

INTERNATIONAL COURT OF JUSTICE

DECLARATION OF INTERVENTION OF THE CZECH REPUBLIC
UNDER ARTICLE 63 OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE
of 21 October 2022

in the case of

ALLEGATIONS OF GENOCIDE UNDER THE CONVENTION ON THE PREVENTION
AND PUNISHMENT OF THE CRIME OF GENOCIDE
(UKRAINE V. RUSSIAN FEDERATION)

DECLARATION OF INTERVENTION OF THE CZECH REPUBLIC UNDER ARTICLE 63 OF THE STATUTE OF THE COURT

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

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

2. Article 82, paragraph 2, of the Rules of the Court provides that a declaration of a State which desires to avail itself of the right of intervention conferred upon it by Article 63 shall state the name of an agent, 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 below, following some preliminary observations.

I. 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 the crime of Genocide (hereinafter as the “Genocide Convention”).

5. In paragraphs 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. In its Application, Ukraine states 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”.¹

¹ Application instituting proceedings, filed in the Registry of the Court on 26 February 2022, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation) (hereinafter as the “Ukraine’s Application”), para. 8.

6. A hearing was held on 7 March 2022, in which the Russian Federation did not participate. However, in a document communicated to the Court on 7 March 2022, the Russian Federation contended that the Court lacked jurisdiction to entertain the case.

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 operations that it commenced on 24 February 2022 in the territory of Ukraine;

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

In its Order, the Court found that, at that stage of proceedings, there were sufficient elements to establish *prima facie* the existence of a dispute between the Parties relating to the interpretation, application or fulfilment of the Genocide Convention.²

8. As of date of this Declaration, the Russian Federation has failed to comply with the Order, has significantly intensified and expanded its military operations in 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 States Parties, including the Czech Republic, to the Genocide Convention that

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

The Registrar added that the States Parties, to which this letter was addressed, are “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”.

10. According to Article 63, paragraph 2, of the Statute of the Court, “every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the

² 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. 2, para. 47.

judgment will be equally binding upon it". By the present declaration, the Czech Republic avails itself of this right to intervene in the proceedings, conferred upon it by Article 63, paragraph 2 of the Statute of the Court. The Czech Republic's right to intervene in the present case arises from its status as a Contracting Party to the Genocide Convention as set out below.

11. The Genocide Convention is of utmost importance to prevent and punish genocide and to protect the basic values of the international community as a whole. This case raises important issues concerning the interpretation of the Genocide Convention. The Court already found and confirmed that the provisions of the Genocide Convention impose obligations *erga omnes*,³ which are owed to the international community as a whole, and that the prohibition against genocide is a *ius cogens* norm of international law.⁴ The Court observed that the object of the Genocide Convention, 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", and added that 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. (...)"⁵ Thus, it follows from the *erga omnes* character of the obligations enshrined in the Convention that all States Parties to the Genocide Convention have a common interest in proper interpretation, application and fulfilment of those obligations. It is precisely for those reasons that the Czech Republic decided to exercise its right to intervene in the proceedings under Article 63 of the Statute in order to support the Court in upholding the integrity of the Genocide Convention.

12. The Czech Republic will focus on the construction of Article IX of the Convention on the jurisdiction of the Court, whereas it reserves its right to submit further arguments concerning the Court's jurisdiction under Article IX of the Genocide Convention and the scope *ratione materiae* of the Genocide Convention, once the Court has decided on the admissibility of the declaration of intervention filed by the Czech Republic.

14. With reference to Article 63 of the Statute of the Court, the Czech Republic wishes to emphasize that it does not seek to become a party to the proceedings and expressly accepts that the construction of the Genocide Convention given by the judgment will be equally binding upon it.

15. In addition and with reference to Article 82, paragraph 1 of the Rules of the Court, which provides that the declaration of intervention "shall be filed as soon as possible, and not later than the date fixed for the opening of the oral proceedings", the Czech Republic wishes to inform that its declaration of intervention was filed, in accordance with this Article, at the earliest opportunity reasonably open to the Czech Republic.

³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, ICJ Reports 2015, p. 3, at p. 47, para. 87; Case Concerning Armed Activities on the Territory of the Congo (New Application; 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, ICJ Reports 2006, p. 6, at p. 31, para. 64; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment, ICJ, 22 July 2022, paras. 107-109.

⁴ Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, ICJ Reports 2007, p. 43, at p. 111, paras. 161- 162.

⁵ Reservations to the Convention on Genocide, Advisory Opinion, ICJ Reports 1951, p. 15, at p. 23.

16. The Czech Republic further informs the Court that it is willing to assist the Court in grouping its intervention together with similar or essentially comparable statements of interventions from other Contracting Parties for future stages of the proceedings, if the Court deems such a move useful in the interest of an expedient administration of justice.

II. CASE AND CONVENTION TO WHICH THIS DECLARATION RELATES

17. This Declaration of intervention relates to the case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide instituted on 26 February 2022 by Ukraine against the Russian Federation. This case raises questions concerning the interpretation, application or fulfilment of the Genocide Convention.

18. As a Contracting Party to the Genocide Convention, the Czech Republic has a direct interest in the interpretation that might be placed upon provisions of the Convention by the Court.

III. BASIS ON WHICH THE CZECH REPUBLIC IS PARTY TO THE CONVENTION

19. Czechoslovakia, as a legal predecessor of the Czech Republic, had signed and ratified the Convention on 28 December 1949 and 21 December 1950, respectively, with a reservation. Subsequently, by a notification received by the depositary of the Genocide Convention on 26 April 1991, the Government of Czechoslovakia notified the Secretary-General of the United Nations (hereinafter as the “Secretary-General”) of its decision to withdraw the reservation to Article IX made upon signature and confirmed upon ratification.

20. In a letter dated 16 February 1993, received by the Secretary-General on 22 February 1993 and accompanied by a list of multilateral treaties deposited with the Secretary-General, including the Genocide Convention, the Government of the Czech Republic notified that, in conformity with the valid principles of international law and to the extent defined by it, the Czech Republic, as a successor State to the Czech and Slovak Federal Republic, i.e. Czechoslovakia, considers itself to be bound, as of 1 January 1993, i.e., the date of the dissolution of the Czech and Slovak Federal Republic, by multilateral international treaties to which the Czech and Slovak Federal Republic was a party on that date.

IV. PROVISIONS OF THE CONVENTION IN QUESTION IN THE CASE

21. In its Application, Ukraine seeks to found the Court’s jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention.⁶ The Russian Federation,

⁶ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Order of 16 March 2022, p. 2, para. 3.

in its document of 7 March 2022 communicated to the Court, is of the view that Article IX of the Genocide Convention does not confer jurisdiction on the Court in this case.⁷

Therefore, the proper construction of the compromissory clause of the Genocide Convention, i.e. its Article IX, is in question in the case.

22. The Czech Republic intervenes, on the basis of Article 63 of the Statute of the Court, with regard to the interpretation of the Article IX of the Genocide Convention. Article 63 of the Statute provides, in general and without qualification, that notified States are entitled to intervene “whenever the construction of a convention ... is in question”. Thus, under Article 63, Contracting Party has the right to intervene not only in respect of disputes concerning substantive clauses of a convention, but also when the construction of a convention’s jurisdictional clauses are concerned. Further, the general wording of Article 63 of the Statute of the Court implies that it is applicable in all phases of a given case, both at the jurisdictional stage and the stage of the dispute on the merits. Thus, this leads to a conclusion that the filing of a declaration pursuant to Article 63 is admissible at this stage of the proceedings.

V. CONSTRUCTION OF ARTICLE IX OF THE GENOCIDE CONVENTION FOR WHICH THE CZECH REPUBLIC CONTENTS

23. 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.”

24. The Czech Republic will focus on the interpretation of Article IX, namely on the condition 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 between Contracting States relating to all aspects of interpretation, application or fulfilment by a Contracting Party of its obligations under the Convention.

25. The notion of a “dispute” is already well-established in the case law of the Court and supports the current interpretation. Accordingly, the Czech Republic 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.⁸ A dispute exists wherever the two sides “hold clearly opposite views” with respect to the issue brought before the Court, “the claim of one party is positively opposed by the other”, and “the respondent was aware, or could not have been unaware, that its views were

⁷ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Document (with annexes) from the Russian Federation setting out its position regarding the alleged “lack of jurisdiction” of the Court in the case, dated 7 March 2022, paras. 10 et seq.

⁸ *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.

‘positively opposed’ by the applicant”.⁹ It is not necessary that a respondent State has expressly responded to the position of the applicant State.¹⁰ Moreover, the Court has emphasized that a dispute under a specific treaty may exist despite the absence of “a specific reference to the treaty or to its provisions in public statements by the parties, provided that those statements refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to identify that there is, or may be, a dispute with regard to that subject-matter”.¹¹

26. Evidence shows that (a) the Russian Federation repeatedly alleged that Ukraine has committed acts that constitute genocide under the Genocide Convention in the Luhansk and Donetsk oblasts and that (b) Ukraine repeatedly denied those allegations.¹² The dispute between Contracting Parties concerning the issue whether an applicant has committed the acts of genocide, in breach of the Genocide Convention, where that applicant has requested the Court to make a finding that it has not committed such acts, is certainly a dispute “relating to the interpretation, application or fulfilment of the present Convention”. There is nothing that limits the Court’s jurisdiction to cases where it is the applicant State that accuses the respondent State of breaching its obligations under the Convention.

27. Therefore, whenever there is a dispute between two or more Contracting Parties concerning whether a Contracting Party has engaged in conduct contrary to the Genocide Convention, the Contracting Party accused of such conduct has the same right to submit the dispute to the Court as the Contracting Party that has made the accusation, and the Court will be in a position to exercise its jurisdiction. In particular, such a State may seek a “negative” declaration from the Court that the allegations by another State that it was responsible for the acts of genocide are without legal and factual foundation. Otherwise, a Contracting Party could falsely accuse another Contracting Party of violations of the Genocide Convention, without the latter Party being able to have recourse to the Court, thus excluding from the Court’s jurisdiction genocide-related disputes and leading potentially to serious misuses of such allegations. Such exclusion would clearly not be consistent with the object and purpose of the Genocide Convention.

28. Further, the statements made by the State organs and senior officials of the Parties to the dispute indicate a divergence of views not only whether certain acts allegedly committed by Ukraine in the Luhansk and Donetsk regions amount to acts of genocide in violation of its obligations under the Genocide Convention, but also whether the use of force for the stated purpose of protecting people who had been allegedly subjected to the acts of genocide abroad falls within the scope of the

⁹ Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment, ICJ Reports 2016, p. 833, at p. 850, para. 41.

¹⁰ See 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.

¹¹ Ibid., para. 72, citing Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011(1), p. 85, para. 30.

¹² 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, paragraphs 30-34. Ibid, Separate Opinion of Judge Robinson, paragraphs 7 – 12.

Genocide Convention and can be regarded as the violation of its provisions.¹³ Therefore, the relevance and seriousness of the dispute on whether a Contracting Party has engaged in conduct contrary to the Convention or not is greatly increased by the fact that the dispute is, expressly and factually, connected with the use of force by one Party against the other Party and its territory on the basis of the alleged violation of the Genocide Convention by the latter Party.

29. The Charter of the United Nations, in its Article 33, paragraph 1, provides that “the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice”. This fundamental and universal normative principle of peaceful settlement of disputes is all the more important in case of the Genocide Convention, which protects some of the most elementary, fundamental values of the international community. Article IX of the Genocide Convention reflects and specifies this principle of peaceful settlement of disputes for the purposes of the Genocide Convention. Whenever a Contracting Party believes that another Contracting Party acts in violation of any provision of the Genocide Convention, the only remedial action available, on a bilateral basis, to the former Contracting Party under the Genocide Convention would be the initiation of the dispute relating to the interpretation, application or fulfilment of the Genocide Convention under Article IX of the Genocide Convention.

30. Thus, if a Contracting Party, in reaction to or under a false claim that alleged violation of the Genocide Convention by another Contracting Party occurred, resorts to another course of action, including the use of military force against the latter Contracting Party, it raises also the question concerning the violation of good faith performance of the Genocide Convention, including the obligation of the peaceful settlement of disputes, reflected in Article IX of the Genocide Convention. At the same time, it raises the question of the abuse of the Convention’s authority to justify such Contracting Party’s action vis-à-vis another Contracting Party outside the framework of the Genocide Convention, as a result of non-performance of the Genocide Convention in good faith by the former Contracting Party.

31. In conclusion, as argued above, the dispute in question relates to the interpretation, application or fulfilment of the Genocide Convention and thus meets the conditions provided for by Article IX of the Genocide Convention, interpreted in good faith in accordance with its ordinary meaning and its context, in the light of the object and purpose of the Convention. Therefore, the Court’s jurisdiction under this provision covers disputes concerning the allegations by a Contracting Party that another Contracting Party committed acts of genocide, as well disputes concerning violation of the obligation to perform relevant provisions of the Genocide Convention in good faith in connection with such allegations, resulting in an abuse of the authority of the Genocide Convention.

VI. DOCUMENTS IN SUPPORT OF THE DECLARATION

¹³ 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, paragraphs 35 – 47.

32. The Czech Republic submits the following documents in support of this Declaration:

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

b) Annex B: Copy of the Notification by the Depository of the deposit by Czechoslovakia of the instrument of ratification of the Convention on the Prevention and Punishment of the Crime of Genocide.

c) Annex C: Copy of notification received on 26 April 1991, by which the Government of Czechoslovakia notified the Secretary-General of its decision to withdraw the reservation to article IX made upon signature and confirmed upon ratification.

d) Annex D: Copy of letter dated 16 February 1993, received by the Secretary-General on 22 February 1993 and notifying succession of the Czech Republic in respect of multilateral treaties deposited with the Secretary-General and listed in the attachment to the letter,

VII. CONCLUSION

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

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

35. The Government of the Czech Republic has appointed the undersigned as Agent for the purposes of this Declaration. It has also appointed Ms. Kateřina Sequensová, Ambassador of the Czech Republic to the Kingdom of the Netherlands, as Co-Agent. The Registrar of the Court may channel all communication at the following address:

Embassy of the Czech Republic to the Kingdom of the Netherlands
Paleisstraat 4
2514 JA Den Haag

Respectfully,



Emil Ruffer

Director of the International Law Department
Ministry of Foreign Affairs of the Czech Republic
Agent of the Government of the Czech Republic

