by the actual terms of the Convention.”²⁷ Accordingly, the subject of the dispute may concern Article IX itself, as well as the good faith performance of the Convention read as a whole.²⁸

²³ R. Kolb, “The Compromissory Clause of the Convention”, in: Paola Gaeta (ed.), *The UN Genocide Convention: A Commentary* (OUP), p. 420.

²⁴ Emphasis added.

²⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, I.C.J. Reports 2007, p. 114, paragraph 169.

²⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections, Judgment of 11 July 1996, I.C.J. Reports 1996, p. 595, at p. 616, para. 32.

²⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, I.C.J. Reports 2007, p.43, at p. 113, para. 166.

²⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections, Judgment of 11 July 1996, I.C.J. Reports 1996, p. 595, at p. 616, para. 33 (“[The Court] would moreover observe that it is sufficiently apparent from the very terms of

22. The ordinary meaning of Article IX thus establishes that the Court has jurisdiction *ratione materiae* to adjudge and declare the absence of genocide and the violation of the Genocide Convention due to a failure to fulfil the Convention in good faith, resulting in an abuse of law.

3. *Good Faith Interpretation of the Genocide Convention*

23. The Court has observed that the principle of good faith, reflected in Article 31 of the VCLT, “obliges the Parties to apply [a treaty] in a reasonable way and in such a manner that its purpose can be realized”.²⁹ Put differently, the obligation to interpret in good faith serves as a safeguard against any misuse of the terms of the treaty. In this sense, the principle of good faith constitutes the positive side of the prohibition of abuse of rights, so that a bad faith interpretation amounts to an abusive interpretation.³⁰

24. In light of the above, a State Party fails to interpret, apply or fulfil the Genocide Convention in good faith if its accusations of genocide, and any ensuing actions with the stated purpose of preventing and punishing such genocide, are not objectively supported by any factual and legal foundation.

25. A dispute as to whether a State Party has disregarded the principle of good faith and has thereby engaged in an abusive interpretation and application of the Genocide Convention falls under the purview of Article IX.

4. *Context of the Genocide Convention*

26. Pursuant to Article 31, paragraph 3 (c) of the VCLT, Article IX of the Genocide Convention has to be interpreted in the context of “any relevant rules of international law applicable in the relations between the parties”. The Charter of the United Nations (“**UN Charter**”) constitutes such international law that applies between the Contracting States of the Genocide Convention.³¹ The Genocide Convention must thus be interpreted in the context of the Parties’ obligations under the UN Charter.

27. According to Article 1, paragraph 1, of the UN Charter, one of the purposes of the United Nations is

“to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace”.

28. Article 2, paragraph 3, of the UN Charter sets forth the principle according to which, in pursuit of the purposes stated in Article 1, the Member States of the United Nations “shall settle

[Yugoslavia’s preliminary] objection that the Parties not only differ with respect to the facts of the case, their imputability and the applicability to them of the provisions of the Genocide Convention, but are moreover in disagreement with respect to the meaning and legal scope of several of those provisions, including Article IX.”)

²⁹ *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia), Judgment of 25 September 1997, I.C.J. Reports 1997, p. 7, at p. 79, para. 142.

³⁰ WTO, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, Report of the Appellate Body of 12 October 1998, para. 158.

³¹ Relevant obligations constitute customary international law as confirmed in *Case concerning Military and Paramilitary Activities in and against Nicaragua, Nicaragua v. United States of America*, Judgment of 27 June 1986, para. 290.

their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”. This principle is further specified in Article 33 of the UN Charter, which provides that

“parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”

29. Article IX of the Genocide Convention reflects and specifies the principle of peaceful settlement of disputes, enshrined in the UN Charter, for the purposes of the Genocide Convention.

30. The Court has held that the obligation to seek the peaceful settlement of disputes must be implemented in good faith in accordance with Article 2, paragraph 2, of the UN Charter.³² The principle of peaceful dispute settlement is “complementary to the ... principle prohibiting recourse to the threat or use of force in international relations or the principle of non-intervention”.³³

31. The principle that international disputes shall be settled peacefully is binding upon all Member States of the United Nations. Consequently, a contextual interpretation confirms that Article IX of the Genocide Convention vests the Court with the jurisdiction to determine whether a Party violated the Genocide Convention by failing to interpret, apply or fulfil the Convention in accordance with its obligations under the UN Charter.

32. In addition, the context of the phrase “relating to the interpretation, application or fulfilment of the Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III” reinforces this reading. In particular, the unusual feature of the word “including” in the intermediate sentence of Article IX indicates an all-encompassing nature of Article IX. The provision expressly indicates that disputes “relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III” are “included” in the wider phrase of disputes “relating to the interpretation, application and fulfilment” of the Genocide Convention and they may thus be referred to the Court. There is nothing in this text which limits the Court’s jurisdiction to the determination of the responsibility of a respondent State, as opposed to the responsibility of an applicant State.

5. Object and Purpose of the Genocide Convention

33. Article 31 of the VCLT requires a treaty to be interpreted in the light of its object and purpose, which may be reflected in its preamble.³⁴ The preamble of the Genocide Convention indicates the object and purpose to further “the spirit and aims of the United Nations”. This object and purpose entails that in their efforts to interpret, apply and fulfil the Convention, Contracting States may not act in a manner that contradicts the spirit and aims of the UN

³² *Case Concerning the Aerial Incident of 10 August 1999 (Pakistan v. India)*, Jurisdiction of the Court, Judgment of 21 June 2000, at p. 25, para. 53.

³³ *Case concerning Military and Paramilitary Activities in and against Nicaragua, Nicaragua v. United States of America*, Judgment of 27 June 1986, para. 290.

³⁴ E.g. *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment of 17 March 2016, I.C.J. Reports 2016, p. 100, at p. 118, para. 39.

Charter. In the same vein, the Court has already affirmed that “it is clear that every State may only act within the limits permitted by international law”.³⁵

34. The Court has emphasized in its 1951 Advisory Opinion that:

“The objects of such a convention must also be considered. The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality. In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions.”³⁶

35. Since Article IX of the Convention provides a mandatory dispute settlement procedure – which aligns with the spirit and aims of the UN Charter – it corroborates the object and purpose of the Convention to ensure the peaceful settlement of disputes concerning the Genocide Convention. In this connection, this Court held:

“The Court thus finds that it has jurisdiction in this case to give effect to the Genocide Convention ... This finding is, moreover, in accordance with the object and purpose of the Convention as defined by the Court in [its Advisory Opinion of] 1951.”³⁷

36. It follows that denying a Party its right to dispute settlement under Article IX of the Convention would run counter to the object and purpose of the Convention, in particular since the State would have no other judicial instrument available to protect itself against any false or abusive allegation of genocide. The result would be to deny legal recourse to Contracting States that wish to be exonerated for allegations of violations of the Genocide Convention fabricated by another Contracting State. Such interpretation of Article IX could lead to serious abuses of the Genocide Convention.

37. Further, the Court recently held that

“[c]ertain acts may fall within the ambit of more than one instrument and a dispute relating to those acts may relate to the “interpretation or application” of more than one treaty or other instrument.”³⁸

38. In other words, the fact that a Party’s claims may simultaneously relate to other legal or political questions in addition to the “interpretation, application or fulfilment” of the Genocide Convention does in no way abrogate Article IX. Even if the larger dispute gives rise to questions

³⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, I.C.J. Reports 2007, p.43, at p. 221, para. 430.

³⁶ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, page 23.

³⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections*, Preliminary Objections, 1. C. J. Reports 1996, p. 595, para. 34.

³⁸ *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 of 3 February 2021, I.C.J. Reports 2021, p. 9, at p. 27, para. 56.

under the UN Charter or customary international law *in parallel* to questions under the Genocide Convention, the Court “cannot infer the subject-matter of a dispute from the political context” but must “bas[e] itself on what the applicant has requested of it”³⁹ under the Genocide Convention.

39. A State cannot escape its obligations under the Genocide Convention by picking and choosing whether it applies the definitions and obligations under the Convention or customary international law in a given situation. Rather, obligations under a treaty take precedence over customary international law in accordance with the interpretive maxim of *lex specialis*.⁴⁰ If the reverse was the case – i.e. if respondent States could vitiate the application of a treaty’s compromissory clause by claiming that the UN Charter or customary international law simultaneously apply to the conduct in question – the inclusion of compromissory clauses would be devoid of any practical value for the peaceful settlement of treaty disputes. In turn, this would negate the object and purpose of the Genocide Convention, which encompasses the peaceful dispute settlement as enshrined in Article IX.

40. In conclusion, the object and purpose of the Convention strongly militates in favour of an interpretation of Article IX according to which disputes relating to the interpretation, application or fulfilment include disputes about false or abusive allegations of genocide contradicting the letter and spirit of the Convention.

III. Conclusion

41. For the reasons given in these Joint Written Observations, the intervening States submit that the proper construction of Article IX of the Genocide Convention vests the Court with the jurisdiction to adjudge and declare (a) an applicant State’s non-violation of the Convention and (b) a violation of the Convention due to the failure to interpret, apply or fulfil the Convention in good faith.

³⁹ Ibid, para. 59.

⁴⁰ *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), Judgment of 27 June 1986, I.C.J. Reports 1986, p. 14, at p. 137, para. 274 (“In general, treaty rules being *lex specialis*, it would not be appropriate that a State should bring a claim based on a customary-law rule if it has by treaty already provided means for settlement of a such a claim.”)

For the Republic of Austria



Ambassador Konrad Bühler, Co-Agent

For the Czech Republic



Director Emil Ruffer, Agent

For the Slovak Republic



Director Peter Klanduch, Co-Agent