International Court of Justice

Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide

(Ukraine v. Russian Federation)

Denmark's Written Observations

on the Admissibility of Its Declaration of Intervention

10 February 2023

I. Introduction

1. On 16 September 2022, Denmark submitted to the Court a Declaration of Intervention pursuant to Article 63 paragraph 2 of the Statute of the Court in the Case concerning *The Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*. While the Russian Federation pleaded to the Court to reject it as inadmissible, Ukraine argued that it is admissible.

2. With the present observations Denmark wishes to share with the Court its understanding of Article 63 of the Statute in order to demonstrate that it fully complied with all the requirements (II). It then addresses the Russian Federation's main arguments presented in *Written Observations on the admissibility of the Declaration of Intervention Submitted by Australia, Austria, Denmark, Estonia, Finland, Greece, Ireland, Luxembourg, Portugal and Spain*, filed on 15 November 2022 (III), before concluding (IV).

II. The Declaration complies with the requirements of the Statute

3. Article 63 of the Statute 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 in."*

4. Article 82, paragraph 2, of the Rules of the Court provides that a declaration of a State's desire to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall specify the case and the convention to which it relates and shall contain:

> *(a) particulars of the basis on which the declarant State considers itself a party to the convention;*
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> *(b) identification of the particular provisions of the convention the construction of which it considers to be in question;*
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> *(c) a statement of the construction of those provisions for which it contends;*
>
> *(d) a list of documents in support, which documents shall be attached.*

5. A plain reading of these provisions indicates that every State Party to the Genocide Convention has a "right" to intervene, as confirmed by the Court.[1] In line with Article 82(2)

[1] *Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 76; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 1981, p. 13, para. 21.

of the Rules, this right may be exercised in the present case if four objective criteria are fulfilled:

(a) The State must show that it has become party to the Genocide Convention;

(b) The intervention must identify the particular provisions of the Genocide Convention, the construction of which is in question;

(c) The intervention must contain "a statement of the construction" of these provisions of the Genocide Convention;

(d) The intervention must contain a list of documents in support.

6. Hence, the admissibility test is a simple one. The Court has to ascertain whether the object of the desired intervention stems from a State Party to the Genocide Convention and whether the object of the intervention is in fact the interpretation of the identified provisions of the Genocide Convention.[2]

7. Denmark considers that it has fully complied with the admissibility requirements under Article 63 of the Statute and 82 of the Rules of the Court. As indicated in Paragraph 15 of its Declaration of Intervention submitted to the Court on 16 September 2022, it became a party to the Genocide Convention on 15 June 1951. Moreover, Denmark has announced to the Court its intention to assist the Court's determination of the interpretation of Articles I, II, III, VIII and IX of the Genocide Convention in Paragraph 16 of its Declaration.

8. The Russian Federation nevertheless objects to this straightforward analysis by advocating five counter-arguments. However, a closer analysis reveals that none of them is based on the law. Rather, as will be shown in the next section, the Russian Federation invites the Court to read into the Statute additional requirements on admissibility for interventions under Article 63 of the Statute, which are unfounded in the Statute.

III. The arguments of the Russian Federation are not based on the law

A. There is no subjective test about the genuine intentions of the intervener

9. In its first argument, the Russian Federation claims that the Declaration of Intervention is not "genuine". Quoting several political statements of various intervening States in paragraphs 15-29, it takes issue with the fact that the intervention was part of a concerted political strategy to help Ukraine in the case.[3] This, in the view of the Russian Federation, would reveal an intention of Denmark to become a de-facto co-complainant.

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[2] *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.

[3] *The Russian Federation's Written observation on admissibility of the Declarations of intervention submitted by Australia, Austria, Denmark, Estonia, Finland, Greece, Ireland, Luxembourg, Portugal and Spain*, 15 November 2022, para. 19 (b), fn. 15-17 (hereafter: "Russian Federation's Written Observations").

10. The Russian presentation of the law is erroneous. The Court has used the expression of "genuine intervention"[4] in *Haya de la Torre* to describe how it operated the objective test to determine whether the object of the intervention of Cuba was the interpretation of the Havana Convention (a "genuine" intervention) or an attempt to re-litigate another case (not a "genuine" intervention). However, contrary to the Russian observation in paragraph 15, the Court did not consider the text of the declaration and the context within which it had been filed to establish the "genuine *intention*" of Cuba. This semantic shift from an objective test (was the intervention "genuine"?) to a subjective test (was the government's intention "genuine"?) does not have any basis in the case law of the Court. Accordingly, and following explicitly from the case law of the Court, the political motivation of Denmark underlying the Declaration of Intervention is irrelevant.[5]

11. Already in *Wimbledon*, the Court accepted that Poland as intervener shared the same arguments as the applicants.[6] Similarly, Denmark cannot be regarded as a "de-facto co-applicant", as alleged in paragraph 34 of the Russian observations. As demonstrated above, Denmark did not submit a complaint against the Russian Federation, did not advance any facts and claims against the Russian Federation on which it asked the Court to hand down a judgment, and did not arrogate itself any other rights of a complainant. The Russian Federation's first argument is therefore entirely unfounded.

B. There is no test verifying the effects of an intervention

12. In its second argument, the Russian Federation pleads that admitting the intervention would be incompatible with the equality of the Parties and the requirements of good administration of justice. It thereby shifts the test under Article 63 of the Statute from verifying the "object" of the intervention to its "effects" on the case. That proposition is equally not supported by the law.

13. In *Whaling in the Antarctic*, the Court itself dismissed the very idea that an intervention would affect the equality of the parties to a dispute if it stays within the limits drawn by Article 63 of the Statute. When admitting New Zealand's intervention, the Court determined:[7]

> *"18. Whereas the concerns expressed by Japan relate to certain procedural issues regarding the equality of the Parties to the dispute, rather than to the conditions for admissibility of the Declaration of Intervention, as set out in Article 63 of the Statute and Article 82 of the Rules of Court ; whereas intervention under Article 63 of the Statute is limited to submitting*

[4] *Haya de la Torre Case*, Judgment of June 13th, 1951, I.C.J. Reports 1951, p. 71, at p. 77.
[5] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, judgment of 22 July 2022, p. 19-20, para. 44; *Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility*, Judgment, I.C.J. Reports 1988, p. 91, para. 52.
[6] *Case of the SS Wimbledon*, judgment of 17 August 1923, P.C.I.J. Series A Nr. 1, p. 12, at p. 18.
[7] *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, at p. 9, paras. 18-19.

observations on the construction of the convention in question and does not allow the intervenor, which does not become a party to the proceedings, to deal with any other aspect of the case before the Court ; and whereas such an intervention cannot affect the equality of the Parties to the dispute ;

19. Whereas New Zealand has met the requirements set out in Article 82 of the Rules of Court; whereas its Declaration of Intervention falls within the provisions of Article 63 of the Statute ; whereas, moreover, the Parties raised no objection to the admissibility of the Declaration ; and whereas it follows that New Zealand's Declaration of Intervention is admissible".

14. In other words, the Court confirmed that a declaration of intervention under Article 63 of the Statute that is limited to submitting observations on the construction of the convention in question, cannot affect the equality of the Parties *per se*.

15. While acknowledging the existence of this order in paragraph 37 of their observations, the Russian Federation takes issue, in paragraphs 39-44, with the fact that the high number of interventions would nevertheless raise an issue of representativeness in the bench under Article 31(5) of the Statute and, in paragraph 49, become "unmanageable" for itself and the Court. According to the Russian Federation, in paragraph 52, admitting several interveners would also run "entirely against the Court's previous practice of admitting only one intervener per case".

16. However, to the best knowledge of Denmark the Court has never refused a declaration of intervention with the reasoning that it had already allowed the intervention of another State, and allowing a second one would therefore be inadmissible.

17. First, such an approach would be manifestly arbitrary. The Court has no power to declare an intervention inadmissible because another State had already done so before. Such a restriction would directly encroach on the "right of intervention" of every State Party to a convention whose construction is at issue. It may well be the case that States were cautious to exercise this right in the past, leading to very few interventions in the history of the Court so far. However, that is purely a matter of policy. According to the law, all State Parties have the right to intervene under Article 63 of the Statute at the same time, if they so wish. Under the Genocide Convention, all State Parties can even invoke the responsibility of another party for a breach of its obligations *erga omnes* to institute proceedings against the other party.[8] In such a situation, when the treaty embodies matters of collective interest, the late Judge Cançado Trindade called upon all State Parties to contribute to the proper interpretation of the treaty as a sort of "collective guarantee of the observance of the obligations contracted by the State

[8] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Judgment of 22 July 2022, p. 36, paras. 107-108.

parties".[9] In the present case, the fact that many other States felt the need to share their interpretation of the Genocide Convention with the Court cannot deprive Denmark of its right to intervene under Article 63 of the Statute on this important matter.

18. Second, it is a direct and inevitable consequence of numerous interventions that some judges in the bench may hold the same nationality as an intervening State. However, that does not infringe the equality of the parties. As recalled by the Court in para. 18 of its order in the *Whaling* case, the interveners do not become party to the proceedings. Therefore, Article 31 (5) of the Statute, and Articles 32 and 36 of the Rules, as quoted by the Russian Federation, do not apply. Moreover, all judges are bound to uphold their neutrality and impartiality in accordance with Article 20 of the Statute.

19. Third, Denmark acknowledges that the number of interveners in the present case is unprecedented and may indeed present new organisational challenges to the Court. In line with Article 30(1) of the Statute, the Court enjoys large discretion to organise the proceedings as it sees fit. Denmark welcomes the decision of the Court to ask for written submissions of the interveners with an identical deadline in order to streamline the process. In order to help in the good administration of justice, Denmark also reiterates its willingness to coordinate its further action before the Court with other interveners to contribute to an effective management of time of the Court and both parties.

C. The Court may decide on admissibility of the intervention before considering Russia's preliminary objections

20. In its third argument, the Russian Federation maintains that the Court has never allowed interventions at the preliminary stage of the proceedings in which jurisdiction or admissibility of an application was challenged. In paras. 53, it quotes six cases in support. In the first three instances (*Military and Paramilitary Activities*, *Nuclear Tests* and *Nuclear Tests (Request for Examination)*, the Court is said to have discarded interventions in the respective phases relating to jurisdiction or admissibility. In the second three instances (*Haya de la Torre, Whaling in the Antarctic* and *Wimbledon*), the Court accepted interventions within the main phase, because – according to the Russian Federation in para. 54 – the jurisdiction was not challenged in a separate stage.

21. It appears that the Russian Federation draws from this practice a duty of the Court to refrain from deciding on the admissibility of the interventions before considering its preliminary objections. Unfortunately, such a duty does not exist in the law and the alleged precedents do not support this view either.

[9] Separate Opinion of Judge Cançado Trindade, attached to *Whaling in the Antarctic (Australia v. Japan)*, *Declaration of Intervention of New Zealand*, Order of 6 February 2013, I.C.J. Reports 2013, p. 33, para 53.

22. First, Article 63 of the Statute does not make any distinction between separate phases before the Court. Rather, the opening word "whenever" indicates that a State is allowed to intervene in all phases of the proceedings.10 Moreover, Article 82(1), second sentence of the Rules sets out only an outer time limit, i.e. a duty to intervene no later than the date fixed for the oral hearing. Again, the mention of an "oral hearing" does not distinguish between separate phases of the Court – the intervention may be filed before the oral hearings set for the jurisdictional/admissibility phase or before the merits phase. In addition, the invitation to file a declaration "as soon as possible" in that provision confirms that the filing of an Article 63 declaration is admissible at this stage of the proceedings.

23. The Russian Federation also advances an erroneous interpretation of the words "Convention in question" in Article 63 of the Statute. In its view, it would be first for the Court to determine the "dispute" pending before it before allowing Convention States to intervene. However, the role of the Court in Article 63 of the Statute is restricted to verify whether the conditions enumerated in Art. 82(2) of the Rules are complied with. Contrary to the Russian allegation, the Court did not determine first the subject matter of the dispute in *Haya de la Torre.*[11] Rather, the Court only ascertained whether the object of the intervention of the Government of Cuba was in fact the interpretation of the Havana Convention in regard to the question whether Colombia was under an obligation to surrender the refugee to the Peruvian authorities.

24. Second, in the first two cases quoted by the Russian Federation in support for such a duty (*Military and Paramilitary Activities* and *Nuclear Tests)* the Court had actually decided to split the proceedings into separate phases[12] before examining the admissibility of the subsequent interventions. In the present case, the Court did not order under Article 79(1) of the Rules to bifurcate the proceedings after the filing of the Russian Federation's preliminary objection. Rather, it has allowed Ukraine to address jurisdiction, admissibility and merits in one memorial. Accordingly, no authority can be drawn from *Military and Paramilitary Activities* and *Nuclear Tests* for the present case: in those cases, there was a separate jurisdictional/admissibility phase, in the present case there is none.

25. Third, even if the Court had bifurcated these proceedings, nothing in the case law supports a duty of the Court to refrain from deciding on the admissibility of an intervention during the jurisdictional phase. In *Military and Paramilitary Activities*, the Court's jurisdiction depended on an understanding of Article 36(2) and (5) of the Statute, and the merits touched upon questions of the UN Charter and customary international law. El Salvador's Declaration of Intervention of 15 August 1984 addressed mainly the latter and did not contain any statement on how it would construe Article 36(2) and (5) of the Statute. Against that background, the Court dismissed the application "in as much as it relates to

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[10] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America),* Intervention of El Salvador, Dissenting Opinion of Judge Schwebel, I.C.J. Reports 1984, p. 223, at p. 234.
[11] *Haya de la Torre Case,* Judgment of June 13th 1951, I.C.J. Reports 1951, p. 71, at p. 77.
[12] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America),* Provisional Measures, Order of 10 May 1984, I.C.J. Reports 1984, p. 169, at p. 187, Point D (separating jurisdiction and admissibility from the merits phase); *Nuclear Tests (New Zealand v. France),* Interim Protection, Order of 22 June 1973, I.C.J. Reports 1973, p. 135, at p. 142

the current phase of the proceedings".[13] As judge Singh,[14] judges Ruda, Mosler, Ago, Jennings and De Lacharrière,[15] as well as judge Oda[16] explained, it had weighed in the Court that El Salvador's declaration was mainly directed to the merits of the case, but insufficient with respect to the jurisdictional question before the Court. This explanation is shared in doctrine.[17]

26. Therefore, it appears that the Court rejected El Salvador's declaration as inadmissible during the jurisdictional phase because and only insofar as it did not contain any construction of Article 36(2) and (5) of the Statute as the jurisdictional base of the case. The Court did not find that no intervention under Article 63 of the Statute could ever be admissible during a jurisdictional phase, as the Russian Federation seems to read into the Court's order of 4 October 1986.

27. The same is true for the *Nuclear Tests* case. After having ordered a jurisdictional phase in June 1973, the Court declared in July 1973 Fiji's intervention of May 1973 admissible. However, it deferred the consideration thereof to the merits as the intervention did not contain any construction of the jurisdictional basis of the case.[18] In other words, the Court was able to decide about the admissibility of the intervention during the ongoing jurisdictional phase, but deferred it to the merits phase, as it only dealt with issues relating to the merits.

28. Fourth, *Nuclear Tests (Request for Examination)* does not support the Russian argument either. In that rather specific case, the Court had before it New Zealand's application from August 1995 and four subsequent interventions under Article 63 of the Statute to re-examine para. 63 of its earlier judgment in *Nuclear Tests*. Instead of separating the proceedings, the Court held a hearing in September 1995 and rejected both the application and the four interventions in an order of October 1995. Hence, the only lesson from this case is that the Court has discretion to dismiss an application together with purported interventions. However, the precedent does not entail a duty of the Court to disregard an intervention prior to the examination of preliminary objections from the Defendant.

29. In conclusion, nothing in Article 63 of the Statute or in the Court's case law supports the Russian view that the Court cannot deal with the admissibility of an intervention before deciding on the Russian Federation's preliminary objection.

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[13] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Intervention of El Salvador, Order of 4 October 1984, I.C.J. Reports 1984, p. 215, at p. 216.
[14] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Intervention of El Salvador, Separate Opinion of Judge Singh, I.C.J. Reports 1984, p. 218.
[15] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Intervention of El Salvador, Separate Opinion of Judges Ruda, Mosler, Ago, Sir Robert Jennings, and De Lacharrière, I.C.J. Reports 1984, p. 219.
[16] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Intervention of El Salvador, Separate Opinion of Judge Oda, I.C.J. Reports 1984, p. 220.
[17] Juan José Quintana, *Litigation at the International Court of Justice*, Brill 2015, pp. 943-944.
[18] *Nuclear Tests (New Zealand v. France)*, Application to Intervene, Order of 12 July 1973, I.C.J. Reports 1973, p. 324, at p. 325.

D. Denmark is entitled to address the Court's jurisdiction

30. In its fourth and fifth argument, the Russian Federation criticises that the declaration would in effect address matters, which presuppose that the Court has jurisdiction and/or that Ukraine's application is admissible. The Russian Federation complains, in particular, that the declaration contains a construction of Article IX of the Genocide Convention on the jurisdiction of the Court. For the Russian Federation, this makes the declaration inadmissible as it is written in a way that presupposes that the Court has jurisdiction over the alleged dispute. Thereby, the Russian Federation effectively maintains that a State may not intervene on questions of jurisdiction, as taking a position on that point would "presuppose" that the Court has jurisdiction. In its fifth argument, it repeats this point with more clarity, contesting Denmark's right to intervene on Article IX of the convention *per se*.

31. In Denmark's view, this line of reasoning also runs contrary to Article 63 of the Statute and the Court's practice.

32. According to Article 63 (1) of the Statute, a State Party may intervene on the "construction of a convention". The plain wording refers to the entire Convention, including its compromissory clause, as the case may be. Accordingly, nothing in the text suggests that a State may not offer its construction of Article IX of the Genocide Convention to the Court.

33. That point is further strengthened by the object and purpose of Article 63 of the Statute. States do not only have a legitimate interest in sharing with the Court their interpretation of substantive obligations contained in a Convention at stake before the Court. It is of equal importance to be heard on jurisdictional issues, as this may affect their own position before the Court in future cases relating to themselves. Hence, an intervention under Article 63 of the Statue may cover both jurisdictional and substantive aspects.[19]

34. Subsequent practice of the Court points in the same direction. So far, the Court has never dismissed an intervention because it was (entirely or primarily) directed to interpreting a compromissory clause. Rather, in *Military and Paramilitary Activities* El Salvador's attempt to influence the jurisdictional question before the Court was unsuccessful because the declaration had not complied with the formal requirements under Rule 82(2)(b) and (c) for the great majority in the Court. Had it done so, it would have been of interest to the Court, as expressly confirmed by Judge Oda.[20] Moreover, Judge Schwebel even found that the faults of El Salvador's initial declaration on jurisdiction had been healed by

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[19] MN Shaw (ed), *Rosenne's Law and Practice of the International Court 1920-2015* (5th ed, Vol III, Brill Nijhoff 2016), p. 1533; H. Thirlway, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence* (Vol I, OUP 2013), p. 1031; A. Miron/C. Chinkin, "Article 63" in: Zimmermann/Tams/Oellers-Frahm/Tomuschat (eds), The Statute of the International Court of Justice: A Commentary (3rd ed. OUP 2019), p. 1741, at p. 1763, note 46.

[20] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Intervention of El Salvador, Separate Opinion of Judge Oda, I.C.J. Reports 1984, p. 220, at p. 221.

subsequent letters.[21] Based on this reading, he was prepared to admit El Salvador's declaration on jurisdictional matters.

35. It follows that Denmark correctly exercised its right to intervene under Article 63 of the Statute. The fact that the intervention also addresses the compromissory clause under Article IX of the Genocide does not render the intervention inadmissible.

E. The Declaration does not contain issues unrelated to the Genocide Convention

36. In its last argument, the Russian Federation refers to Denmark's arguments:

> *"Denmark refers to questions related to whether there is evidence that genocide has been committed or may be committed in Ukraine, the doctrine of abuse of rights and the principle of good faith in application of the Convention, the scope of due diligence to be performed by the State that intends to accuse another State of genocide, issues of use of force, and compliance with the Court's provisional measures order."*[22]

The Russian Federation alleges that this observation does not relate to the construction of the Genocide Convention and contains an impermissible incursion into the interpretation or application of other rules of international rules that are distinct from the treaty in question and derive from different sources.

37. The argument is based on a misperception of Denmark's arguments. Clearly, the statements did not introduce the issue of verifying allegations that genocide has been committed or may be committed in Ukraine, the doctrine of abuse of rights, the principle of good faith in the application of the Genocide Convention, the scope of due diligence to be undertaken by a State Party that wish to take action pursuant to Article I, issues of use of force, or compliance with the Court's provisional measures order as self-standing matters under international law. Rather, the statements were part of the construction of Articles I, II, III, VIII and IX of the Convention.

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[21] *Opinion of Judge Schwebel in Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Declaration of Intervention of El Salvador)*, Order of 4 October 1984, I.C.J. Reports 1984, p. 223, at pp. 235-236.

[22] The Russian Federation's Written Observations, para. 106 (c). Footnotes excluded.

38. Such technique is permissible, and necessary, under international law. According to Article 31(3)(c) of the Vienna Convention on the Law of Treaties, representing customary international law,[23] the interpretation of a treaty may include:

> *"any relevant rules of international law applicable in the relations between the parties."*

According to the Report of the ILC Study Group on Fragmentation of International law, the notion of "relevant rules" includes customary international law, general principles of law and treaty law.[24] It follows that mentioning relevant case law of the Court, resolutions of the UN Human Rights Council, the general principles of due diligence and good faith, and the UN Charter as interpretative aids to Articles I, II, III, VIII and IX of the Convention cannot be disqualified as an "impermissible incursion" as stated in paragraph 110 of the Russian observations. Rather, adhering to the principle of systemic integration, it contributes to the required integral interpretation of international law as a legal order.

39. Denmark finds further support for its position in the Court's order of 16 March 2022. In para. 58, the Court stated:

> *The acts undertaken by the Contracting Parties "to prevent and to punish" genocide must be in conformity with the spirit and aims of the United Nations, as set out in Article 1 of the United Nations Charter.*[25]

40. It appears that the Court interpreted Article I of the Genocide Convention in light of Article 1 of the UN Charter. In a similar vein, Denmark suggests that it is possible to interpret Articles I, II, III, VIII and IX in the light of general principles of law and the UN Charter, as permitted by the principle of systemic integration and Article 31(3)(c) of the Vienna Convention. Such operation does not transcend the boundaries of Article 63 of the Statute, but stays within the requirement of constructing the Convention at issue in line with accepted rules of treaty interpretation.

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[23] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar),* Judgment of 22 July 2022, p. 31, para. 87: *"The Court will have recourse to the rules of customary international law on treaty interpretation as reflected in Articles 31 to 33 of the Vienna Convention on the Law of Treaties of 23 May 1969"*; see also *Application of the International Convention On the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates),* Preliminary Objections, Judgment of 4 February 2021, p. 24, para. 75 with further references.

[24] Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law: Report of the Study Group of the ILC finalised by Mr. Martti Koskenniemi, 13 April 2006, pp. 94-96. https://legal.un.org/ilc/documentation/english/a_cn4_l682.pdf.

[25] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russia),* Order of 16 March 2022, p. 13, para. 58.

IV. Conclusion

41. For the reasons set out above, Denmark maintains that its Declaration of Intervention fully complies with the requirements under Article 63 of the Statute and Article 82 of the Rules.

42. The Court should therefore decide that the intervention is admissible and allow Denmark to present its written observations in good time in order to exercise its right to intervene as party to the Genocide Convention.

Respectfully,

Vibeke Pasternak Jørgensen, Agent of the Government of the Kingdom of Denmark.