

INTERNATIONAL COURT OF JUSTICE

DECLARATION OF INTERVENTION

(Article 63 of the Statute)

OF THE GOVERNMENT OF ITALY

12 September 2022

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

(UKRAINE V. RUSSIAN FEDERATION)

COUR INTERNATIONALE DE JUSTICE

DÉCLARATION D'INTERVENTION

(article 63 du Statut)

DU GOUVERNEMENT DE L'ITALIE

le 12 septembre 2022

ALLEGATIONS DE GENOCIDE AU TITRE DE LA CONVENTION POUR LA
PREVENTION ET LA REPRESSION DU CRIME DE GENOCIDE

(UKRAINE C. FEDERATION DE RUSSIE)

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

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

1. On behalf of the Government of Italy, I have the honour to submit to the Court a Declaration of intervention (henceforth “Declaration”) 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)*.

2. By filing this Declaration, Italy intervenes under Article 63, paragraph 2, of the Statute of the Court. As repeatedly acknowledged by this Court, such intervention constitutes the exercise of a right.¹ Italy reserves the right to supplement this Declaration in the course of written and oral observations and by filing a further declaration with the Court.

3. In availing of its right to intervene under Article 63 of the Statute, Italy is mindful of the requirement under Article 82, paragraph 1, of the Rules of Court, according to which the declaration of a State intervening pursuant to 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”. Accordingly, Italy wishes to express that this Declaration has been filed at the earliest reasonably available opportunity, within the time limits set out by Article 82, paragraph 1, of the Rules of the Court.

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; *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, para. 18.

4. According to Article 82, paragraph 2, of the Rules of the Court, a State that wishes to avail itself of the right of intervention conferred upon it by Article 63 of the Statute, shall submit a declaration that specifies the case and the convention to which it relates, and which contains:

- 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.

5. Following certain preliminary observations, including an overview of the procedural history of this case (**Part I – Preliminary Observations**), the Declaration will address: the requirements under Article 82, paragraph 2, of the Rules of the Court, namely the basis on which Italy considers itself a Party to the Convention (**Part II – Basis on which Italy is a Party to the Convention**); an identification of the provisions on whose construction Italy wishes to intervene (**Part III - Provisions of the Convention in Question in the Case**); a statement on the construction of those provisions (**Part IV – Statement of Construction**); and a list of documents in support of Italy’s intervention (**Part V- Documents in Support of the Declaration**).

I. PRELIMINARY OBSERVATIONS

6. The Declaration takes note of the proceedings of the case at hand as of the date of its filing.

7. On 26 February 2022, Ukraine filed in the Registry of the Court an Application instituting proceedings against the Russian Federation concerning a dispute relating to the interpretation, application or fulfilment of the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”).²

² Application Instituting Proceedings, *Allegations of Genocide Under the Convention on the Prevention*

8. In its Application, Ukraine submits *inter alia* that:

The duty to prevent and punish genocide enshrined in Article I of the Convention necessarily implies that this duty must be performed in good faith and not abused, and that one Contracting Party may not subject another Contracting Party to unlawful action, including armed attack, especially when it is based on a wholly unsubstantiated claim of preventing and punishing genocide.³

9. Therefore,

[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.⁴

10. Concurrently, Ukraine filed a Request for the indication of provisional measures asking the Court to indicate the following provisional measures:

(a) The Russian Federation shall immediately suspend the military operations commenced on 24 February 2022 that have as their stated purpose and objective the prevention and punishment of a claimed genocide in the Luhansk and Donetsk oblasts of Ukraine.

(b) The Russian Federation shall immediately 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, direction or influence, take no steps in furtherance of the military operations which have as their stated purpose and objective preventing or punishing Ukraine for committing genocide.

(c) The Russian Federation shall refrain from any action and shall provide assurances that no action is taken that may aggravate or extend the dispute that is the subject of this Application, or render this dispute more difficult to resolve.

(d) The Russian Federation shall provide a report to the Court on measures taken to implement the Court's Order on Provisional Measures one week after such Order and

and Punishment of the Crime of Genocide, (Ukraine v. Russian Federation), 27 February 2022.

³ *Ibid.*, para 27.

⁴ *Ibid.*, para 7.

then on a regular basis to be fixed by the Court.⁵

11. Oral proceedings were held on 7 March 2022, without the participation of the Russian Federation. On 16 March 2022, the Court upheld its *prima facie* jurisdiction, and found for the Applicant as to the plausibility of the rights invoked by Ukraine and the existence of a risk of irreparable damage. Thus, in its Order on provisional measures, the Court ordered that:

(1) The Russian Federation shall immediately suspend the military operations 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 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) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.⁶

12. As of the date of this Declaration, the Russian Federation has failed to comply with the Order of 16 March 2022 and has intensified and expanded its military operations on the territory of Ukraine.

13. On 30 March 2022, as contemplated by Article 63, paragraph 1, of the Statute of the Court, the Registrar duly notified the Government of Italy as a party to the Genocide Convention that by Ukraine's application the Genocide Convention "is invoked both as a basis for the Court's jurisdiction and the substantive basis of [Ukraine's] claims on the merits". The registrar also noted that:

Ukraine seeks to find 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 [the Genocide

⁵ Request for the indication of provisional measures, *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, 27 February 2022, para 20.

⁶ *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, para. 86.

Convention] will be in question in this case.⁷

14. The case at hand raises crucial issues concerning the interpretation and application of the Genocide Convention. The latter contain *erga omnes* obligations, which are evidentiary of the *jus cogens* character of the international norm on the prohibition to commit genocide, as authoritatively confirmed by the Court.⁸ Since according to their *erga omnes* nature the obligations enshrined in the Convention are owed to all its Parties,⁹ all Parties have an interest in their correct interpretation, application and fulfilment.

15. Ever since becoming a Party to the Genocide Convention in 1952 Italy has consistently committed to promoting the object and purpose of the Genocide Convention, in particular, through its efforts in support of the development of international criminal law and justice, including the establishment and functioning of international criminal courts and tribunals.

16. In the same spirit, and consistent with the rationale of Article 63 of the Statute, Italy's intervention is aimed at assisting the Court in construing such provisions of the Convention which are in question in this case in the pursuit of a common interest of each and all its Parties.

17. While Italy does not seek to become a party in the Proceedings brought by Ukraine against the Russian Federation in this case, it is aware and accepts that, upon declaration of admissibility by this Court of its Declaration of intervention under Article 63 of the Statute, the Genocide Convention's construction given by the judgment in this case will be equally binding upon it.

II. BASIS ON WHICH ITALY IS A PARTY TO THE CONVENTION

18. Italy acceded to the Convention and deposited its instrument of accession in accordance with Article XI, paragraph 4, of the Convention on 4 June 1952.

⁷ Letter from the Registrar of the Court of 30 March 2022 – see Annex A.

⁸ *Case Concerning 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, p. 43, at p. 111, paras. 161-162

⁹ *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 with further references; *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, para. 107.

19. As of today, Italy has not filed any reservation to the Convention and remains a Party to the Convention.

III. PROVISIONS OF THE CONVENTION IN QUESTION IN THE CASE

20. This case raises questions about the construction of multiple provisions of the Genocide Convention.

21. According to Ukraine's application, the legal grounds of its claim are to be found in Articles I, II and III of the Convention.¹⁰ The jurisdiction of the Court is firmly based on Article IX of the Convention.¹¹

22. The Court is required to "satisfy itself [...] that it has jurisdiction" pursuant to Article 53, paragraph 2, of the Statute. This requires the Court to address the proper construction of Article IX, which would consequently be directly relevant for the interpretation and application of the Convention in relation to the present case.

23. Italy notes that Article 63 of the Statute does not make a distinction between provisions of a Convention concerning jurisdictional issues and those which pertain to the merits.¹² Therefore, intervening States may offer their assistance to the Court in the construction of a particular Convention also with regard to provisions pertaining to issues of jurisdiction.

24. Therefore, Italy will address Article IX of the Convention concerning the jurisdiction of the Court (**Part IV(A)**). Italy will then examine those provisions which are relevant to the merits of the claim, with special regard to Articles I, II and III (**Part IV(B)**).

¹⁰ Application Instituting Proceedings, *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, 27 February 2022, para. 26.

¹¹ *Ibid.*, paras. 5-7.

¹² See 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.

25. In doing so, Italy will present its construction of the above provisions in line with customary rules of interpretation as reflected in Articles 31 to 33 of the Vienna Convention on the Law of Treaties.¹³

IV. STATEMENT OF CONSTRUCTION

A. PROVISIONS OF THE CONVENTION IN QUESTION REGARDING THE JURISDICTION OF THE COURT

26. Ukraine grounds the jurisdiction of the Court in Article 36, paragraph 1, of the Statute of the Court and in Article IX of the Genocide Convention, which provides:

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.

27. According to Ukraine, a dispute exists with the Russian Federation relating to the interpretation, application or fulfilment of the Genocide Convention. Such dispute concerns “whether, as a consequence of the Russian Federation's unilateral assertion that genocide is occurring, the Russian Federation has a lawful basis to take military action in and against Ukraine to prevent and punish genocide pursuant to Article I of the Genocide Convention”.¹⁴

28. The notion of “dispute” is well-established in the case law of the Court as “a disagreement on a point of law or fact, a conflict of legal views or of interests” between parties.¹⁵ In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the

¹³ *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.

¹⁴ *Allegations a/Genocide under the Convention on the Prevention and Punishment of the Crime a/Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para. 31.

¹⁵ *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.

other”¹⁶ and that the disputing parties “hold clearly opposite views concerning the question of the performance or non- performance of certain international obligations”.¹⁷ Moreover, “in case the respondent has failed to reply to the applicant’s claims, it may be inferred from this silence, in certain circumstances, that it rejects those claims and that, therefore, a dispute exists”.¹⁸ It is also to be noted that it is not necessary that a State invoke a specific treaty or its provisions for a dispute to arise.¹⁹

29. The expression “interpretation, application or fulfilment of the Convention” is “unique as compared with the compromissory clauses found in other multilateral treaties”.²⁰ It broadens the scope of the jurisdiction of the Court as compared with standard jurisdictional clauses by “add[ing] the word ‘fulfilment’ to the provision conferring on the Court jurisdiction over disputes as to the ‘interpretation and application’ of the Convention”.²¹

30. As acknowledged by the Court, Article IX surely encompasses the situation in which one State alleges that another State has committed genocide.²² Disputes based on allegations by a State party that another State party is responsible for acts of genocide, lack of prevention or punishment of acts of genocide clearly constitute disputes on the “interpretation, application or fulfilment” of the Genocide Convention, thus falling within the scope of Article IX of the Genocide Convention. However, multiple points of construction of the Convention also arise, which fall within the scope

¹⁶ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment of 21 December 1962, I.C.J. Reports 1962, p. 319, at p. 328.

¹⁷ *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, p. 406, at p. 414, para. 18; ICJ, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 3, at 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

¹⁸ *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. 71.

¹⁹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 391, at pp. 428-429, para. 83; *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, p. 70, at pp. 84-85, para. 30.

²⁰ *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.

²¹ *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, p. 43, at 114, para. 168.

²² *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, p. 43, at p. 114, para. 169.

of Article IX, when the dispute concerns non-violation complaints. Namely, where a State party, which has been accused by another State party of having committed breaches of the Genocide Convention, claims that it has not committed such breaches.

31. Italy contends that especially important points of construction of the Convention arise when similar accusations against a State Party are made by another State Party based on an interpretation of Articles I-IV which the former State Party deems in patent contrast with the principle of good faith, as codified under Articles 26 and 31 of the 1969 Vienna Convention on the Law of Treaties.

32. As observed by this Court, general international law requires Contracting Parties “to apply [a treaty] in a reasonable way and in such a manner that its purpose can be realized”.²³ Good faith interpretation and application of international law is essential to building “trust and confidence [that] are inherent in international co-operation”²⁴ and provides indispensable safeguards against abuses of the terms of a convention.

33. The relevance of good faith as a tool for building trust among States is all the more of key relevance in the interpretation and application of an international treaty of the kind of the Genocide Convention in respect to which Parties 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”.²⁵

34. Italy contends that a good faith interpretation of a given provision of a convention bestowing rights and duties upon its Contracting Parties requires that a State acquire evidence which shows that a breach is at least likely to have occurred before attributing a conduct in breach of that provision.

²³ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7, at p. 79, para. 142.

²⁴ *Nuclear Tests (Australia v. France)*, I.C.J. Reports 1974, p. 7, at p. 142.

²⁵ *Reservations to the Convention on Genocide*, Advisory Opinion: I.C.J. Reports 1951, p. 15, at p. 23.

35. Accordingly, Italy contends that a disagreement between two States concerning the unsubstantiated allegation of genocide falls within the notion of a “dispute on the interpretation” of the Convention in the sense envisaged by Article IX.

36. In light of the above, Italy considers that a Contracting Party to the Convention which has been the addressee of an allegation of genocide which it affirms to be unsubstantiated can validly address the Court with a view to attaining an assessment confirming that the Convention has been correctly applied by such State. This would clearly fall within the ordinary meaning of the notion of “dispute relating to the application” of the Convention under Article IX, thus falling within the scope of the jurisdiction *ratione materiae* of the Court.

37. The fact that the Court may decide on disputes concerning a declaration of conformity of the conduct of a State with a given treaty is also supported by the Court’s case law. In the *Rights of Nationals of the United States of America in Morocco* dispute between France and the United States, the applicant asked the Court to declare that its conduct was in “conformity with the economic system which is applicable to Morocco, according to the conventions which bind France and the United States”.²⁶ Neither the Court, nor the defendant, raised any issue as to the framing of the claim as a non-violation one.²⁷

38. Article IX expressly provides that the Court may be *seised* “at the request of *any of the parties* to the dispute” (emphasis added). This language implies that a State accused of committing genocide has the same right to submit the dispute to the Court on the same footing as the State making the accusation.

39. Finally, the object and purpose of the Convention further support the wide interpretation of Article IX. In its 1951 Advisory Opinion, the Court held:

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

²⁶ *Case concerning rights of nationals of the United States of America in Morocco*, Judgment of August 27th, 1952: I.C.J. Reports 1952, p. 176, at p. 182.

²⁷ *Ibid.*, pp. 182-184.

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.²⁸

40. Any international convention, all the more so one which contains legal protection for basic principles of morality, prohibits States parties to abusively interpret and invoke the Convention's provisions. An interpretation to the contrary would deprive the Convention of its authority to outlaw the most aberrant of crimes if such authority could be abused by any State Party without a possibility of the victim of such abuse to turn to the Court. The very purpose of the Convention speaks loudly in favour of a reading of Article IX which encompasses disputes about the alleged abuse of the Convention's authority to justify a State's action vis-à-vis another State Party to the Convention.

41. In conclusion, Italy contends that the ordinary meaning of Article IX of the Convention, its context and the object and purpose of the entire Convention show that a dispute regarding acts carried out by one State against another State based on claims of genocide which the latter State deems unsubstantiated falls under the notion of "dispute between Contracting Parties relating to the interpretation, application or fulfilment of the present Convention". Italy argues that this also encompasses disputes concerning the fulfilment of the convention through the unilateral use of military force for the stated purpose of preventing and punishing alleged genocide.²⁹

B. *PROVISIONS OF THE CONVENTION REGARDING THE MERITS OF THE CASE*

42. In its Application, Ukraine requested the Court to:

(a) Adjudge and declare that, contrary to what the Russian Federation claims, no acts

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

²⁹ *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. 11, para. 45.

of genocide, as defined by Article III of the Genocide Convention, have been committed in the Luhansk and Donetsk oblasts of Ukraine.

(b) Adjudge and declare that the Russian Federation cannot lawfully take any action under the Genocide Convention in or against Ukraine aimed at preventing or punishing an alleged genocide, on the basis of its false claims of genocide in the Luhansk and Donetsk oblasts of Ukraine.

(c) Adjudge and declare that the Russian Federation's recognition of the independence of the so-called 'Donetsk People's Republic' and 'Luhansk People's Republic' on 22 February 2022 is based on a false claim of genocide and therefore has no basis in the Genocide Convention.

(d) Adjudge and declare that the 'special military operation' declared and carried out by the Russian Federation on and after 24 February 2022 is based on a false claim of genocide and therefore has no basis in the Genocide Convention.

(e) Require that the Russian Federation provide assurances and guarantees of non-repetition that it will not take any unlawful measures in and against Ukraine, including the use of force, on the basis of its false claim of genocide.

(f) Order full reparation for all damage caused by the Russian Federation as a consequence of any actions taken on the basis of Russia's false claim of genocide.

43. These submissions concern the interpretation of Article I of the Genocide Convention, which reads as follows:

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

44. According to Article I of the Genocide Convention, all States Parties are obliged to prevent and punish genocide. Italy recalls that the Court has already emphasised that in fulfilling their duty to prevent genocide, Contracting Parties must act within the limits imposed by

international law.³⁰ Moreover, “[t]he 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”.³¹

45. As stressed above, a good faith interpretation of the expression “undertake to prevent” implies that each State Party must assess whether a genocide or a serious risk of genocide exists prior to taking action pursuant to Article I.³² This flows from the general principle of good faith whereby, subject to proof to the contrary, an act of a State “must be considered lawful. *Omnia rite acta praesumuntur*”.³³ Since a claim that a State has committed, or there is a serious risk that it is going to commit, acts of genocide constitute a “charge of exceptional gravity”,³⁴ such an assessment is subject to a particularly heavy standard of proof, namely one according to which evidence must be “fully conclusive”,³⁵ or, anyhow, corresponding to “a high level of certainty appropriate to the seriousness of the allegation”.³⁶

46. Italy thus considers that a good faith construction of Article I imposes on a Contracting Party purporting to adopt measures aimed at preventing or punishing acts of genocide a due diligence obligation to gather fully conclusive evidence from independent sources before taking any action.

³⁰ *Case Concerning 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, p. 43, at p. 221, para. 430; *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, para. 57.

³¹ *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, para. 58.

³² *Case Concerning 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, p. 43, at pp. 221-222, paras. 430-431.

³³ *Valentiner Case* (1903), United Nations Report of International Arbitral Awards, Vol. 10, p. 403, at p. 405.

³⁴ *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, p. 43, at p. 129, para. 209; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 3, at p. 74, para. 178.

³⁵ *Case Concerning 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, p. 43, at p. 129, para. 209.

³⁶ *Case Concerning 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, p. 43, at p. 130, para. 210.

47. The obligation to interpret and apply the Convention in good faith implies that a State cannot invoke the “undertak[ing] to prevent” genocide in Article I of the Convention as a justification for its conduct if it has not carried out an objective and documented assessment of the occurrence or the risk of occurrence of genocide.

48. Turning to the undertaking “to punish” in Article I of the Convention, Italy contends that the obligation is limited to punitive measures of a criminal law character directed against individuals. This is confirmed by Articles IV-VI of the Convention. In other words, a State should use its domestic criminal law or rely on international criminal investigations to suppress genocide by individual perpetrators (“punishment”) and not engage in any other type of measures, in particular forcible or military measures to “punish” a State or a people.

49. Article II of the Convention reads as follows:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

50. The submissions of Ukraine also call for the Court to interpret Article III of the Convention, which states that:

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

51. For an action to be qualified as “genocide” under Article II both “genocidal actions” and “genocidal intent” are to be established.³⁷ In turn, the occurrence of civilian casualties in the course of an armed conflict is not evidence of genocidal action or genocidal intent, as it cannot be qualified *per se* as an extreme form and most inhuman form of persecution designed to destroy a group or part of a group.

52. The definition laid down in Article II and III of the notion of genocide clearly shows that the assessment of the actual occurrence, or serious risk of occurrence, of acts of genocide is not a subjective one without precise legal parameters. This further supports Italy’s contention that the proper construction of these provisions requires that such assessment must be strictly made on the basis of “fully conclusive” evidence.

C. *SUMMARY OF THE CONSTRUCTION OF ARTICLES I, II, III AND IX FOR WHICH ITALY
CONTENDS*

53. For the reasons explained above, Italy contends that:

- a. Article IX of the Genocide Convention is formulated so as to address issues concerning the abuse of the terms of the Convention and complaints of non-violation.
- b. Article I of the Genocide Convention, interpreted in conjunction with Articles II and III, requires Contracting Parties to substantiate their claim of a breach of the Convention by way of “fully conclusive” evidence before adopting measures aimed at preventing or punishing acts of genocide.

V. *DOCUMENTS IN SUPPORT OF THE DECLARATION*

54. The following is a list of the documents in support of this Declaration, which documents are attached hereto:

³⁷ *Case Concerning 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. 43, at pp. 121-122, paras. 186-189.

- a. Letter of 30 March 2022 from the Registrar of the International Court of Justice to the Ambassador of Italy to the Kingdom of the Netherlands;
- b. United Nations Depository Notification confirming the Government of Italy's accession to the Genocide Convention.

VI. CONCLUSION


55. For all of the above reasons, Italy respectfully requests the Court to recognise the admissibility of this Declaration and that Italy is availing itself of its right under Article 63, paragraph 2, of the Statute of the Court to intervene in these proceedings.

56. Italy reserves the right to supplement this Declaration in the course of written and oral observations and by filing a further declaration with the Court.

57. The Government of Italy has appointed the undersigned as Agent for the purposes of the present Declaration, together with H.E. Giorgio Novello, Ambassador of Italy 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 Italy
Parkstraat n 28,
2514 JK, The Hague
The Netherlands

Respectfully,



Stefano Zanini

Agent of the Government of Italy

Annex A: Letter of 30 March 2022 from the Registrar of the International Court of Justice to the Ambassador of Italy to the Kingdom of the Netherlands;

Annex B: United Nations Depository Notification confirming the Government of Italy's accession to the Genocide Convention.

Annex A:
Letter from the Registrar of the International Court of Justice to the Ambassador of Italy
to the Kingdom of the Netherlands



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.

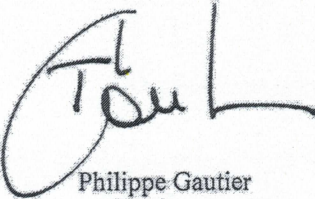
In the above-mentioned Application, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”) is invoked both as a basis of the Court’s jurisdiction and as a substantive basis of the Applicant’s claims on the merits. In particular, the Applicant 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.

.i.

[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.



Philippe Gautier
Registrar

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FILE NO.:

C.N.85.1952.TREATIES

le 16 juin 1952

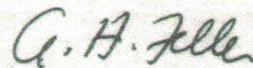
CONVENTION DU 9 DECEMBRE 1948 POUR LA PREVENTION ET LA REPRESSION DU
CRIME DE GENOCIDEADHESION PAR L'ITALIE

Je suis chargé par le Secrétaire général de porter à votre connaissance que l'instrument d'adhésion par le Gouvernement italien de la Convention pour la prévention et la répression du crime de génocide, ouverte à la signature à Paris le 9 décembre 1948, a été déposé auprès du Secrétaire général des Nations Unies le 4 juin 1952 conformément aux dispositions de l'article XI de la Convention.

Conformément aux dispositions de l'article XIII de la Convention, l'adhésion par l'Italie prendra effet le 2 septembre 1952, soit le quatre-vingt-dixième jour qui suivra le dépôt de l'instrument d'adhésion auprès du Secrétaire général.

La présente notification est faite en application de l'article XVII (a) de la Convention.

Je vous prie d'agréer,
l'assurance de ma haute considération.



A. H. Feller
Conseiller général et Directeur principal
Département juridique