



DECLARATION OF INTERVENTION OF THE REPUBLIC OF LITHUANIA

INTERVENTION PURSUANT TO ARTICLE 63 OF THE STATUTE
OF THE INTERNATIONAL COURT OF JUSTICE

19 JULY 2022

To the Registrar of the International Court of Justice, the undersigned being duly authorized by the Government of the Republic of Lithuania:

1. On behalf of the Government of the Republic of Lithuania, and following your letter n°156413 of 30 March 2022 addressed to the parties to the Genocide Convention pursuant to Article 63, paragraph 1, of the Statute of the Court, I have the honour to submit to the Court a Declaration of Intervention pursuant to the right to intervene set out in Article 63, paragraph 2, of the Statute, in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (General List No. 182).

2. In addition to specifying the case and the convention to which the intervention pursuant to Article 63 relates, Article 82, paragraph 2, of the Rules of Court provides that a declaration made pursuant to those provisions shall contain:

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

3. Concerning point (a) above, Lithuania recalls that, on 1st February 1996, it deposited its instrument of accession to the Genocide Convention in accordance with Article XI thereof.¹

4. Concerning point (b) above, Lithuania considers that the particular provisions of the Convention, the construction of which is in question in the pending case between Ukraine and the Russian Federation and upon which Lithuania shall comment, are:

- Article I;
- Article VIII; and
- Article IX.

¹ UNTS reference: C.N.30.1996.TREATIES-1 (Depositary Notification)
<https://treaties.un.org/doc/Publication/CN/1996/CN.30.1996-Eng.pdf>

5. Concerning point (d) above, Lithuania indicates that, at this stage, its Declaration of Intervention only relies on readily available documents and that it has no specific document to submit in support of its Declaration. Should its Declaration be admitted, Lithuania reserves the right to append documents to its written observations to be filed pursuant to Article 86 of the Rules.

6. Pursuant to point (c) above, Lithuania's statement of the construction of Articles I, VIII and IX of the Convention begins at paragraph 19 below. It is preceded by some preliminary observations.

PRELIMINARY OBSERVATIONS

7. On 26 February 2022, at 9.30 p.m., 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").²

8. In its Application, Ukraine seeks to find the Court's jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention.

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

10. By letters dated 1 March 2022, the Registrar informed the Parties that the Court had fixed 7 and 8 March 2022 as the dates for the oral proceedings on the Request for the indication of provisional measures.

² Application instituting proceedings, filed in the Registry of the Court on 26 February 2022, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (hereinafter "Ukraine's Application").

11. By letter dated 5 March 2022, the Ambassador of the Russian Federation to the Kingdom of the Netherlands indicated that his Government had decided not to participate in the oral proceedings due to open on 7 March 2022.

12. On 7 March 2022, the Ambassador of the Russian Federation to the Kingdom of the Netherlands communicated to the Court a document setting out “the position of the Russian Federation regarding the lack of jurisdiction of the Court in t[he] case”, in which the Russian Federation contended that the Court lacked jurisdiction to entertain the case and “request[ed] the Court to refrain from indicating provisional measures and to remove the case from its list”.³

13. In the above-mentioned document dated 7 March 2022, the Russian Federation states that the only basis for jurisdiction referred to by Ukraine is the dispute resolution clause contained in Article IX of the Genocide Convention, but that it is clear from the plain language of the Convention that it does not regulate the use of force between States. The Russian Federation further stated that its “special military operation” on the territory of Ukraine is based on Article 51 of the United Nations Charter and customary international law, and that accordingly, Ukraine’s Application and Request “manifestly fall beyond the scope of the Convention, and thus the jurisdiction of the Court”.⁴

14. On 16 March 2022, the Court issued a binding Order, in which it found that *prima facie* it had jurisdiction over the dispute and indicated the following provisional measures:

“(1) By thirteen votes to two,

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

(2) By thirteen votes to two,

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

³ Document (with annexes) from the Russian Federation setting out its position regarding the alleged “lack of jurisdiction” of the Court in the case, para. 24.

⁴ *Ibid.*, para. 23.

(3) Unanimously,

Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”⁵

15. Since 16 March 2022, the Russian Federation, in manifest breach of the binding Order of 16 March 2022 and its obligations under international law, has intensified and expanded its military operations on the territory of Ukraine, has failed to take any measures to ensure that military and irregular armed units and other organizations and persons under its control or direction take no further steps in furtherance of the military operations, and has thus also aggravated the dispute pending before the Court.

16. The wider significance of the pending dispute, and of the responsibility of the Court in resolving it, cannot be stressed enough. This dispute under the Genocide Convention has come to the Court due to the Russian Federation’s unsubstantiated claims that genocide occurred in Ukraine and that this entitled it to launch a military invasion of its neighbour so to prevent further acts of genocide.⁶ In advancing such fabricated claims, the Russian Federation has, through the use of force against Ukraine, turned on its head one of the most fundamental multilateral treaties of our times so as to justify an egregious breach of the founding principles of the UN Charter for which it bears a specific responsibility as permanent member of the Security Council. Lithuania joins the Court in expressing its deepest concern “about the use of force by the Russian Federation in Ukraine” and “the extent of the human tragedy that is taking place in Ukraine”, including “the continuing loss of life and human suffering” resulting from this use of force.⁷

17. While those matters appertain to the merits of this case, Lithuania shares with all the other contracting parties to the Genocide Convention a common interest in ensuring that the construction of its provisions—which contain obligations *erga omnes partes*⁸—are properly interpreted, so as to avoid abusive interpretations and misuses of the Convention, whether in the present case or in the future. The integrity of the Convention requires its proper interpretation. For these reasons, and pursuant to Article 63 of the Statute, Lithuania has decided

⁵ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022*, para. 86 (hereinafter “Order of 16 March 2022”).

⁶ Order of 16 March 2022, paras. 37-41; para. 59.

⁷ Order of 16 March 2022, respectively paras. 18 and 17.

⁸ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020*, I.C.J. Reports 2020, p. 3 and references.

to exercise its right to intervene in this case in order to submit to the Court its views on the construction of particular provisions of the Convention which are at the heart of the pending dispute.

18. Lithuania has the right to do so at this procedural stage. Indeed, the wording of Article 63 of the Statute “is unqualified in asserting [that the right of intervention can be exercised] ‘[w]henver the construction of a convention ... is in question’, which implies that it is applicable in all phases of the case.”⁹ By stating that “[a] State which desires to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall file a declaration to that effect [...] *as soon as possible*, and not later than the date fixed for the opening of the oral proceedings”, Article 82 of the Rules confirms that the filing of an Article 63 declaration is admissible at this stage of the proceedings. In that regard, it is to be noted that Article 82, in referring to the “opening of the oral proceedings”, does not distinguish between the oral proceedings on the merits and those concerning objections to jurisdiction. This clarifies that, depending on the issue to be resolved, an Article 63 intervention is possible at each stage of the proceedings, but can also be made as soon as possible, covering jurisdictional and substantive provisions alike. Indeed, as recalled above, Article 63 is unqualified as far as the type of provisions of the convention—substantive, procedural or jurisdictional—is concerned, merely requiring, in the broadest of terms, “the construction of a convention ... [to be] in question”. Likewise, Article 82, paragraph 2, (b) of the Rules does not limit the right of the intervening State to identify “the particular provisions” in the said convention.

⁹ A. Miron & Chr. Chinkin, “Article 63”, in A. Zimmermann & Chr. Tams (eds.), *The Statute of the International Court of Justice: A Commentary* (3rd edn., Oxford, OUP 2019), p. 1763, MN 46.

STATEMENT OF THE CONSTRUCTION OF THE PROVISIONS

A) Article I

19. Lithuania recalls that the undertaking of the parties to the Convention “to prevent and to punish” genocide under Article I must be implemented in accordance with international law. As the Court stated in its 2007 judgment in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, and reiterated in its Order of 16 March 2022 in the present case, “in discharging its duty to prevent genocide, ‘every State may only act within the limits permitted by international law’”.¹⁰ Moreover, “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”.¹¹

20. Lithuania contends that, in construing the duties of States flowing from Article I, the principle of good faith in treaty interpretation is of central relevance. As the Court has had occasion to note, in determining the scope of the duty to prevent, “the notion of ‘due diligence’, which calls for an assessment *in concreto*, is of critical importance.”¹² In Lithuania’s view, the obligation to prevent genocide is not limited to acts occurring within the territory of the State purporting to act. However, such obligation remains an obligation of conduct, to be fulfilled strictly within the limits of international law. Coupled with the requirement to act diligently, this necessarily entails that any Contracting Party that purports to allegedly prevent genocide, must justify any actions it seeks to take with substantial evidence from independent sources either that genocidal acts are being perpetrated or that there exists “a serious risk that genocide will be committed”.¹³ Put differently, Lithuania contends that the due diligence obligation to prevent further genocidal acts from occurring entails a due diligence obligation to collect such substantial evidence before taking any further action in fulfilment of Article I. Article I is manifestly breached when a Contracting Party fails to do so and, as has occurred in the present

¹⁰ Order of 16 March 2022, para. 57, quoting from *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 221, para. 430.

¹¹ Order of 16 March 2022, para. 58.

¹² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 221, para. 430.

¹³ *Ibid.*, para. 431.

dispute, engages in an act of military aggression against another State under the factually unsubstantiated pretext of preventing or suppressing genocide.

21. Lithuania also contends that the obligation to punish genocide enshrined in Article I is limited to punitive measures of a criminal law character directed against individuals. This is confirmed by Articles IV-VII of the Convention. The obligation to punish genocide cannot be understood as allowing any other type of measure, in particular forcible or military measures intended to “punish” a State or a people.

B) Article VIII

22. Lithuania contends that the above construction of Article I is confirmed by Article VIII of the Convention, pursuant to which Contracting Parties to the Convention “may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.” In Lithuania’s assessment, Article VIII is not merely an enabling provision, but reflects the Convention’s design which favours collective, institutional measures to prevent and to suppress acts of genocide. Lithuania submits that the Contracting Parties to the Genocide Convention that are at the same time Member States of the United Nations already possess a right to call upon UN organs to take action for the prevention and suppression of acts of genocide under the Charter,¹⁴ and thus would not need to invoke Article VIII. Lithuania thus contends that the proper interpretation of Article VIII of the Convention is that which takes account of the object and purpose of the provision in its context. Such a construction requires Article VIII and Article I of the Convention to be read together, so as to condition the legality of any unilateral preventive measure by a State pursuant to Article I, in the territory of another State, to the prior seising of the competent organs of the United Nations pursuant of Article VIII, and the failure of such organs to take action in accordance with the Charter. Any such unilateral preventive measure must comply with the requirements of Article I as set out above.

¹⁴ See in particular, Art. 11, para. 2, and Art. 35, para. 1 of the UN Charter.

C) Article IX

23. In relation to Article IX, Lithuania recalls that because its scope concerns “[d]isputes [...] relating to the interpretation, application or *fulfilment* of the [...] Convention”, it is “unique as compared with the compromissory clauses found in other multilateral treaties which provide for submission to the International Court of Justice of such disputes between the Contracting Parties as relate to the *interpretation or application* of the treaties in question”.¹⁵ Article IX thus bestows on the Court the competence to adjudicate upon disputes concerning the alleged fulfilment (in the French version of the Convention: “*l’exécution*”) by a Contracting Party of its obligations under the Convention. This is particularly salient in relation to the obligation of due diligence, entailed by Article I, to collect substantial evidence from independent sources that acts of a genocidal nature are being perpetrated.¹⁶

24. Moreover, Article IX of the Convention establishes the Court’s jurisdiction over all “[d]isputes [...] 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”. Lithuania contends that the use of the term “including” does not restrict the competence of the Court to disputes “relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III”, but extends such competence to disputes between Contracting Parties concerning the responsibility of a State for the breach of Article I. As the Court clarified, the use of the term “including” “tends to confirm that disputes relating to the responsibility of Contracting Parties for genocide, and the other acts enumerated in Article III to which it refers, are comprised within a broader group of disputes relating to the interpretation, application or fulfilment of the Convention.”¹⁷ As the Court further clarified, disputes falling within the scope of Article IX need not necessarily relate to obligations that “are expressly imposed by the actual terms of the Convention”.¹⁸ Therefore, Lithuania contends that the jurisdiction of the Court under Article IX extends to disputes concerning the fulfilment of the obligation to prevent and punish genocide under Article I, read in conjunction with Article VIII and as understood above, and more specifically to whether a State’s unilateral use

¹⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Preliminary Objections, Declaration of Judge Oda, I.C.J. Reports 1996 (II)*, p. 627, para. 5 (emphasis in the original).

¹⁶ See paragraph 20 above.

¹⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 114, para. 169.

¹⁸ *Ibid.*, p. 113, para. 166.

of military force “for the stated purpose of preventing and punishing alleged genocide is a measure that can be taken in fulfilment of the obligation to prevent and punish genocide contained in Article I of the Convention“.¹⁹ Thus, the competence of the Court under Article IX also extends to deciding on the legal consequences of actions found to be in breach of Article I.

25. Finally, Lithuania notes that the terms of Article IX allow “any of the parties” to a dispute concerning the fulfilment of Article I to submit the said dispute to the Court for adjudication.²⁰

Respectfully,




Gabija Grigaitė-Daugirdė
Agent of the Republic of Lithuania

¹⁹ Order of 16 March 2022, para. 45.

²⁰ See R. Kolb, “The Compromissory Clause of the Convention” in P. Gaeta (ed.), *The UN Genocide Convention: A Commentary* (Oxford, OUP 2009), p. 420: “Article IX allows a unilateral seizing of the ICJ by any party to a dispute. [...] Article IX of the Convention is in this respect a model of clarity and simplicity, opening the seizing of the Court as largely as possible.”