

**INTERNATIONAL COURT OF JUSTICE**

**Allegations of Genocide under the Convention on the Prevention and  
Punishment of the Crime of Genocide (Ukraine v. Russian Federation)**

**DECLARATION OF INTERVENTION BY IRELAND  
PURSUANT TO ARTICLE 63 OF THE STATUTE OF THE  
INTERNATIONAL COURT OF JUSTICE**

19 September 2022



## To the Registrar, International Court of Justice

The undersigned, being duly authorised by the Government of Ireland:

1. On behalf of the Government of Ireland, I have the honour to submit to the Court the following Declaration of Intervention pursuant to Article 63, paragraph 2 of the Statute of the Court ('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)*.
2. Article 82, paragraph 2, of the Rules of the Court provides that a declaration of a State's desire to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall specify the case and the convention to which it relates and shall contain:
  - a) *'particulars of the basis on which the declarant State considers itself a party to the convention;*
  - 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. These matters are addressed in sequence below.

### CASE AND CONVENTION TO WHICH THIS DECLARATION RELATES

4. On 26 February 2022, Ukraine instituted proceedings against the Russian Federation at the International Court of Justice ('the Court') under the 1948 Convention on the Prevention and Punishment of Genocide ('the Convention') to which both Ukraine and the Russian Federation are Contracting Parties. In its Application instituting proceedings, which was accompanied by a Request to the Court for the indication of provisional measures, Ukraine contends that there is a dispute between Ukraine and the Russian Federation within the meaning of Article IX of the Convention relating to its interpretation, application or fulfilment. Specifically, Ukraine contends that the:

*'...Russian Federation claims that acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine, and has undertaken military and other actions against Ukraine, including recognizing purportedly independent states*

*on Ukrainian territory, with the express purpose of preventing and punishing such alleged acts of genocide...'*<sup>1</sup>

5. At paragraph 9 of its Application, Ukraine '*emphatically denies that any such genocide has occurred, and that the Russian Federation has any lawful basis to take action in and against Ukraine for the purpose of preventing and punishing genocide under Article I of the Convention.*' Ukraine accordingly contends that:

*'A dispute has therefore arisen relating to the interpretation and application of the Genocide Convention, as Ukraine and Russia hold opposite views on whether genocide has been committed in Ukraine, and whether Article I of the Convention provides a basis for Russia to use military force against Ukraine to 'prevent and to punish' this alleged genocide.'*<sup>2</sup>

6. On 7 March 2022 the Ambassador of the Russian Federation to the Kingdom of the Netherlands communicated to the Court a document setting out '*its position regarding the lack of competence of the Court in this case.*'<sup>3</sup>

7. In response to the Request of Ukraine for the indication of provisional measures, on 16 March 2022 the Court made an Order indicating the following provisional measures:

*'(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 organisations and person which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in points (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.'*<sup>4</sup>

8. As of the date of this Declaration, the Russian Federation has failed to comply with the Order of the Court. On the contrary, the Russian Federation has since then intensified

---

<sup>1</sup> Application by Ukraine instituting proceedings filed in the Registry of the Court on 26 February 2022, paragraph 8 ([URB Application 20220525 E-F v0.indd \(icj-cij.org\)](https://www.icj-cij.org/public/files/case-related/182/182-20220525-E-F-v0.indd))

<sup>2</sup> *Ibid*, para. 11

<sup>3</sup> Document (with annexes) from the Russian Federation setting out its position regarding the alleged "lack of jurisdiction" of the Court in the case, 7 March 2022, para. 3, <https://www.icj-cij.org/public/files/case-related/182/182-20220307-OTH-01-00-EN.pdf>

<sup>4</sup> Order dated 16 March 2022, para. 86, <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>

its military operations on the territory of Ukraine and has thus aggravated the dispute before the Court.

9. On 30 March 2022, as contemplated by Article 63, paragraph 1 of the Statute, the Registrar of the Court duly notified the Government of Ireland as a Contracting Party to the Convention that by Ukraine's Application the Convention had been '*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 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 this case.'*

10. The prohibition of genocide is a peremptory norm of general international law. Ireland recalls that the Court has described this and other such peremptory norms as obligations necessary 'to protect essential humanitarian values.'<sup>5</sup> Ireland further recalls that the Court has recognised 'the rights and obligations enshrined by the Convention (as) rights and obligations *erga omnes*.'<sup>6</sup> Given the essential function of the prohibition of genocide in ensuring the interests of humanity and the *erga omnes* nature of the rights and obligations of States under the Convention, as a Contracting Party Ireland has a direct interest in the construction that might be placed by the Court on the relevant provisions of the Convention and wishes to see the consistent interpretation, application and fulfilment of the Convention among all Contracting Parties. Accordingly Ireland has decided to avail itself of the right conferred upon it by Article 63, paragraph 2 of the Statute to intervene in the present proceedings.

11. In intervening in these proceedings Ireland acknowledges that it is '*limited to submitting observations on the construction of the convention in question and does not ... become a party to the proceedings, (nor is it permitted) to deal with any other aspect of the case before the Court (and that) such an intervention cannot affect the equality*

---

<sup>5</sup> 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, para 147.

<sup>6</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II), para. 31

*of the Parties to the dispute.*<sup>7</sup> Further, in accordance with Article 63, paragraph 2 of the Statute, Ireland acknowledges that in so intervening it accepts that the construction given to the Convention by the judgment of the Court in these proceedings will be binding on it.

## **PARTICULARS OF THE BASIS ON WHICH IRELAND CONSIDERS ITSELF A PARTY TO THE CONVENTION**

12. Ireland deposited its instrument of accession to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide in accordance with Article XI, paragraph 4 thereof with the Secretary-General of the United Nations on 22 June 1976. In accordance with Article XIII of the Convention the accession of Ireland became effective on 20 September 1976.

## **PROVISIONS OF THE CONVENTION THE CONSTRUCTION OF WHICH APPEARS TO BE IN QUESTION**

13. Ireland recalls that at paragraph 45 of its Provisional Measures Order dated 16 March 2022 the Court identified that:

*‘The statements made by the State organs and senior officials of the Parties indicate a divergence of views as to whether certain acts allegedly committed by Ukraine in the Luhansk and Donetsk regions amount to genocide in violation of its obligations under the Genocide Convention, as well as whether the use of force by the Russian Federation 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.’*

14. The Russian Federation on the other hand has argued that there is no dispute within the meaning of Article IX of the Convention and that Ukraine’s ‘Application and Request manifestly fall beyond the scope of the Convention and thus the jurisdiction of the Court.’<sup>8</sup>

---

<sup>7</sup> *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.

<sup>8</sup> Order dated 16 March 2022, para 34 - <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>.

15. Accordingly, in Ireland's view the construction of Article I and Article IX of the Convention appear to be in question.

#### **CONSTRUCTION OF ARTICLE I FOR WHICH IRELAND CONTENDS**

16. Article I of the Convention provide that:

*'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.'*

17. Any action taken by a Contracting Party to the Genocide Convention in purported prevention of genocide, whether or not in doing so that Party expressly relies on the Convention, will be understood as being done in performance of that Party's legal obligation under the Convention to prevent genocide.

18. It is a rule of customary international law, reflected in Articles 26 and 31 of the 1969 Vienna Convention on the Law of Treaties, that treaty obligations must be interpreted and applied in good faith. As the Court has recognised, *'(o)ne of the basic principles governing the creation and performance of legal obligations... is good faith.'*<sup>9</sup> The Court has been clear that the *'principle of good faith obliges the Parties (to a treaty) to apply it in a reasonable way and in such a manner that its purpose can be realized.'*<sup>10</sup>

19. Accordingly where action taken in purported prevention of a genocide follows upon false allegations of genocide, those allegations and any subsequent action cannot in any circumstances be regarded as reasonable and indeed subvert the object and purposes of the Convention itself. In Ireland's view, therefore, any action taken on the basis of such allegations, in purported performance of Article I of the Convention, can only be regarded as a serious breach of the obligation to interpret and apply that provision in good faith.

#### **CONSTRUCTION OF ARTICLE IX FOR WHICH IRELAND CONTENDS**

20. Article IX of the Genocide Convention provides as follows:

*'Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated*

---

<sup>9</sup> Nuclear Tests (Australia v. France), Judgment, 20 December 1974, para. 46

<sup>10</sup> Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, 25 September 1997, para. 142



*in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.’*

21. Two questions arise in considering the construction of Article IX in this instance. Firstly, what is meant by the term ‘dispute’? Secondly, assuming the existence of a dispute, in order to found the Court’s jurisdiction it is still necessary to ensure that the dispute in question does indeed fall within the provisions of Article IX of the Convention, i.e. that it *‘relates) to the interpretation, application or fulfilment of the present Convention.’*
22. The meaning of the term ‘dispute’ is long established in the caselaw of this Court and of its predecessor, the Permanent Court of International Justice. As early as 1924 the latter interpreted it as ‘a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons.’<sup>11</sup> The present Court has explained that in order for a dispute to exist it ‘must be shown that the claim of one party is positively opposed by the other.’<sup>12</sup> The parties must ‘hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations.’<sup>13</sup> 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.’<sup>14</sup> In Ireland’s view these criteria are clearly met in the present case.
23. As to the second question, namely the nature of disputes ‘relating to the interpretation, application or fulfilment of the present Convention’, Ireland contends that the scope of Article IX is broad. Specifically, in Ireland’s view a dispute in which an allegation of commission of genocide, or failure to prevent genocide, is made by one Contracting Party to the Convention against another Party, which the latter denies, is a dispute that comes within the scope of Article IX. This is the case whether or not the former Party expressly cites the Convention because, regardless, it accuses the latter Party of committing an act or acts prohibited by the Convention, or of failing to prevent an act

---

<sup>11</sup> *Mavrommatis Palestine Concessions*, Judgment of 30 August 1924 (Objection to the Jurisdiction of the Court), PCIJ Series A, A02, p.11

<sup>12</sup> *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.

<sup>13</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 74.

<sup>14</sup> *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.



- or acts as required by the Convention, and therefore of failing to fulfil its obligations under that Convention. In such a case a dispute ‘relating to the interpretation, application or fulfilment’ of the Genocide Convention necessarily arises between them.
24. In addition, the use of the word ‘including’ in Article IX supports the contention that its scope is not limited to disputes in which acts prohibited by the Convention have been committed. Article IX’s reference to ‘*Disputes between the Contracting Parties ... including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III...*’ (emphasis added) enables the Court to exercise jurisdiction also in disputes other than these expressly referenced disputes as long as such disputes relate to the interpretation, application or fulfilment of the Convention.
25. Finally, Article IX enables reference of a dispute to the Court ‘*at the request of any of the parties to the dispute.*’ This phrase supports the contention that the Court’s jurisdiction may be engaged either by the Contracting Party alleging the commission of, or failure to prevent, genocide as it may be by the Contracting Party against which such an allegation is made.

#### **DOCUMENTS IN SUPPORT OF THE PRESENT DECLARATION**

26. The following is a list of the documents submitted in support of this Declaration, which documents are attached hereto at Annexes A and B:
- (a) Copy of Letter from the Registrar of the International Court of Justice to the Ambassador of Ireland to the Kingdom of the Netherlands, dated 30 March 2022; and
  - (b) Copy of Notification by the Director of the General Legal Division of the Office of Legal Affairs, United Nations Secretariat, of the Accession by Ireland to the Convention on the Prevention and Punishment of the Crime of Genocide, dated 9 July 1976.

#### **CONCLUSION**

27. On the basis of the information set out above, Ireland 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 this case. Ireland reserves the right to amend or supplement this Declaration if and when deemed necessary.

28. The Government of Ireland has appointed Mr. Declan Smyth, Acting Legal Adviser at the Department of Foreign Affairs, as Agent and Mr. Frank Groome, Chargé d’Affaires, a.i, at the Embassy of Ireland to the Kingdom of the Netherlands, as Co-Agent for the purposes of this Declaration. The Registrar of the Court may transmit all communications with respect to these proceedings to the following address:

Embassy of Ireland to the Kingdom of the Netherlands  
Scheveningseweg 112, 2584 AE  
The Hague

A handwritten signature in cursive script, reading "Frank Groome", written over a horizontal line.

Frank Groome,  
Chargé d’Affaires, a.i,  
Co-Agent of the Government of Ireland

Annex A: Copy of the letter from the Registrar of the International Court of Justice to the Ambassador of Ireland to the Kingdom of the Netherlands, dated 30 March 2022; and

Annex B: Copy of the Notification by the Director of the General Legal Division of the Office of Legal Affairs, United Nations Secretariat, of the Accession by Ireland to the Convention on the Prevention and Punishment of the Crime of Genocide, dated 9 July 1976.

## Annex A



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](http://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.

*J.*

[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', with a large, stylized initial 'P' and 'G'.

Philippe Gautier  
Registrar

Annex B

(IV.1)

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017  
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE. C.N.204.1976.TREATIES-1

9 July 1976

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE  
ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 9 DECEMBER 1948

ACCESSION BY IRELAND

Sir,

I have the honour, upon instructions from the Secretary-General, to inform you that, on 22 June 1976, the instrument of accession by the Government of Ireland to the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948, was deposited with the Secretary-General.

In accordance with paragraph 3 of its article XIII, the Convention will enter into force for Ireland on the ninetieth day following the deposit of the instrument of accession, that is to say on 20 September 1976.

Accept, Sir, the assurances of my highest consideration.



Blaine Sloan  
Director of the General Legal Division,  
in charge of the Office of Legal Affairs