

INTERNATIONAL COURT OF JUSTICE

DECLARATION OF INTERVENTION UNDER ARTICLE 63
OF THE FEDERAL REPUBLIC OF GERMANY

1 September 2022

In the case of

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

(UKRAINE *v.* RUSSIAN FEDERATION)

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

1. On behalf of the Government of Germany, I have the honour to submit to the Court a Declaration of Intervention pursuant to Article 63, paragraph 2, of the Statute of the Court, in the Case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*¹.

2. Article 82, paragraph 2, of the Rules of the Court provides that, when availing itself of its right of intervention conferred upon it by Article 63 of the Statute, a State shall make a Declaration specifying the case and the convention to which it relates. This Declaration 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. Those matters are addressed in sequence below, following some preliminary observations.

¹ 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)* (from here on "Ukraine's Application").

I. Preliminary Observations

4. On 26 February 2022, Ukraine instituted proceedings against the Russian Federation in the above-mentioned case.

5. In its Application instituting proceedings, Ukraine claims that

“(…) the Russian Federation’s declaration and implementation of measures in or against Ukraine in the form of a “special military operation” declared on 24 February 2022 on the basis of alleged genocide, as well as the recognition that preceded the military operation, is incompatible with the [Genocide] Convention and violates Ukraine’s right to be free from unlawful actions, including military attack, based on a claim of preventing and punishing genocide that is wholly unsubstantiated.”²

and that accordingly

“[t]here is a dispute between Ukraine and the Russian Federation within the meaning of Article IX relating to the interpretation, application or fulfilment of the Genocide Convention.”

6. A hearing was held on 7 March 2022. The Russian Federation did not participate in the oral proceedings. However, in a document communicated to the Court on 7 March 2022, 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 the list”.

7. Following a request for provisional measures from Ukraine, the Court ordered on 16 March 2022 that:

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

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

² Ukraine’s Application, para. 26.

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

8. As of date of this Declaration, Russia has not only failed to comply with the Order, which as the Court has reaffirmed has binding effect under Article 41 of the Court's Statute³, but in blatant disregard of the said Order has instead intensified and expanded its military operations on the territory of Ukraine and has thus aggravated the dispute pending before the Court.

9. As provided for in Article 63, paragraph 1, of the Statute of the Court, the Registrar on 30 March 2022 duly notified the States Parties to the Convention on the Prevention and Punishment of the Crime of Genocide that

“(…) the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”) is invoked both as a basis of the Court’s jurisdiction and as a substantive basis of the Applicant’s claims on the merits. In particular, the Applicant seeks to found the Court’s jurisdiction on the compromissory clause contained in Article IX of the Genocide Convention, asks the Court to declare that it has not committed a genocide as defined in Articles II and II of the Convention, and raises questions concerning the scope of the duty to prevent and punish genocide under Article I of the Convention.”

10. By this present Declaration, Germany avails itself of the right to intervene conferred upon it by Article 63, paragraph 2, of the Statute. As this Court has recognized, once the requirements of Article 63 are fulfilled, it confers a ‘right’ of intervention, with the State seeking to intervene confining its intervention to “the point of interpretation which is in issue in the proceedings”.⁴

11. Germany’s right to intervene in the present case arises from its status as a party to the Genocide Convention as set out below.

12. This case raises important issues concerning the Genocide Convention. The Court has found that the provisions of the Convention impose *erga omnes partes* obligations on Contracting Parties to the Convention⁵ and that the prohibition

³ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para. 84.

⁴ *Whaling in the Arctic*, Declaration of Intervention by New Zealand, ICJ Reports (2013), pp. 3, 5-6, para. 8.

⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, ICJ Reports 2015, p. 3, at p. 47, para. 87; *Case Concerning Armed Activities on the Territory of the Congo (New Application; 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility,

against genocide is a *jus cogens* norm in international law.⁶ The Court recognised the international community's common interest in the rights and duties enshrined in the Convention already more than seven decades ago, observing that:

“It is indeed difficult to imagine a convention that might have this dual character [a purely humanitarian and civilizing purpose] 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...”⁷

13. It follows from this *erga omnes* character of the obligations enshrined in the Convention that all States parties to the Convention have an interest of their own in the proper interpretation, application and fulfilment of those obligations.

14. Moreover, Germany, given its own past, has a specific interest in the Court exercising its jurisdiction in the case at hand under Article IX thereof. Germany notably exercises the right granted to it by Article 63 in order to support the Court in upholding the integrity of the Genocide Convention. It does so to prevent State parties from relying on alleged acts of genocide purportedly committed by another State party in order to, on the alleged legal basis of the Genocide Convention, justify a blatantly illegal use of military force against that other State.

15. It is in this context that Germany has thus determined that it is necessary for it to intervene in this case in order to place its interpretation of Article IX of the Genocide Convention before the Court. Germany reserves the right to submit further arguments as to the scope *ratione materiae* of the Genocide Convention and the Court's ensuing jurisdiction under its Article IX as part of its Written Observations once the Court has decided on the admissibility of the Declaration of Intervention filed herewith.

16. Consistently with the jurisprudence of the Court referred to above as to the scope of the right of intervention under Article 63, Germany will thus hereinafter

Judgment, ICJ Reports 2006, p. 6, at p. 31, para. 64; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, ICJ, 22 July 2022, paras. 107–109.

⁶ *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports 2007, p. 43, at p. 111, paras. 161–162.

⁷ *Reservations to the Convention on Genocide*, Advisory Opinion, ICJ Reports 1951, p. 15, at p. 23.

present its views to the Court on the scope of the Court's jurisdiction under Article IX of the Genocide Convention.

17. In that regard, Germany emphasizes that in line with Article 63 of the Statute and the Court's jurisprudence on the matter⁸ it does not seek to become a party to the proceedings. At the same time, and again in accordance with Article 63 of the Statute, Germany hereby confirms that, by availing itself of its right to intervene under Article 63, it accepts that the construction to be given by the Court's judgment in the case will be equally binding upon it.

18. In addition to the matters already set out above, Article 82, paragraph 1, of the Rules of Court further provides that a declaration of a State desiring to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall be filed "as soon as possible and not later than the date fixed for the opening of the oral proceedings". In accordance with that requirement, this Declaration has been filed at the earliest opportunity reasonably open to Germany, namely after the filing of Ukraine's Memorial and after the Court having previously rendered its order on provisional measures in the case.

19. Germany further informs the Court that it is willing to assist the Court in grouping its intervention together with similar interventions from other State parties, in particular EU Member States, for future stages of the proceedings, if the Court deems such a move to be useful in the interest of an expedient administration of justice.

II. Case and Convention to which this Declaration relates

20. This declaration of intervention relates to the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* instituted on 26 February 2022 by Ukraine against the Russian Federation. That case thus concerns, as confirmed by the Court's order on provisional measures, the interpretation of the Genocide Convention, and notably the question whether the acts complained of by Ukraine are capable of falling within the scope of that convention *ratione materiae*⁹, and thus whether the dispute between the parties falls within the purview of Article IX Genocide Convention.

⁸ *Whaling in the Arctic*, Declaration of Intervention by New Zealand, ICJ Reports (2013), pp. 3, 5, para. 7.

⁹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para. 29.

III. Basis on which Germany is a Party to the Convention

21. Germany deposited its instrument of ratification to the Genocide Convention in accordance with its Article XI on 9 October 1954¹⁰ and it accordingly entered into force for Germany by virtue of its Article XIII ninety days thereafter. Germany has entered no reservations to the Convention, and remains a Party to the Convention.

IV. Provisions of the Convention in Question in the Case

22. In its Application, Ukraine seeks to found the Court's jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention.¹¹ The Russian Federation, in its "Document" of 7 March 2022 addressed to the Court¹², is of the view that Article IX of the Genocide Convention does not confer jurisdiction on the Court in this case.¹³

23. Thus, the key legal issue for the Court is whether it has jurisdiction on the basis of Article IX of the Genocide Convention to entertain Ukraine's case. For this, the Court must ascertain whether acts complained of by the Applicant are capable of falling within the provisions of that instrument and whether consequently the dispute is one, which the Court has jurisdiction *ratione materiae* to entertain.¹⁴

24. It is therefore the proper construction of the Genocide Convention's compromissory clause, i.e. its Article IX, which is in question in the case and it is its interpretation that is directly relevant to the resolution of the dispute placed before the Court by Ukraine's Application. 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

¹⁰ See Annex B to this Declaration.

¹¹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para. 3.

¹² 'Document (with annexes) from the Russian Federation setting out its position regarding the alleged "lack of jurisdiction" of the Court in the case' of 7 March 2022.

¹³ *Ibid.*, paras. 10 et seq.

¹⁴ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para. 25.

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.”

25. It is with regard to the interpretation of that provision that Germany intervenes in the current proceedings on the basis of Article 63 of the Court’s Statute. Germany notes that Article 63 is not limited to issues of interpretation of a treaty’s substantive clauses but also entitles contracting parties of the relevant treaty to intervene as far as the content and the interpretation of jurisdictional clauses of such treaty is concerned. The wording of Article 63 is unqualified in asserting “whenever the construction of a convention ... is in question”. This implies that Article 63 is applicable in all phases of a given case.

26. Article 63 differentiates neither between various types of treaty provisions, nor between types of treaties. Accordingly, there appears to be no reason within the Statute why an intervention should not be allowed for the purpose of placing an interpretation of a compromissory clause.¹⁵

V. Construction of Art. IX of the Genocide Convention for which Germany Contends

27. As the Court has recalled in its order on provisional measures in the case at hand, the Parties to this case dispute whether the compromissory clause of Article IX of the Genocide Convention can be invoked in a case in which allegations of genocide committed by one State leads to the use of military force by another State.¹⁶ Whether the Court does indeed have jurisdiction to make a declaration of an applicant State’s compliance with its obligations under the Convention, provided that this is a matter in dispute between the Parties to the case, is therefore dependent on the proper construction of Article IX of the Genocide Convention.

28. Germany’s observations as to the proper construction of Article IX of the Genocide Convention will address the following elements:

- (1) the requirement and notion of ‘dispute’ that must exist between the Contracting Parties;

¹⁵ *Nicaragua*, Declaration of Intervention of the Republic of El Salvador, Diss. Op. Schwebel, ICJ Reports (1984), paras 223, 234.

¹⁶ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, paras. 30 - 34.

- (2) the requirement that such dispute relates to the interpretation, application or fulfilment of the Convention;
- (3) the possibility to submit the dispute to the Court at the request of any of the parties to such dispute.

1. Notion of ‘dispute between the Contracting Parties’

29. According to the established case law of the Court,¹⁷ a dispute is “*a disagreement on a point of law or fact, a conflict of legal views or of interests*” between parties.¹⁸ In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other”.¹⁹ The two sides must “*hold clearly opposite views concerning the question of the performance or non-performance of certain’ international obligations*”.²⁰ A dispute typically exists when one of the Parties maintains that the Convention applies, while the other denies it.²¹

30. The case at hand raises the question whether an alleged behavior by the applicant State, which could fall within the provisions of the Genocide Convention, can justify a reaction by another state. The Parties therefore disagree over the lawfulness of the conduct of the applicant State, which is encompassed by the term “dispute”.

2. Relation of the dispute to “the interpretation, application and fulfilment of the [Genocide] Convention”

31. If a dispute between the Contracting Parties exists, this dispute must relate to the interpretation, application or fulfilment of the Convention in order for the Court to be able to exercise its jurisdiction under Article IX of the Genocide Convention.

32. As the Court has recalled in its order on provisional measures in the case at hand, a compromissory clause of a specific treaty can be invoked provided the

¹⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, ICJ, 22 July 2022, para 63.

¹⁸ *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.

¹⁹ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment, I.C.J. Reports 1962, p. 328.

²⁰ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 26, para. 50, citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 74.

²¹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II), p. 414, para. 18.

dispute refers to the subject-matter of the treaty with sufficient clarity.²² Ukraine has invoked the Genocide Convention both as a basis of the Court's jurisdiction and as a substantive basis of the its claims on the merits.

33. The Russian Federation's document communicated to the Court on 7 March 2022, on the other hand, denies any relation between Russia's so-called "special military operation" on the territory of Ukraine and the Genocide Convention and states that a reference to genocide is not equal to the invocation of the Convention or the existence of a dispute arising under it.²³

34. Germany's interpretation of Article IX in general and of phrase "relating to the interpretation, application or fulfilment of the Genocide Convention" in particular is based on Article 31 of the 1969 Vienna Convention on the Law of Treaties, representing customary international law:

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. (...)

²² *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para. 44.

²³ Document from the Russian Federation setting out its position regarding the alleged "lack of jurisdiction" of the Court in the case, 7 March 2022, para. 20.

35. The phrase „relating to“ establishes a link between the dispute and the Convention. The subject matter of the dispute must concern the Convention itself. Or, to put it otherwise: it would not be permissible to use the Genocide Convention as a means of bringing before the Court a dispute regarding alleged violations of other rules of international law.

36. In contrast thereto, where, like in the case at hand, the subject-matter of an application concerns the question whether certain acts, such as allegations of genocide and military operations undertaken with the stated purpose of preventing and punishing genocide, are in conformity with the Genocide Convention, such dispute falls squarely within the scope of Article IX of the Convention. The Court can exercise its jurisdiction under Article IX of the Genocide Convention irrespective of the question whether or not the conduct in question simultaneously breaches other rules of international law extrinsic to the Genocide Convention.

37. The phrase “interpretation, application or fulfilment of the Convention” encompasses many different scenarios. It is intentionally broad, “opening the seizing of the Court as largely as possible”.²⁴

38. It is already the ordinary meaning of Article IX which makes it clear that the Court has jurisdiction over the question whether genocidal acts have been or are being committed or not.²⁵ In particular, the inclusion of the word “fulfilment” in Article IX in addition to the more common formulation of “interpretation and application” in compromissory clauses supports the view that the Court has jurisdiction *rationae materiae* to declare the absence of genocide when genocide is being alleged to take place. Where one State party to the Genocide Convention accuses another of committing genocidal acts, the ‘fulfilment’ of the Convention is clearly at stake.

39. Thus, whenever there is a dispute between two or more State parties concerning whether a State party has engaged in conduct contrary to the Convention, the State party accused of such conduct has the same right to submit the dispute to the Court as the State that has made the accusation, and the Court will be in a position to exercise its jurisdiction.

40. Otherwise a State party could freely invent violations of the Genocide Convention, allegedly committed by another State party without the latter being able

²⁴ R. Kolb, “The Compromissory Clause of the Convention”, in: Paola Gaeta (ed), *The UN Genocide Convention: A Commentary*, (OUP 2008), p. 420.

²⁵ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide* (Ukraine v. Russian Federation), Order of 16 March 2022, p. 10, para. 43; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Order of 23 January 2020, I.C.J. Reports 2020, p. 14, para. 30.

to have recourse to the Court. Such interpretation would thereby not only pave the way for genocide-related disputes arising which the Court could not address, but also as the current situation brought about by the allegations of genocide brought forward by the Russian Federation unfortunately to serious misuses of the Genocide Convention.

41. This reading of the Convention's compromissory clause is further supported by its context. In particular, the use of the words "including" in the intermediate sentence of Article IX indicates an all-encompassing nature of Article IX. Moreover, Article IX expressly provides for the Court's jurisdiction "at the request of *any of the parties* to the dispute". This language suggests that a State accused of committing genocide has the same right to submit the dispute to the Court as the State making the accusation. Hence, the context of the phrase ("relating to") in Article IX confirms that the Court's jurisdiction goes beyond disputes between States about the responsibility for alleged genocidal acts, but also covers disputes between States about the absence of genocide

42. A broad understanding of the Convention's compromissory clause is furthermore confirmed by the fact that it does not require, unlike many other compromissory clauses, any additional procedural steps such as prior negotiations or attempts to settle the dispute by way of arbitration.

43. Finally, the object and purpose gives further support to the wide interpretation of Article IX. Famously, in its 1951 Advisory Opinion, the Court held²⁶

"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."

44. The Convention's object to protect the most elementary principles of morality also prohibits any possibility of a Contracting Party to abuse its provisions

²⁶ *Reservations to the Genocide Convention*, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, p. 23.

for other means. It would undermine the Convention's credibility as a universal instrument to outlaw the most abhorrent crime of genocide if its authority could be abused by any Contracting Party without a possibility of the victim of such abuse to turn to the Court. The purpose of the Convention hence speaks loudly in favour of a reading of Article IX, according to which disputes relating to the interpretation, application and fulfilment include disputes about the abuse of the Convention's authority to justify a Contracting State's action vis-à-vis another Contracting State.

45. Thus, the ordinary meaning of Article IX of the Convention, its context and the object and purpose of the entire Convention all confirm that a dispute regarding acts carried out by one State against another State based on false claims of genocide while claiming to be itself in fulfilment of its obligations to prevent and punish genocide falls under the notion of a "dispute between Contracting Parties relating to the interpretation, application or fulfilment of the present Convention". Accordingly, the Court has jurisdiction to declare the absence of genocide and the violation of a good faith performance of the Convention resulting in an abuse of the law.

3. Possibility of a unilateral seisin of the Court

46. Article IX explicitly states that

„disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention (...) shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.“

47. The words „any of the parties to the dispute“ make it abundantly clear that such a dispute can not only be submitted to the Court (as has been done in the past) by a party accusing the other party to the dispute of committing acts of genocide. Indeed, there is no reason why a State facing what it considers to be an unfounded allegation of breach of the Convention cannot, on its own accord, bring the matter before the Court. Certainly, in the case of the Genocide Convention, a State party standing accused of acts of genocide has a legal interest in obtaining a resolution of the dispute. Otherwise, due to the *erga omnes* character of the obligations under the Genocide Convention, that State stands exposed to possible (counter-)measures taken by other State parties of the Convention.

4. Summary of the Construction of Article IX of the Convention for which Germany contends

48. It is on the basis of the above arguments that Germany interprets Article IX of the Genocide Convention as follows:

49. Article IX of the Genocide Convention (the Convention's compromissory clause) is intentionally broad, covering all "[d]isputes 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."

50. Article IX of the Genocide Convention does not limit the Court's jurisdiction to cases where it is the applicant State accusing the respondent State of breaching its obligations under the Convention. Rather, Article IX confers on the Court jurisdiction to declare the applicant State's compliance with the Convention, where this is a matter of dispute between the parties to a case.

51. Article IX of the Genocide Convention thus also covers disputes which relate to situations in which one State party of the Convention alleges that another State party is committing acts of genocide on its territory and where, relying on such accusations, the former State party then uses military force against the latter.

52. In order to resolve such a dispute, the Court is called upon to apply the Genocide Convention to the relevant facts in order to determine whether there is a basis for such allegations, and if found not to be true whether the use of military force against the State party having allegedly committed such acts does constitute a violation of the Genocide Convention.

VI. Documents in Support of the Declaration

53. Germany submits the following documents in support of this Declaration:

Annex A: Letter from the Registrar sent pursuant to Article 63, paragraph 1, of the Court's Statute;

Annex B: Instrument of Accession of the Federal Republic of Germany to the Convention on the Prevention and Punishment of the Crime of Genocide.

VII. Conclusion


54. On the basis of the information set out above, Germany avails itself of the right conferred upon it by Article 63, paragraph 2, of the Statute to intervene as a non-party in the proceedings brought by Ukraine against the Russian Federation in the above-mentioned case.

55. Germany reserves the right to amend or supplement this Declaration in the course of written and oral observations and by filing a further declaration with the Court.

56. The Government of Germany has appointed the undersigned as Agent for the purposes of the present Declaration, together with Dr. Cyrill Jean Nunn, Ambassador of Germany to the Kingdom of the Netherlands, as Co-Agent. It is requested that all communications in this case be sent to the following address:

Embassy of the Federal Republic of Germany in the Netherlands
Groot Hertoginnelaan 18-20
NL-2517 EG Den Haag

Respectfully submitted,



Dr. Christophe Eick
Agent of the Government of Germany



156413

30 March 2022

Excellency,

I have the honour to refer to my letter (No. 156253) dated 2 March 2022 informing your Government that, on 26 February 2022, Ukraine filed in the Registry of the Court an Application instituting proceedings against the Republic of the Russian Federation in the case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation). A copy of the Application was appended to that letter. The text of the Application is also available on the website of the Court (www.icj-cij.org).

Article 63, paragraph 1, of the Statute of the Court provides that:

[w]henever 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”.

Further, under Article 43, paragraph 1, of the Rules of Court:

“Whenever the construction of a convention to which States other than those concerned in the case are parties may be in question within the meaning of Article 63, paragraph 1, of the Statute, the Court shall consider what directions shall be given to the Registrar in the matter.”

On the instructions of the Court, given in accordance with the said provision of the Rules of Court, I have the honour to notify your Government of the following.

In the above-mentioned Application, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”) is invoked both as a basis of the Court’s jurisdiction and as a substantive basis of the Applicant’s claims on the merits. In particular, the Applicant seeks to found the Court’s jurisdiction on the compromissory clause contained in Article IX of the Genocide Convention, asks the Court to declare that it has not committed a genocide as defined in Articles II and III of the Convention, and raises questions concerning the scope of the duty to prevent and punish genocide under Article I of the Convention. It therefore appears that the construction of this instrument will be in question in the case.

/s/

[Letter to the States parties to the Genocide Convention
(except Ukraine and the Russian Federation)]

Your country is included in the list of parties to the Genocide Convention. The present letter should accordingly be regarded as the notification contemplated by Article 63, paragraph 1, of the Statute. I would add that this notification in no way prejudices any question of the possible application of Article 63, paragraph 2, of the Statute, which the Court may later be called upon to determine in this case.

Accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Philippe Gautier', written in a cursive style.

Philippe Gautier
Registrar

DER PRÄSIDENT
DER BUNDESREPUBLIK DEUTSCHLAND

Beitrittserklärung

Im Namen der Bundesrepublik Deutschland erkläre ich hiermit,
daß die Bundesrepublik Deutschland der am 9. Dezember 1948
von der Vollversammlung der Vereinten Nationen angenommenen

Konvention über die Verhütung und Bestrafung
des Völkermordes

beitritt.

Bonn, den 9. Okt. 1954

Der Bundespräsident



Der Bundeskanzler
und Bundesminister des Auswärtigen



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