



DECLARATION OF INTERVENTION
OF THE REPUBLIC OF CROATIA

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

In the case of

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

13 October 2022

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

1. On behalf of the Republic of Croatia, I have the honour to submit to the Court a Declaration of Intervention pursuant to Article 63 paragraph 2 of the Statute of the Court in the Case concerning *The 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. Those matters are addressed in sequence below, following some preliminary observations.

PRELIMINARY OBSERVATIONS

4. On 26 February 2022, Ukraine instituted proceedings against the Russian Federation in a dispute concerning the interpretation, application or fulfilment of the Convention on the Prevention and Punishment of Genocide (the "Genocide Convention").
5. In paras. 4-12 of its Application instituting proceedings, Ukraine contends that there is a dispute between Ukraine and the Russian Federation within the meaning of Article IX relating to the interpretation, application or fulfilment of the Genocide Convention.
6. On substance, Ukraine claims that the Russian Federation's declaration and implementation of measures in or against Ukraine in the form of a "special military operation" declared on 24 February 2022 on the basis of alleged genocide, as well as the recognition by the Russian Federation of so-called "Donetsk People's Republic" and "Luhansk People's Republic" that preceded the military operation, is incompatible with the Convention, quoting Articles I-III thereof (paras. 2 and 26-29 of the Application).
7. Following a request for provisional measures from Ukraine, the Court ordered on 16 March 2022 that:
 - (1) the Russian Federation shall immediately suspend the military operation that it commence on 24 February 2022 in the territory of Ukraine;

- (2) The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and person which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in points (1) above; and
- (3) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.
8. As of date of this Declaration, Russian Federation has failed to comply with the Order, has intensified and expanded its military operations on the territory of Ukraine and has thus aggravated the dispute pending before the Court.
9. On 30 March 2022, as contemplated by Article 63, paragraph 1, of the Statute of the Court, the Registrar duly notified the Republic of Croatia 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 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.
10. It is the understanding of the Republic of Croatia that the Genocide Convention is of utmost importance to prevent and punish genocide. Any acts committed with an intent to destroy, in whole or in part, national, ethnical, racial or religious group constitutes a crime under international law. The prohibition against genocide is a *jus cogens* norm in international law². The rights and obligations enshrined by the Convention are owed to the international community as a whole (rights and obligations *erga omnes partes*)³. In such a situation, when the treaty embodies matters of collective interest, the late Judge Cançado Trindade called upon all State Parties to contribute to the proper interpretation of the treaty as sort of a "collective guarantee of the observance of the obligations contracted by the State parties"⁴.

¹ Letter from the Registrar of the Court of 30 March 2022 – see Annex A.

² *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.

³ *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.

⁴ Separate Opinion of Judge Cançado Trindade, attached to *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand*, Order of 6 February 2013, I.C.J. Reports 2013, p. 33, para 53.

11. By this present Declaration, the Republic of Croatia avails itself of the right to intervene conferred upon it by Article 63, paragraph 2, of the Statute. This Court has recognized that Article 63 confers a “right” of intervention⁵. The Court has also underlined that an intervention “*is limited to submitting observations on the construction of the convention in question and does not allow the intervenor, which does not become a party to the proceedings, to deal with any other aspect of the case before the Court; and whereas such intervention cannot affect the equality of the Parties to the dispute*”.⁶
12. Consistent with the restricted scope for interventions under Article 63 of the Statute, the Republic of Croatia will present its interpretation of the relevant Article of the Genocide Convention in line with Article 31 of the Vienna Convention on the Law of Treaties, which represents the codification of customary international law⁷. It notes that Article 63 of the Statute does not make a distinction between provisions in a Convention, which relate to jurisdictional issues and those, which relate to substantive provisions. According to Judge Schwebel “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”⁸. Indeed, in both situations, States may offer their assistance to the Court in the construction of a particular Convention and the wording in Article 82 of the Rules to file a declaration “as soon as possible” confirms that the filing of an Article 63 declaration is admissible at this stage of the proceedings.
13. At present, the Republic of Croatia focuses on the construction of Article IX of the Convention on the jurisdiction of the Court.
14. The Republic of Croatia does not seek to become a party to the Proceedings and accepts that the Genocide Convention’s construction given by the judgment will be equally binding upon it. Its intervention will not address issues of application of the Convention.
15. The Republic of Croatia also wishes to assure the Court that the intervention was filed “as soon as possible and no later than the date fixed for the opening of the oral proceedings” as stipulated in Article 82 of the Rules of the Court. It requests to be provided with copies of all pleadings filed by Ukraine and Russia, as well as any annexed documents, in line with Article 85, paragraph 1, of the Rules of the Court. It further informs the Court that it is willing to assist the Court in grouping its intervention together

⁵ *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.

⁶ *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.

⁷ *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.

⁸ 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.

with similar interventions from other EU Member States for future stages of the proceedings, if the Court deems such a move useful in the interest of an expedient administration of justice.

BASIS ON WHICH THE REPUBLIC OF CROATIA IS PARTY TO THE CONVENTION

16. The Republic of Croatia is the party to the Convention on the basis of the notification of succession, which it deposited with the Secretary-General of the United Nations on 12 October 1992, with effect from 8 October 1991, the date on which the Republic of Croatia assumed responsibility for its international relations.

PROVISIONS OF THE CONVENTION IN QUESTION IN THE CASE:

17. 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.”

18. The Republic of Croatia contends that the notion of “dispute” is already well-established in the case law of the Court and supports the current interpretation. Accordingly, it concurs with the meaning given to the word dispute as “a disagreement on a point of law or fact, a conflict of legal views or of interests” between parties.⁹ In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other”.¹⁰ The two sides must “hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations”.¹¹ 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”¹².
19. The Republic of Croatia hence concentrates on the interpretation of the other parts of Article IX, namely that the scope of such disputes must be “relating to the interpretation, application or fulfilment of the present Convention”. It contends that Article IX is a broad jurisdictional clause, allowing the Court to adjudicate upon disputes concerning not only the application and interpretation but also alleged fulfilment by a Contracting Party of its obligations under the Convention. As Judge Oda noted, the inclusion of the word

⁹ *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.

¹⁰ *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.

¹¹ *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.

¹² *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.

“fulfilment” is “unique as compared with the compromissory clauses found in other multilateral treaties which provide for submission of the International Court of such disputes between Contracting Parties as relate to the *interpretation or application* of the treaties in question”¹³.

20. The Republic of Croatia’s interpretation of Article IX in general and of the phrase “relating to the interpretation, application or fulfilment of the Convention” in particular, is based on Article 31 of the Vienna Convention on the Law of Treaties which paragraph 1 reads as follows:

“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.”

21. With regard to the phrase “relating to the interpretation, application or fulfilment of the Convention” its ordinary meaning may be divided in two sub-categories.
22. The first point (“relating to”) establishes a link between the dispute and the Convention.
23. The second point (“interpretation, application or fulfilment of the Convention”) encompasses many different scenarios.
24. There can be a dispute about the interpretation, application or fulfilment of the Convention when one State alleges that another State has committed genocide¹⁴. In that scenario, the Court verifies the factual basis for such allegation, that is whether genocide has been committed or not.
25. While this scenario of (alleged) responsibility for acts of genocide constitutes an important type of dispute on the “interpretation, application or fulfilment” of the Convention, it is not the only one. For example, in *The Gambia v. Myanmar* (pending), the applicant claimed that the defendant was not only responsible for prohibited acts under Article III, but that it was also violating its obligations under the Convention by failing to prevent genocide in violation of Article I; and failing to punish genocide in violation of Articles I, IV and V¹⁵. In that example, one State alleges that another State is not honouring its commitment to “prevent” and “punish” genocide, because it grants impunity to acts of genocide committed on its territory. Therefore, there can also be disputes about “non-action” as a violation of the substantive obligations under Article I, IV and V.

¹³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Preliminary Objections, Declaration of Judge Oda, I.C.J. Reports 1996 (II), p. 627, para. 5 (emphasis in the original).

¹⁴ *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. 75, para. 169.

¹⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Judgment of 22 July 2022, p. 12, para. 24, Points (1) (c), (d) and (e).

26. The ordinary meaning of the phrase (“relating to the interpretation, application or fulfilment of the Convention”) in Article IX makes it clear that there is no need to establish genocidal acts as a basis to affirm the Court’s jurisdiction. In addition to establishing genocidal acts the Court also has jurisdiction *over the question whether* genocidal acts have been or are being committed or not.¹⁶ Hence, it also has jurisdiction *ratione materiae* to declare the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law. In particular, the jurisdiction of the Court extends to disputes concerning the unilateral use of military force for the stated purpose of preventing and punishing alleged genocide¹⁷.
27. The context of the phrase (“relating to the interpretation, application or fulfilment of the Convention”) further confirms this reading. In particular, the unusual feature of the words “including” in the intermediate sentence indicates a broader scope of Article IX of the Convention when compared to standard compromissory clause¹⁸. Disputes relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III are therefore only one type of dispute covered by Article IX, which are “included” in the wider phrase of disputes “relating to the interpretation, application and fulfilment” of the Convention¹⁹.
28. Moreover, Article IX expressly provides for ICJ jurisdiction “at the request of *any of the parties* to the dispute” (emphasis added). This language suggests that a State accused of committing genocide has the same right to submit the dispute to the Court as the State making the accusation. In particular, such a State may seek a “negative” declaration from the Court that the allegations from another State that it was responsible for genocide are without legal and factual foundation.
29. Finally, the object and purpose of the Convention gives further support to the wide interpretation of Article IX. The Court noted that “[a]ll the States parties to the Genocide Convention [thus] have a common interest to ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention”²⁰. Famously, in its 1951 Advisory Opinion, the Court held²¹:

¹⁶ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of 16 March 2022, p. 10, para. 43 and p. 11, para. 45; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Order of 23 January 2020, I.C.J. Reports 2020, p. 14, para. 30.

¹⁷ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of 16 March 2022, p. 10 para 43 and p. 11, para. 45;

¹⁸ *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. 75, para. 169.

¹⁹ See also the Written Observations of The Gambia on the Preliminary Objections raised by Myanmar, 20 April 2021, pp. 28-29, para. 3.22 (“The inclusion of disputes “relating to the responsibility of a State for genocide” among those that can be brought before the Court unmistakably means that responsibility for genocide can be the object of a dispute brought before the Court by any contracting party”).

²⁰ *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.

²¹ *Reservations to the Genocide Convention*, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, p. 23.

“The objects of such a convention must also be considered. The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality. In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the raison d’être of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions.”

30. The Convention’s object to protect the most elementary principles of morality also prohibits any possibility of a State Party to abuse its provisions for other means. It would undermine the Convention’s credibility as a universal instrument to outlaw the most abhorrent crime of genocide if its authority could be abused by any State Party without a possibility of the victim of such abuse to turn to the Court. The purpose of the Convention hence speaks loudly in favour of a reading of Article IX, according to which disputes relating to the interpretation, application and fulfilment include disputes about the abuse of the Convention’s authority to justify a State’s action vis-à-vis another State party to the Convention.
31. In conclusion, the construction of Article IX of the Convention shows that the Court’s jurisdiction goes beyond disputes between States about the responsibility for alleged genocidal acts, but also covers disputes between States about the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law. It also confirms that a dispute regarding acts carried out by one State against another State based on false claims of genocide falls under the notion of “dispute between Contracting Parties relating to the interpretation, application or fulfilment of the present Convention”. Accordingly, the Court has jurisdiction to declare the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law. Therefore the jurisdiction of the Court extends to disputes concerning the unilateral use of military force which is based on the false claims that act of genocide have occurred.

DOCUMENTS IN SUPPORT OF THE DECLARATION

32. The following is a list of the documents in support of this Declaration, which documents are attached hereto:
 - (a) Letter from the Registrar sent pursuant to Article 63, paragraph 1 of the Court’s Statute;
 - (b) Notification of succession by the Republic of Croatia to the Genocide Convention.

CONCLUSION

33. On the basis of the information set out above, the Republic of Croatia avails itself on 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.
34. The Republic of Croatia reserves the right to supplement or amend this Declaration as may be necessary.
35. The Government of the Republic of Croatia has appointed the undersigned Ms Gordana Vidović Mesarek, Director-General for European and International Law, Ministry of Foreign and European Affairs, as Agent for the purposes with this Declaration, together with Ms Anamarija Valković, Head of Sector for International Law, Ministry of Foreign and European Affairs, as Co-Agent. The Registrar of the Court may channel all communication through them at the following address:

Embassy of the Republic of Croatia in the Kingdom of the Netherlands
Surinamestraat 11
2585 GG
Den Haag

Respectfully,



Gordana Vidović Mesarek
Agent for the Republic of Croatia

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

Annex B: Notification of succession by the Republic of Croatia to the Genocide Convention



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.

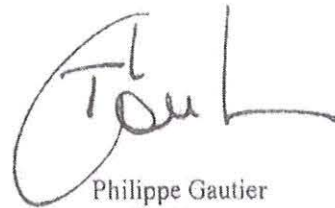
In the above-mentioned Application, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”) is invoked both as a basis of the Court’s jurisdiction and as a substantive basis of the Applicant’s claims on the merits. In particular, the Applicant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

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', written in a cursive style.

Philippe Gautier
Registrar

UNITED NATIONS  NATIONS UNIES

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

REFERENCE: C.N.362.1992.TREATIES-4 (Depositary Notification)

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

SUCCESSION BY CROATIA

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

On 12 October 1992, the notification of succession by the Government of Croatia to the above-mentioned Convention was deposited with the Secretary-General, with effect from 8 October 1991, the date on which Croatia assumed responsibility for its international relations.

1 April 1993

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7/8

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned