

**DECLARATION OF INTERVENTION
OF THE REPUBLIC OF AUSTRIA**

4 October 2022

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

1. On behalf of the Republic of Austria, I have the honour to submit to the Court a Declaration of Intervention pursuant to the right to intervene set out in Article 63, paragraph 2, of the Statute of the International Court of Justice (“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 Court provides that a declaration of a State’s desire to avail itself of the right conferred upon it by Article 63, paragraph 2, of the Statute “shall specify the case and 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 requirements are addressed in sequence below.

I. Austria’s Right to Intervene

4. On 30 March 2022, the Registrar notified Austria, as a Party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention” or “Convention”), on the basis of Article 63, paragraph 1, of the Statute, that by Ukraine’s Application the Genocide Convention “is invoked both as a basis of the Court’s jurisdiction and the substantive basis of [Ukraine’s] claims on the merits.” The Registrar further specified 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 [the Genocide Convention] will be in question in this case.”¹

5. By the present Declaration, Austria, as a Party to the Genocide Convention, avails itself of the right to intervene conferred upon it by Article 63, paragraph 2, of the Statute. Austria exercises this right in accordance with Article 82, paragraph 2, of the Rules of Court, by filing this Declaration “as soon as possible and well in advance of the oral proceeding”. Furthermore, in accordance with Article 63 of the Statute, Austria limits its intervention to matters of construction of the Genocide Convention in the context of the present case.

6. If this intervention is admitted, Austria requests to be furnished with copies of the Parties’ pleadings and documents annexed thereto and reserves its right to submit its written observations on the subject-matter of the intervention pursuant to Article 86, paragraph 1, of the Rules of Court.

7. By this intervention, Austria does not seek to become a Party to these Proceedings. However, Austria accepts that by intervening in this case, the construction of the Genocide Convention given by the judgment will be equally binding upon it.

8. Finally, Austria hereby expresses its willingness to assist the Court in grouping its intervention together with like-minded intervening States at future stages of the proceedings, should the Court consider this conducive for the sound and expeditious administration of justice.

II. Case and Convention to which this Declaration relates

9. On 26 February 2022, Ukraine instituted proceedings against the Russian Federation under Article IX of the Genocide Convention.² The Application instituting proceedings was accompanied by a request to the Court for the indication of provisional measures in accordance with Article 41 of the Statute.³

10. Ukraine states that its Application “concerns a dispute ... relating to the interpretation, application and fulfilment of the [Genocide Convention]”.⁴ Specifically, it contends that

“... the Russian Federation has falsely claimed that acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine, and on that basis recognized the so-called “Donetsk People’s Republic” and “Luhansk People’s Republic”, and then declared and

¹ Letter from the Registrar of the International Court of Justice to the States Parties to the Genocide Convention, n°156413, 30 March 2022.

² *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide* (Ukraine v. Russia), Application instituting proceedings of 26 February 2022 (“Application”).

³ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide* (Ukraine v. Russia), Request for the indication of provisional measures submitted by Ukraine, 26 February 2022 (“Provisional Measures Request”).

⁴ Application, para. 2.

implemented a “special military operation” against Ukraine with the express purpose of preventing and punishing purported acts of genocide that have no basis in fact.”⁵

11. On 7 March 2022, the Russian Federation delivered a document to the Registry of the Court, setting out its position regarding the alleged “lack of jurisdiction” of the Court in this case.⁶ In particular, the Russian Federation claims that its “special military operation” is “based on the United Nations Charter, its Article 51 and customary international law”⁷, as opposed to the Genocide Convention. In the Russian Federation’s view, Ukraine’s allegations fall outside the scope *ratione materiae* of Article IX of the Genocide Convention because

“[a] reference to genocide is not equal to the invocation of the Convention or the existence of a dispute under it, since the notion of genocide exists in customary international law independently of the Convention ... There are no references to the Convention in the statement of the President of the Russian Federation to which the Government of Ukraine refers...”⁸

12. The Court rejected this argument *prima facie* in its Order indicating provisional measures of 16 March 2022, following an oral hearing and consideration of the document filed by the Russian Federation.⁹ Notably, the Court pointed out that

“since 2014, various State organs and senior representatives of the Russian Federation have referred, in official statements, to the commission of acts of genocide by Ukraine in the Luhansk and Donetsk regions. The Court observes, in particular, that the Investigative Committee of the Russian Federation – an official State organ – has, since 2014, instituted criminal proceedings against high-ranking Ukrainian officials regarding the alleged commission of acts of genocide against the Russian-speaking population living in the above-mentioned regions “in violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide”.”¹⁰

13. The Court drew from this that

“the evidence in the case file demonstrates *prima facie* that statements made by the Parties referred to the subject-matter of the Genocide Convention in a sufficiently clear

⁵ Ibid; see also paras. 8-11, where Ukraine *inter alia* refers to the Address by the President of the Russian Federation of 21 February 2022, basing his decision to “immediately recognise the independence and sovereignty of the Donetsk People’s Republic and the Lugansk People’s Republic” on the “horror and genocide, which almost 4 million people are facing” (<http://en.kremlin.ru/events/president/transcripts/statements/67828>); and Address by the President of the Russian Federation of 24 February 2022, stating that the purpose of the military operation is to “protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kiev regime” (<http://en.kremlin.ru/events/president/news/67843>); see also *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide* (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022 (“Provisional Measures Order”), paras. 37-42.

⁶ 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 (“Document of the Russian Federation”).

⁷ Ibid, para. 15.

⁸ Ibid, para. 20.

⁹ Provisional Measures Order, para. 48.

¹⁰ Ibid, para. 37.

way to allow Ukraine to invoke the compromissory clause in this instrument as a basis for the Court's jurisdiction."¹¹

14. These observations make plain that the Genocide Convention and its proper construction form a central part of the case at hand. As a Party to the Genocide Convention, Austria is entitled to intervene and present its construction of the Convention under Article 63, paragraph 2, of the Genocide Convention. Furthermore, the Court has recognized that the obligations in the Convention are owed *erga omnes partes* so that any State Party to the Convention has a legal interest in the other State Parties' compliance with the Convention.¹²

III. Basis on which Austria is a Party to the Genocide Convention

15. On 19 March 1958, Austria deposited its instrument of accession to the Genocide Convention with the Secretary-General of the United Nations in accordance with Article XI of the Convention.¹³ Upon that instrument becoming effective on 17 June 1958, Austria became a State Party to the Genocide Convention pursuant to Article XIII of the Convention.

IV. Provisions of the Genocide Convention in Question in the Proceedings

16. According to the letter of the Registrar of 30 March 2022, Articles I, II, III and IX of the Genocide Convention are in question in the present proceedings. Although these provisions relate both to the Court's jurisdiction and the merits of the case, Austria will limit this intervention to jurisdictional issues, i.e. to the construction of the compromissory clause contained in Article IX of the Genocide Convention.¹⁴

17. However, the construction of the Convention's compromissory clause, and specifically an interpretation in the light of the object and purpose of the Convention, requires reference to other provisions of the Genocide Convention. Finally, Austria reserves its right to submit further declarations concerning the construction of the Articles of the Convention that relate to the merits of the case.

¹¹ Ibid, para. 44.

¹² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022, at paras. 107-109.

¹³ See Annex.

¹⁴ Neither the wording of Article 63 of the Statute nor the few precedents in the Court's case law limit the right to intervene under Article 63 of the Statute to substantive, as opposed to jurisdictional issues of construction; see *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, Dissenting Opinion of Judge Schwebel (stating that "intervention in the jurisdictional phase of a proceeding is within the scope of rights with which States are endowed by the terms of Article 63."); see also Robert Kolb, *The International Court of Justice* (Hart Publishing 2014), 737 ("[O]ne must begin with what is generally accepted, namely that an intervention is possible in relation to each title of jurisdiction in a multilateral convention, for example, a compromissory clause.")

V. Statement on the Construction of Article IX of the Genocide Convention

18. 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 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.”

19. Austria wishes to address the construction of the Court’s jurisdiction under Article IX of the Genocide Convention in the specific context of the present case. Ukraine’s claims can be grouped into two sets of jurisdictional questions.

20. The first category of jurisdictional questions concerns Ukraine’s request to the Court to

“adjudge and declare that, contrary to what the Russian Federation claims, no acts of genocide, as defined by Article III of the Genocide Convention, have been committed in the Luhansk and Donetsk oblasts of Ukraine.”¹⁵

21. The relief sought is a “negative declaration” by the Court, stating that Ukraine has *not* committed genocide as defined in the Genocide Convention. This raises the question as to whether Article IX of the Genocide Convention vests the Court with the jurisdiction *ratione materiae* to adjudge and declare the absence of acts of genocide, i.e. a non-violation of Article III of the Genocide Convention.

22. “Negative declarations” establishing the non-violation of international obligations are as much part of the Court’s competence as declaratory relief for the violation of obligations. For instance, in the case concerning *Rights of Nationals of the United States of America in Morocco*, the applicant requested the Court to declare that it had acted “in conformity with the treaty provisions which are ... binding on France and the United States”.¹⁶ The Court, which has to verify its jurisdiction *proprio motu*,¹⁷ did not see any jurisdictional issues with France’s request for a negative declaration and went on to consider the merits of the claim. Likewise, in its *Lockerbie* judgment, the Court confirmed its jurisdiction over the applicant’s request for a negative declaration establishing that it had *not* violated the Montreal Convention.¹⁸

23. Consequently, Austria concludes from the Court’s case law that the Court is competent to grant declaratory relief concerning the non-violation of international obligations.

¹⁵ Application, para. 30(a).

¹⁶ *Rights of Nationals of the United States of America in Morocco* (France v. United States of America), Judgment of 27 August 1952, I.C.J. Reports 1952, p. 176, at p. 182.

¹⁷ *Appeal Relating to the Jurisdiction of the ICAO Council* (India v. Pakistan), Judgment of 18 August 1972, I.C.J. Reports 1972, p. 46, at p. 52, para. 13.

¹⁸ *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie* (Libyan Arab Jamahiriya v. United Kingdom), Preliminary Objections, Judgment of 27 February 1998, I.C.J. Reports 1998, p. 9.

24. The second category of jurisdictional questions relates to Ukraine's claim 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 Convention ...”.¹⁹

25. This category of claims is contingent on the Court's jurisdiction over the question as to whether the Russian Federation's conduct is contrary to its obligations regarding the interpretation, application and fulfilment of the Genocide Convention.

26. In Austria's view, the core jurisdictional question of the second category is whether Article IX of the Genocide Convention vests the Court with the competence to sit over a dispute concerning certain declarations and acts undertaken on the basis of abusive allegations of genocide that contradict the letter and spirit of the Genocide Convention.

27. The following sections set out Austria's statement of the construction of Article IX of the Genocide Convention in line with the rule of interpretation stated in Article 31 of the 1969 Vienna Convention of the Law of Treaties (“VCLT”): “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.” Although the VCLT is not directly applicable *ratione temporis* in the present case, it is well established that Article 31 of the VCLT reflects customary international law.²⁰

1. Ordinary Meaning of the Terms of Article IX

28. The point of departure of the general rule of interpretation is an interpretation of the terms of the treaty by their ordinary meaning.²¹

29. According to the plain wording of Article IX of the Genocide Convention, the Court has jurisdiction over “disputes” that relate to the interpretation, application or fulfilment of the Convention. This notion of a dispute – “a disagreement on a point of law or fact, a conflict of legal views or of interests”²² – takes centre stage in the construction of Article IX.

30. A dispute exists if the two parties “hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations.”²³ In this connection,

¹⁹ Application, paras. 26, 30(b)-30(d).

²⁰ See, e.g., *Arbitral Award of 3 October 1899* (Guyana v. Venezuela), Jurisdiction of the Court, Judgment of 18 December 2020, I.C.J. Reports 2020, p. 455, at p. 475, para. 70.

²¹ E.g. *Territorial Dispute* (Libyan Arab Jamahiriya/Chad), Judgment of 3 February 1994, I.C.J. Reports 1994, p. 6, at p. 22, para. 41.

²² *Mavrommatis Palestine Concessions* (Greece v. United Kingdom), Preliminary Objections, Judgment of 30 August 1924, P.C.I.J. Series A, No. 2, at p. 11.

²³ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea* (Nicaragua v. Colombia), Preliminary Objections, Judgment of 17 March 2016, I.C.J. Reports 2016, p. 3, at p. 26, para. 50.

“the positive opposition ... need not necessarily be stated *expressis verbis*”,²⁴ as long as “the respondent was aware, or could not have been unaware, that its views were ‘positively opposed’ by the applicant.”²⁵ Likewise, “it is not necessary that a State must expressly refer to a specific treaty in its exchanges with the other State to enable it later to invoke that instrument before the Court”.²⁶

31. The dispute must in principle exist on the date on which the application is submitted to the Court.²⁷ In the present case, Ukraine refers to statements that manifested the opposing views of the Russian Federation and Ukraine prior to the filing of Ukraine’s Application.²⁸ Further, the document submitted to the Court on 7 March 2022, in which the Russian Federation reiterated the allegations of genocide that form the core of Ukraine’s claim,²⁹ and other “[c]onduct subsequent to the application (or the application itself)” may be used “to confirm the existence of a dispute [or] to clarify its subject-matter”.³⁰

32. A dispute only falls under the jurisdiction of the Court pursuant to Article IX of the Genocide Convention if it relates to the “interpretation, application or fulfilment” of the Convention.

33. Austria submits that the Court’s jurisdiction over the “fulfilment” of the Convention – an unusual feature among compromissory clauses, which are commonly limited to the “interpretation and application” of the respective treaty – further substantiates a construction of Article IX that renders declarations of the absence of genocide under its purview. Opposing views between State Parties regarding allegations of genocide plainly constitute a dispute not only about the interpretation and application of the Genocide Convention but also as to whether or not the accused State has “fulfilled” the Convention.

34. The Court recently held that

²⁴ *Land and Maritime Boundary between Cameroon and Nigeria* (Cameroon v. Nigeria), Preliminary Objections, Judgment of 11 June 1998, I.C.J. Reports 1998, p. 275, at p. 315, para. 89.

²⁵ See, e.g., *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament* (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment of 5 October 2016, I.C.J. Reports 2016, p. 833, at p. 850, para. 41.

²⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Georgia v. Russian Federation), Preliminary Objections, Judgment of 1 April 2011, I.C.J. Reports 2011, p. 70, at p. 85, para. 30.

²⁷ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament* (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment of 5 October 2016, I.C.J. Reports 2016, p. 833, at p. 851, paras. 42-43.

²⁸ See Application, paras. 8-11.

²⁹ Document of the Russian Federation, para. 20.

³⁰ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament* (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment of 5 October 2016, I.C.J. Reports 2016, p. 833, at p. 851, para. 43.

“[c]ertain acts may fall within the ambit of more than one instrument and a dispute relating to those acts may relate to the “interpretation or application” of more than one treaty or other instrument.”³¹

35. Accordingly, the fact that a Party’s claims may simultaneously relate to other legal or political questions in addition to the “interpretation, application or fulfilment” of the Genocide Convention does in no way abrogate Article IX. Even if the larger dispute gives rise to questions under the UN Charter or customary international law *in parallel* to questions under the Genocide Convention, the Court “cannot infer the subject-matter of a dispute from the political context” but must “bas[e] itself on what the applicant has requested of it”³² under the Genocide Convention.

36. Ukraine requests the Court to adjudge and declare whether certain declarations and acts undertaken on the basis of abusive allegations of genocide are in conformity with the Genocide Convention. Thereby, Ukraine calls upon the Court to assess the Russian Federation’s conduct in the light of the provisions of the Genocide Convention and the principle of *pacta sunt servanda*. In view of Ukraine’s claims, the Russian Federation cannot escape its obligations under the Genocide Convention since State Parties cannot pick and choose whether they apply a treaty or customary international law in a given situation. Rather, obligations under a treaty take precedence over customary international law in accordance with the interpretive maxim of *lex specialis*.³³

37. Moreover, disputes under Article IX “includ[e] those relating to the responsibility of a State for genocide or for any of the acts enumerated in article III”.

38. As the Court has noted, this clause “does not exclude any form of State responsibility”³⁴ and thus, the Court’s jurisdiction under the Convention covers State responsibility for any form of conduct, including false allegations of genocide. In the same vein, the Court has confirmed that Article IX also pertains to disputes concerning obligations that are “not expressly imposed by the actual terms of the Convention.”³⁵ Accordingly, the subject of the dispute may also concern Article IX itself, as well as the Convention read as a whole.³⁶

³¹ *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights* (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment of 3 February 2021, I.C.J. Reports 2021, p. 9, at p. 27, para. 56.

³² *Ibid.*, para. 59.

³³ *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), Judgment of 27 June 1986, I.C.J. Reports 1986, p. 14, at p. 137, para. 274 (“In general, treaty rules being *lex specialis*, it would not be appropriate that a State should bring a claim based on a customary-law rule if it has by treaty already provided means for settlement of a such a claim.”)

³⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment of 11 July 1996, I.C.J. Reports 1996, p. 595, at p. 616, para. 32.

³⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, I.C.J. Reports 2007, p.43, at p. 113, para. 166.

³⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment of 11 July 1996, I.C.J. Reports 1996, p. 595, at p.

39. Finally, Article IX authorizes “any of the parties to the dispute” to seize the Court with the matter. Thus, the State Party accused of genocide has the same right to seize the Court and ask for declaratory relief as the State that has made the accusation. As a consequence, the plain wording of Article IX vests the Court with jurisdiction to grant a negative declaration establishing the non-violation of the Genocide Convention.

2. Good Faith Interpretation of the Genocide Convention

40. The Court has observed that the principle of good faith, reflected in Article 31 of the VCLT, “obliges the Parties to apply [a treaty] in a reasonable way and in such a manner that its purpose can be realized”.³⁷ Put differently, the obligation to interpret in good faith serves as a safeguard against any misuse of the terms of the treaty. In this sense, the principle of good faith constitutes the positive side of the prohibition of abuse of rights, so that a bad faith interpretation amounts to an abusive interpretation.³⁸

41. In light of the above, a State Party fails to interpret, apply and fulfil the Genocide Convention in good faith if its accusations of genocide, and any ensuing actions with the stated purpose of preventing and punishing such genocide, are not objectively supported by any factual and legal foundation.

42. A dispute as to whether a State Party has disregarded the principle of good faith and has thereby engaged in an abusive interpretation and application of the Genocide Convention falls under the purview of Article IX.

3. Object and Purpose of the Genocide Convention

43. Article 31 of the VCLT requires a treaty to be interpreted in the light of its object and purpose, which may be reflected in its preamble.³⁹ The preamble of the Genocide Convention indicates the object and purpose to further “the spirit and aims of the United Nations”. This object and purpose entails that in their efforts to interpret, apply and fulfil the Convention, State Parties may not act in a manner that contradicts the spirit and aims of the UN Charter. In the

616, para. 33 (“[The Court] would moreover observe that it is sufficiently apparent from the very terms of [Yugoslavia’s preliminary] objection that the Parties not only differ with respect to the facts of the case, their imputability and the applicability to them of the provisions of the Genocide Convention, but are moreover in disagreement with respect to the meaning and legal scope of several of those provisions, including Article IX.”)

³⁷ *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia), Judgment of 25 September 1997, I.C.J. Reports 1997, p. 7, at p. 79, para. 142.

³⁸ WTO, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, Report of the Appellate Body of 12 October 1998, para. 158.

³⁹ E.g. *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast* (Nicaragua v. Colombia), Preliminary Objections, Judgment of 17 March 2016, I.C.J. Reports 2016, p. 100, at p. 118, para. 39.

same vein, the Court has already affirmed that “it is clear that every State may only act within the limits permitted by international law”.⁴⁰

44. The Court has further noted that

“[t]he high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions.”⁴¹

45. The Convention’s object and purpose to protect the most elementary principles of morality also necessitates the possibility of recourse before the Court for States that claim to be a victim of another State Party’s abusive invocation of genocide. Hence, the object and purpose of the Convention strongly militates in favour of an interpretation of Article IX according to which disputes relating to the interpretation, application and fulfilment include disputes about abusive allegations of genocide contradicting the letter and spirit of the Convention.

VI. Conclusion

46. For the reasons given in this Declaration, Austria respectfully requests the Court to recognize the admissibility of this Declaration and that Austria is availing itself of its right under Article 63, paragraph 2, of the Statute of the Court to intervene in these proceedings.

47. Austria reserves the right to amend or supplement this Declaration in the course of written and oral observations and by filing further declarations with the Court.

VII. Annex: Documents in Support of this Declaration of Intervention

For the Republic of Austria



Ambassador Helmut Tichy, Agent

⁴⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, I.C.J. Reports 2007, p.43, at p. 221, para. 430.

⁴¹ *Reservations to the Genocide Convention*, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, p. 15, at p. 23.



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.

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[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 'P. Gautier', with a large, sweeping initial 'P'.

Philippe Gautier
Registrar



Nachdem die am 9. Dezember 1948 von der Generalversammlung der Vereinten Nationen einstimmig genehmigte Konvention über die Verhütung und Bestrafung des Völkermordes, welche also lautet:

(Übersetzung.)

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

The Contracting Parties
Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;

Recognizing that at all periods of history genocide has inflicted great losses on humanity; and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

Article I

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.

Article II

In the present Convention, genocide means any of the

CONVENTION POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Les Parties Contractantes,
Considérant que l'Assemblée générale de l'Organisation des Nations Unies, par sa résolution 96 (I) en date du 11 décembre 1946, a déclaré que le génocide est un crime du droit des gens, en contradiction avec l'esprit et les fins des Nations Unies et que le monde civilisé condamne;

Reconnaissant qu'à toutes les périodes de l'histoire le génocide a infligé de grandes pertes à l'humanité;

Convaincues que, pour libérer l'humanité d'un fléau aussi odieux, la coopération internationale est nécessaire;

Conviennent de ce qui suit:

Article premier

Les Parties contractantes confirment que le génocide, qu'il soit commis en temps de paix ou en temps de guerre, est un crime du droit des gens, qu'elles s'engagent à prévenir et à punir.

Article II

Dans la présente Convention, le génocide s'entend de l'un

KONVENTION ÜBER DIE VERHÜTUNG UND BESTRAFUNG DES VÖLKERMORDES

Nach Erwägung der Erklärung, die von der Generalversammlung der Vereinten Nationen in ihrer Resolution 96 (I) vom 11. Dezember 1946 abgegeben wurde, daß Völkermord ein Verbrechen nach Völkerrecht ist, das dem Geist und den Zielen der Vereinten Nationen zuwiderläuft und von der zivilisierten Welt verurteilt wird,

In Anerkennung der Tatsache, daß der Völkermord der Menschheit in allen Zeiten der Geschichte große Verluste zugefügt hat, und

In der Überzeugung, daß zur Befreiung der Menschheit von einer solch verabscheuungswürdigen Geißel internationale Zusammenarbeit erforderlich ist,

sind die Vertragschließenden Parteien hiemit wie folgt übereingekommen:

Artikel I

Die Vertragschließenden Parteien bestätigen, daß Völkermord, ob in Friedens- oder in Kriegszeiten begangen, ein Verbrechen nach Völkerrecht ist, zu dessen Verhütung und Bestrafung sie sich verpflichten.

Artikel II

In dieser Konvention bedeutet Völkermord eine der fol-

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.

Article III

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.

Article IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the

quelconque des actes ci-après, commis dans l'intention de détruire, en tout ou en partie, un groupe national, ethnique, racial ou religieux, comme tel:

- a) Meurtre de membres du groupe;
- b) Atteinte grave à l'intégrité physique ou mentale de membres du groupe;
- c) Soumission intentionnelle du groupe à des conditions d'existence devant entraîner sa destruction physique totale ou partielle;
- d) Mesures visant à entraver les naissances au sein du groupe;
- e) Transfert forcé d'enfants du groupe à un autre groupe.

Article III

Seront punis les actes suivants:

- a) Le génocide;
- b) L'entente en vue de commettre le génocide;
- c) L'incitation directe et publique à commettre le génocide;
- d) La tentative de génocide;
- e) La complicité dans le génocide.

Article IV

Les personnes ayant commis le génocide ou l'un quelconque des autres actes énumérés à l'article III seront punies, qu'elles soient des gouvernants, des fonctionnaires ou des particuliers.

Article V

Les Parties contractantes s'engagent à prendre, conformément à leurs constitutions respectives, les mesures législatives nécessaires pour assurer l'appli-

genden Handlungen, die in der Absicht begangen wird, eine nationale, ethnische, rassische oder religiöse Gruppe als solche ganz oder teilweise zu zerstören:

- a) Tötung von Mitgliedern der Gruppe;
- b) Zufügung von schwerem körperlichem oder seelischem Schaden an Mitgliedern der Gruppe;
- c) vorsätzliche Unterwerfung der Gruppe unter Lebensbedingungen mit dem Ziel, ihre körperliche Zerstörung ganz oder teilweise herbeizuführen;
- d) Verhängung von Maßnahmen, die auf die Geburtenverhinderung innerhalb der Gruppe gerichtet sind;
- e) gewaltsame Überführung von Kindern der Gruppe in eine andere Gruppe.

Artikel III

Die folgenden Handlungen werden bestraft:

- a) Völkermord;
- b) Verschwörung zur Begehung von Völkermord;
- c) unmittelbare und öffentliche Anreizung zur Begehung von Völkermord;
- d) Versuch des Völkermordes;
- e) Beteiligung am Völkermord.

Artikel IV

Personen, die Völkermord oder eine der sonstigen in Artikel III angeführten Handlungen begehen, werden bestraft, gleichviel ob sie nach der Verfassung verantwortliche regierende Personen, öffentliche Beamte oder Privatpersonen sind.

Artikel V

Die Vertragsschließenden Parteien verpflichten sich, in Übereinstimmung mit ihren Verfassungen die notwendigen gesetzgeberischen Maßnahmen zu er-

provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in article III.

Article VI

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

Article IX

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 ar-

cation des dispositions de la présente Convention, et notamment à prévoir des sanctions pénales efficaces frappant les personnes coupables de génocide ou de l'un quelconque des autres actes énumérés à l'article III.

Article VI

Les personnes accusées de génocide ou de l'un quelconque des autres actes énumérés à l'article III seront traduites devant les tribunaux compétents de l'Etat sur le territoire duquel l'acte a été commis, ou devant la Cour criminelle internationale qui sera compétente à l'égard de celles des Parties contractantes qui en auront reconnu la juridiction.

Article VII

Le génocide et les autres actes énumérés à l'article III ne seront pas considérés comme des crimes politiques pour ce qui est de l'extradition.

Les Parties contractantes s'engagent en pareil cas à accorder l'extradition conformément à leur législation et aux traités en vigueur.

Article VIII

Toute Partie contractante peut saisir les organes compétents des Nations Unies afin que ceux-ci prennent, conformément à la Charte des Nations Unies, les mesures qu'ils jugent appropriées pour la prévention et la répression des actes de génocide ou de l'un quelconque des autres actes énumérés à l'article III.

Article IX

Les différends entre les Parties contractantes relatifs à l'interprétation, l'application ou l'exécution de la présente Convention, y compris ceux relatifs à la responsabilité d'un Etat en matière de génocide ou de l'un quelconque des autres actes

greifen, um die Anwendung der Bestimmungen dieser Konvention sicherzustellen und insbesondere wirksame Strafen für Personen vorzusehen, die des Völkermordes oder einer der sonstigen in Artikel III angeführten Handlungen schuldig sind.

Artikel VI

Personen, denen Völkermord oder eine der sonstigen in Artikel III angeführten Handlungen zur Last gelegt wird, werden vor ein zuständiges Gericht des Staates, in dessen Gebiet die Handlung begangen worden ist, oder vor das internationale Strafgericht gestellt, das für jene Vertragschließenden Parteien zuständig ist, die seine Gerichtsbarkeit anerkannt haben.

Artikel VII

Völkermord und die sonstigen in Artikel III angeführten Handlungen werden bei der Auslieferung nicht als politische Straftaten angesehen.

Die Vertragschließenden Parteien verpflichten sich, in derartigen Fällen die Auslieferung gemäß ihren geltenden Gesetzen und Verträgen zu bewilligen.

Artikel VIII

Jede Vertragschließende Partei kann die zuständigen Organe der Vereinten Nationen damit befassen, gemäß der Charta der Vereinten Nationen jene Maßnahmen zu ergreifen, die sie für die Verhütung und Bekämpfung von Völkermordhandlungen oder einer der sonstigen in Artikel III angeführten Handlungen für geeignet erachten.

Artikel IX

Streitigkeiten zwischen den Vertragschließenden Parteien bezüglich der Auslegung, Anwendung oder Durchführung dieser Konvention, einschließlich derjenigen, die sich auf die Verantwortlichkeit eines Staates für Völkermord oder eine der son-

ticle III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article X

The present Convention, of which the Chinese, English, French, Russian, and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a procès-verbal

énumérés à l'article III, seront soumis à la Cour internationale de Justice, à la requête d'une Partie au différend.

Article X

La présente Convention dont les textes anglais, chinois, espagnol, français et russe feront également foi, portera la date du 9 décembre 1948.

Article XI

La présente Convention sera ouverte jusqu'au 31 décembre 1949 à la signature au nom de tout Membre des Nations Unies et de tout Etat non membre à qui l'Assemblée générale aura adressé une invitation à cet effet.

La présente Convention sera ratifiée et les instruments de ratification seront déposés auprès du Secrétaire général des Nations Unies.

A partir du 1^{er} janvier 1950, il pourra être adhéré à la présente Convention au nom de tout Membre des Nations Unies et de tout Etat non membre qui aura reçu l'invitation susmentionnée.

Les instruments d'adhésion seront déposés auprès du Secrétaire général des Nations Unies.

Article XII

Toute Partie contractante pourra, à tout moment, par notification adressée au Secrétaire général des Nations Unies, étendre l'application de la présente Convention à tous les territoires ou à l'un quelconque des territoires dont elle dirige les relations extérieures.

Article XIII

Dès le jour où les vingt premiers instruments de ratification ou d'adhésion auront été déposés, le Secrétaire général en dressera procès-verbal. Il trans-

stigen in Artikel III angeführten Handlungen beziehen, werden auf Antrag einer der an dem Streitfall beteiligten Parteien dem Internationalen Gerichtshof unterbreitet.

Artikel X

Diese Konvention, deren chinesischer, englischer, französischer, russischer und spanischer Text gleichermaßen authentisch ist, trägt das Datum des 9. Dezember 1948.

Artikel XI

Diese Konvention steht bis zum 31. Dezember 1949 jedem Mitglied der Vereinten Nationen und jedem Nicht-Mitgliedstaat, an den die Generalversammlung eine Einladung zur Unterzeichnung gerichtet hat, zur Unterzeichnung offen.

Diese Konvention bedarf der Ratifikation; die Ratifikationsurkunden werden bei dem Generalsekretär der Vereinten Nationen hinterlegt.

Nach dem 1. Jänner 1950 kann jedes Mitglied der Vereinten Nationen und jeder Nicht-Mitgliedstaat, der, wie oben erwähnt, eine Einladung erhalten hat, der Konvention beitreten.

Die Beitrittsurkunden werden bei dem Generalsekretär der Vereinten Nationen hinterlegt.

Artikel XII

Eine Vertragschließende Partei kann jederzeit durch Mitteilung an den Generalsekretär der Vereinten Nationen die Anwendung dieser Konvention auf alle oder eines der Gebiete erstrecken, für deren internationale Beziehungen diese Vertragschließende Partei verantwortlich ist.

Artikel XIII

An dem Tag, an dem die ersten zwanzig Ratifikations- oder Beitrittsurkunden hinterlegt sind, errichtet der Generalsekretär ein Protokoll und über-

and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninth day following the deposit of the instrument of ratification or accession.

Article XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

mettra copie de ce procès-verbal à tous les Etats Membres des Nations Unies et aux non-membres visés par l'article XI.

La présente Convention entrera en vigueur le quatre-vingt-dixième jour qui suivra la date du dépôt du vingtième instrument de ratification ou d'adhésion.

Toute ratification ou adhésion effectuée ultérieurement à la dernière date prendra effet le quatre-vingt-dixième jour qui suivra le dépôt de l'instrument de ratification ou d'adhésion.

Article XIV

La présente Convention aura une durée de dix ans à partir de la date de son entrée en vigueur.

Elle restera par la suite en vigueur pour une période de cinq ans et ainsi de suite, vis-à-vis des Parties contractantes qui ne l'auront pas dénoncée six mois au moins avant l'expiration du terme.

La dénonciation se fera par notification écrite adressée au Secrétaire général des Nations Unies.

Article XV

Si, par suite de dénonciations, le nombre des Parties à la présente Convention se trouve ramené à moins de seize, la Convention cessera d'être en vigueur à partir de la date à laquelle la dernière de ces dénonciations prendra effet.

Article XVI

Une demande de révision de la présente Convention pourra être formulée en tout temps par toute Partie contractante, par voie de notification écrite adressée au Secrétaire général.

L'Assemblée générale statuera sur les mesures à prendre, s'il y a lieu, au sujet de cette demande.

mittelt jedem Mitglied der Vereinten Nationen und jedem der in Artikel XI erwähnten Nicht-Mitgliedstaaten eine Abschrift desselben.

Diese Konvention tritt am neunzigsten Tag nach dem Zeitpunkt der Hinterlegung der zwanzigsten Ratifikations- oder Beitrittsurkunde in Kraft.

Ratifikationen oder Beitritte, die nach letzterem Zeitpunkt erfolgen, werden am neunzigsten Tag nach der Hinterlegung der Ratifikations- oder Beitrittsurkunde wirksam.

Artikel XIV

Diese Konvention bleibt für die Dauer von zehn Jahren vom Zeitpunkt ihres Inkrafttretens an in Kraft.

Danach bleibt sie für die Dauer von jeweils weiteren fünf Jahren für jene Vertragsschließenden Parteien in Kraft, die sie nicht mindestens sechs Monate vor Ablauf des laufenden Zeitraumes gekündigt haben.

Die Kündigung erfolgt durch schriftliche Mitteilung an den Generalsekretär der Vereinten Nationen.

Artikel XV

Wenn infolge von Kündigungen die Zahl der Parteien dieser Konvention auf weniger als sechzehn sinkt, tritt die Konvention mit dem Zeitpunkt außer Kraft, in dem die letzte dieser Kündigungen wirksam wird.

Artikel XVI

Ein Antrag auf Revision dieser Konvention kann jederzeit von einer Vertragsschließenden Partei durch eine schriftliche Mitteilung an den Generalsekretär gestellt werden.

Die Generalversammlung entscheidet über die Schritte, die gegebenenfalls auf einen solchen Antrag hin zu unternehmen sind.

Article XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with article XI;
- (b) Notifications received in accordance with article XII;
- (c) The date upon which the present Convention comes into force in accordance with article XIII;
- (d) Denunciations received in accordance with article XIV;
- (e) The abrogation of the Convention in accordance with article XV;
- (f) Notifications received in accordance with article XVI.

Article XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

Article XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

Article XVII

Le Secrétaire général des Nations Unies notifiera à tous les Etats Membres des Nations Unies et aux Etats non membres visés par l'article XI:

- a) Les signatures, ratifications et adhésions reçues en application de l'article XI;
- b) Les notifications reçues en application de l'article XII;
- c) La date à laquelle la présente Convention entrera en vigueur, en application de l'article XIII;
- d) Les dénonciations reçues en application de l'article XIV;
- e) L'abrogation de la Convention, en application de l'article XV;
- f) Les notifications reçues en application de l'article XVI.

Article XVIII

L'original de la présente Convention sera déposé aux archives de l'Organisation des Nations Unies.

Une copie certifiée conforme sera adressée à tous les Etats Membres des Nations Unies et aux Etats non membres visés par l'article XI.

Article XIX

La présente Convention sera enregistrée par le Secrétaire général des Nations Unies à la date de son entrée en vigueur.

Artikel XVII

Der Generalsekretär der Vereinten Nationen macht allen Mitgliedern der Vereinten Nationen und den in Artikel XI erwähnten Nicht-Mitgliedstaaten über die folgenden Angelegenheiten Mitteilung:

- a) Unterzeichnungen, Ratifikationen und Beitritte, die gemäß Artikel XI eingegangen sind;
- b) Mitteilungen, die gemäß Artikel XII eingegangen sind;
- c) den Zeitpunkt, zu dem diese Konvention gemäß Artikel XIII in Kraft tritt;
- d) Kündigungen, die gemäß Artikel XIV eingegangen sind;
- e) Außerkrafttreten der Konvention gemäß Artikel XV;
- f) Mitteilungen, die gemäß Artikel XVI eingegangen sind.

Artikel XVIII

Das Original dieser Konvention wird in den Archiven der Vereinten Nationen hinterlegt.

Eine beglaubigte Abschrift der Konvention wird jedem Mitglied der Vereinten Nationen und jedem der in Artikel XI erwähnten Nicht-Mitgliedstaaten übermittelt.

Artikel XIX

Diese Konvention wird am Tag ihres Inkrafttretens beim Generalsekretär der Vereinten Nationen registriert.

die verfassungsmäßige Genehmigung des Nationalrates erhalten hat, erklärt der Bundespräsident im Namen der Republik Österreich dieser Konvention beizutreten und verspricht im Namen der Republik Österreich die gewissenhafte Erfüllung der in dieser Konvention enthaltenen Bestimmungen.

Zu Urkund dessen ist die vorliegende Beitrittsurkunde vom Bundespräsidenten unterzeichnet, vom Bundeskanzler, vom Bundesminister für Inneres, vom Bundesminister für Justiz und vom Bundesminister für die Auswärtigen Angelegenheiten gegengezeichnet und mit dem Staatssiegel der Republik Österreich versehen worden.

Geschehen zu Wien, den 27. Feber 1958.

Der Bundespräsident:

Scharf

Der Bundeskanzler:

Julius Raab

Der Bundesminister für Inneres:

Ernst Starmer

Der Bundesminister für Justiz:

Walter Reuter

Der Bundesminister für die Auswärtigen Angelegenheiten:

Julius Raab