

**Before the
International Court of Justice**

**Joint Declaration of Intervention
Pursuant to Article 63 of the Statute of the Court
By the Governments of Canada and the Kingdom of the Netherlands**

**Filed in the Registry of the Court
In the case of**

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

**JOINT DECLARATION OF INTERVENTION UNDER ARTICLE 63 OF THE STATUTE OF THE COURT
OF THE GOVERNMENTS OF CANADA AND THE KINGDOM OF THE NETHERLANDS**

To the Registrar of the International Court of Justice, the undersigned being duly authorized by the Governments of Canada and the Kingdom of the Netherlands:

1. On behalf of the Governments of Canada and the Kingdom of the Netherlands, we have the honour to submit to the Court a Joint Declaration of Intervention pursuant to the right to intervene set out in 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'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 ("Russia") concerning a dispute relating to the interpretation, application and fulfilment of the *Convention on the Prevention and Punishment of the Crime of Genocide*¹ (hereinafter: Genocide Convention).² The Application instituting proceedings was accompanied by a request to the Court for the indication of provisional measures. The Court issued an Order indicating provisional measures on 16 March 2022.
5. According to its application instituting proceedings, Ukraine 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 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. On the basis of this false

¹ Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 9 December 1948, United Nations, *Treaty Series*, vol. 78, p. 277. Entry into force on 12 January 1951.

² Application instituting proceedings, filed in the Registry of the Court on February 26, 2022, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

allegation, Russia is now engaged in a military invasion of Ukraine involving grave and widespread violations of the human rights of the Ukrainian people.³

6. Ukraine therefore brought its Application “to establish that Russia has no lawful basis to take action in and against Ukraine for the purpose of preventing and punishing any purported genocide.”⁴ Ukraine contends that “Russia’s actions erode the core obligation of Article I of the Convention, undermine its object and purpose, and diminish the solemn nature of the Contracting Parties’ pledge to prevent and punish genocide.”⁵

7. On March 30, 2022, pursuant to Article 63, paragraph 1, of the Statute of the Court, the Registrar notified Canada and the Kingdom of the Netherlands, as Contracting Parties to the Genocide Convention, that by Ukraine’s application the Genocide Convention “is invoked both as a basis for the Court’s jurisdiction and as a substantive basis of [Ukraine’s] claims on the merits”⁶. Specifically, the Registrar 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 Article 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.”⁷

8. On October 31, 2022, the Registrar informed the Contracting Parties to the Convention that “taking into account the number of declarations pursuant to Article 63 of the Statute of the Court that have been filed in this case, the Court considers that the interest of the sound administration of justice and procedural efficiency would be advanced if any State that intends to avail itself of the right of intervention conferred on it by Article 63 would file its declaration not later than Thursday 15 December 2022.”⁸

9. By this Joint Declaration, Canada and the Netherlands accordingly avail themselves of the right to intervene in the dispute between Ukraine and Russia under Article 63, paragraph 2, of the Statute of the Court, as Contracting Parties to the Genocide Convention, addressing relevant preliminary and substantive elements at the same time.

10. The Court has recognized that Article 63 confers a right of intervention,⁹ where the State seeking to intervene confines its intervention to “the point of interpretation which is in issue in the proceedings, and does not extend to general intervention in the case”.¹⁰ The Court has also held that

³ *Ibid*, para 2.

⁴ *Ibid*, para 3.

⁵ *Ibid*, para 28.

⁶ Letters of 30 March 2022 from the Registrar of the Court to the Ambassador of Canada to the Netherlands and to the Minister of Foreign Affairs of the Kingdom of the Netherlands respectively.

⁷ *Ibid*.

⁸ Letter of 31 October 2022 from the Registrar of the Court to the Contracting Parties of the Genocide Convention.

⁹ *Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 76; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, *Application for Permission to Intervene*, Judgment, I.C.J. Reports 1981, p. 13, para 21; *Whaling in the Antarctic (Australia v. Japan)*, *Declaration of Intervention of New Zealand*, Order of 6 February 2013, I.C.J. Reports 2013, p. 3, para 7.

¹⁰ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, *Application for Permission to Intervene*, Judgment, I.C.J. Reports 1981, p. 15, para. 26.

“in accordance with the terms of Article 63 of the Statute, the limited object of the intervention is to allow a third State not party to the proceedings, but party to a convention whose construction is in question in those proceedings, to present to the Court its observations on the construction of that convention.”¹¹

11. Furthermore, bearing in mind the *jus cogens* character of the prohibition of genocide, and the *erga omnes partes* nature of the obligations under the Genocide Convention, all Contracting Parties have a common interest in the accomplishment of the high purposes of the Genocide Convention. In its Order on provisional measures in *The Gambia v. Myanmar* case, the Court made the following statement relative to the interests of all parties to the Genocide Convention:

The Court recalls that in its Advisory Opinion on *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, it observed that ‘[i]n 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.’ . . . In view of their shared values, all the States parties to the Genocide Convention have a common interest to ensure that acts of genocide are prevented and that, if they occur, their authors do not enjoy impunity. That common interest implies that the obligations in question are owed by any State party to all the other States parties to the Convention.¹²

12. It is in this limited context, as Contracting Parties to the Genocide Convention, that Canada and the Netherlands put forward a Joint Declaration of Intervention. Given their common interest in the accomplishment of the high purposes of the Convention, as well as their consequent interest in its construction, Canada and the Netherlands have decided to intervene in this case in order to place their interpretation of the relevant provisions of the Convention before the Court.

13. Canada and the Netherlands do not seek to become a party to the proceedings and accept that, by availing themselves of the right to intervene under Article 63 of the Statute, the construction given to the Genocide Convention by the judgment in this case will be equally binding upon them as it is to the parties to the proceedings.

14. Canada and the Netherlands wish to intervene and present their interpretation of Articles IX and I of the Genocide Convention. With respect to the jurisdiction of the Court, in their view, Article IX grants jurisdiction to the Court to make a declaration of a Contracting Party’s compliance with its obligations under the Genocide Convention, irrespective of whether it is the applicant State or the respondent State, provided that this is a matter in dispute between the parties to the case. With respect to the construction of Article I, the intervention will argue that the duty to prevent genocide entails a due diligence obligation to assess whether there is a genocide or a serious risk of genocide before taking further action in fulfilment of Article I. The duty to prevent should be interpreted in light of the definition of genocide in Article II, as well as Article VIII, which encourages Contracting Parties to act collectively to prevent genocide. As for the duty to punish outlined in Article I, it must be read together with Articles IV to VII of the Genocide Convention, and thus be interpreted as an

¹¹ *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, para 7.

¹² *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, para 41.

obligation to prosecute individuals. Article I does not allow a Contracting Party to punish another Contracting Party for a genocide or an alleged genocide.

I. The Case and Convention to which this Declaration Relates

15. This Joint Declaration relates to the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide*, instituted by Ukraine on February 26, 2022 against Russia. That case concerns the interpretation, application and fulfilment of the Genocide Convention.

16. As Contracting Parties to the Genocide Convention, Canada and the Netherlands have an interest in the construction of this Convention resulting from the case brought by Ukraine. Canada and the Netherlands are accordingly exercising their right to intervene in these proceedings pursuant to Article 63 of the Statute. The intervention is directed to the question of construction of the Genocide Convention arising in this case.

II. The Basis on which Canada and the Netherlands are Contracting Parties to the Genocide Convention

17. Canada and the Netherlands are Contracting Parties to this Convention. In accordance with Article XI of the Genocide Convention, Canada signed this Convention on 28 November 1949 and deposited its instrument of ratification on 3 September 1952. The Netherlands deposited its instrument of accession to the Genocide Convention in accordance with Article XI of the Convention on 20 June 1966. The Genocide Convention entered into force for Canada and the Netherlands on the 90th day following the deposit of their instruments of ratification and accession. Based on this, Canada and the Netherlands were Contracting Parties to this Convention at the time the present proceedings were instituted.

III. The Provisions of the Genocide Convention in Question in the Present Dispute

18. Ukraine seeks to found the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention. Specifically, Ukraine contends that a dispute exists between it and Russia relating to the interpretation, application or fulfilment of the Genocide Convention.

19. The proper construction of Article IX of the Genocide Convention is therefore in question in the case and is directly relevant to the resolution of the dispute placed before the Court by Ukraine's Application. Article IX provides:

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

20. There is no limitation in Article 63 of the Statute of the Court or Article 82 of the Rules of the Court that would prevent Canada and the Netherlands from exercising their right to intervene on the construction of provisions of the Genocide Convention pertaining to issues of jurisdiction in addition to issues pertaining to the merits.

21. In its Application, Ukraine contends that “the duty to prevent and punish genocide enshrined in Article I of the Convention necessarily implies that this duty must be performed in good faith and not abused, and that one Contracting Party may not subject another Contracting Party to unlawful action, including armed attack, especially when it is based on a wholly unsubstantiated claim of preventing and punishing genocide.”¹³ Ukraine thus argues that “Russia’s actions erode the core obligation of Article I of the Convention, undermine its object and purpose, and diminish the solemn nature of the Contracting Parties’ pledge to prevent and punish genocide”.¹⁴

22. In light of the above, the proper construction of Article I of the Genocide Convention is also in question in the case and is directly relevant to the resolution of the dispute placed before the Court by Ukraine’s Application. Article I provides:

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.

23. As further detailed below, the duty to prevent and punish genocide, as outlined in Article I, must be interpreted in light of Articles II and IV-VIII of the Genocide Convention.

IV. Construction of the Provisions for which Canada and the Netherlands contend

24. Canada and the Netherlands have based their interpretation of the Genocide Convention on the general rules of interpretation, as reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (hereinafter: VCLT).¹⁵ Article 31(1) of the VCLT provides as the basic rule of interpretation that “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”. Pursuant to Article 31(3) of the VCLT, such interpretation must take account of the subsequent practice of the parties to the treaty, and pursuant to Article 32 of the VCLT, may also be confirmed by reference to supplementary means of interpretation.

25. In accordance with Article 31(3) of the VCLT, Canada and the Netherlands will support their interpretation by other relevant rules of international law applicable between the parties to the dispute. Canada and the Netherlands will rely on customary international law, the Charter of the United Nations¹⁶ (hereinafter: the UN Charter), the Rome Statute of the International Criminal Court¹⁷ and the Draft Articles on the Responsibility of States for Internationally Wrongful Acts¹⁸ in the context of the interpretation of the Genocide Convention. Canada and the Netherlands will also refer to the case law of international courts and tribunals as subsidiary means in the interpretation of the Genocide Convention, pursuant to Article 38(1)(d) of the Statute of the Court.

¹³ Application instituting proceedings, filed in the Registry of the Court on February 26, 2022, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, para 27.

¹⁴ *Ibid*, para 28.

¹⁵ Vienna Convention on the Law of Treaties (Vienna, 1969), UNTS v. 1155, p. 331.

¹⁶ Charter of the United Nations, (San Francisco, 1945), 1 UNTS XVI.

¹⁷ Rome Statute of the International Criminal Court (Rome, 1998) UNTS 2187.

¹⁸ Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001, Yearbook of the ILC 2001, Vol. II Part Two.

ARTICLE IX OF THE GENOCIDE CONVENTION

26. Article IX confers jurisdiction to the Court over “disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention”. There is nothing in Article IX that limits the Court’s jurisdiction to cases where it is the applicant State accusing the respondent State of breaching its obligations under the Genocide Convention.

27. First, the term “dispute” is sufficiently broad to encompass a disagreement over the lawfulness of the conduct of an applicant State; it is not limited to the conduct of the respondent State. The term “dispute” as used in Article IX should be interpreted consistently with the wide meaning given to that term generally in international law.¹⁹ It is well established that a dispute exists when there is “a disagreement on a point of law or fact, a conflict of legal views or interests”²⁰ between parties, provided that they hold views which are opposed to each other. It is not necessary that a respondent State has expressly opposed the claims of the applicant State.²¹ Furthermore, a dispute under the Genocide Convention may exist despite the absence of a specific reference to the Genocide Convention 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.”²²

28. Second, Article IX of the Genocide Convention expressly states that disputes shall be referred to the Court “at the request of any of the parties to the dispute” (emphasis added). This confirms that, where there is a dispute concerning whether a State has engaged in conduct contrary to the Genocide Convention, the State accused of such conduct has the same right to submit the dispute to the Court as the State that has made the accusation, and the Court has jurisdiction over that dispute. 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 inclusion of the word “fulfilment” in Article IX, in addition to the more common formulation of “interpretation and application” usually found in compromissory clauses, supports a broad interpretation of this provision. Specifically, Article IX confers jurisdiction over a dispute as to whether a Contracting Party’s conduct can properly be said to be in “fulfilment” of the Genocide Convention. It encompasses disputes about the scope and content of the provisions of the Genocide Convention and actions taken (or not taken) by the Contracting Parties in respect to those obligations, including the duty to prevent and punish genocide outlined in Article I.

30. In light of the above, Article IX grants jurisdiction to the Court to make a declaration of a Contracting Party’s compliance with its obligations under the Genocide Convention, irrespective of whether it is the applicant State or the respondent State, provided that this is a matter in dispute between the parties to the case.

¹⁹ *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, para 63.

²⁰ *Mavrommatis Palestine Concessions*, Judgment No 2, 1924, P.C.I.J., Series A, No. 2, p. 11.

²¹ *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, para 71.

²² *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, para 72.

ARTICLE I OF THE GENOCIDE CONVENTION

31. An essential first step before taking action in fulfilment of Article I is the assessment of whether there is a genocide or a serious risk of genocide. The notion of due diligence articulated by the Court in relation to a State's obligation to take measures to prevent genocide applies equally when assessing whether there is a genocide or a serious risk thereof. This assessment should be based on all available information, in particular from independent and credible sources, and should be guided by the definition of genocide, as outlined in Article II of the Genocide Convention. Indeed, any Contracting Party that purports to prevent genocide must establish an objective basis for its assessment that genocide has occurred or is about to occur. Whether acts amount to genocide or a serious risk thereof so as to trigger the application of Article I, is not simply a matter of a State's subjective interpretation; the acts at issue must fit within the definition of genocide in Article II.

32. Pursuant to Article II of the Genocide Convention, the commission of genocide relies on both genocidal action and genocidal intent.²³ Specifically, Article II provides that genocide may only occur if the genocidal act is committed "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such". This genocidal intent is "the essential characteristic of genocide, which distinguishes it from other serious crimes."²⁴ As for what constitutes a genocidal act, Article II provides the following list: (i) killing members of the group; (ii) causing serious bodily or mental harm to members of the group; (iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (iv) imposing measures intended to prevent births within the group; and (v) forcibly transferring children of the group to another group.

Duty to Prevent

33. Under Article I, Contracting Parties have confirmed that genocide is a crime under international law "which they undertake to prevent and to punish". While Article I does not specify what kind of measures a Contracting Party may take to fulfil this obligation, it is well established that in discharging its obligations under a treaty, a Contracting Party must act in good faith.²⁵ In discharging its duty to prevent genocide under the Genocide Convention, a Contracting Party must also take into account other parts of the Convention,²⁶ and act within the limits permitted by international law.²⁷

34. In *Bosnia v. Serbia*, this Court considered the meaning and scope of some of the substantive obligations stipulated by the Genocide Convention, including the duty to prevent genocide set forth in Article I. The Court stated that "the obligation [to prevent] is one of conduct and not result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide: the obligation of State parties is rather to employ all means

²³ *Ibid.*, para 186-187.

²⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgement, ICJ Reports 2015, p. 3, para 13 2.

²⁵ Article 26 of the VCLT provides that "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

²⁶ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para 56.

²⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbian and Montenegro)*, Judgement, ICJ Reports 2007, p. 43, para 430.

reasonably available to them so as to prevent genocide as far as possible.”²⁸ The Court added that “the notion of ‘due diligence’, which calls for an assessment *in concreto*, is of critical importance”²⁹ and emphasized that “a State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.”³⁰ As mentioned above, this notion of due diligence equally applies to the assessment of whether there is a genocide or a serious risk thereof.

35. Furthermore, Article I should be interpreted in light of Article VIII, which provides that a State “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”. While Article VIII does not exhaust a Contracting Party’s duty to prevent genocide,³¹ it encourages Contracting Parties to act collectively to prevent and suppress genocide through the mechanisms of the United Nations. The preamble of the Genocide Convention further emphasizes multilateral cooperation by stressing that international cooperation is required “in order to liberate mankind from [the] odious scourge” of genocide. Contracting Parties may also submit a dispute relating to the interpretation, application or fulfilment of the Convention to the Court, pursuant to Article IX of the Convention.

36. Article VIII thus supports an interpretation that a Contracting Party should act, where appropriate, through recourse to multilateral mechanisms, when taking action to prevent genocide, including when carrying out an assessment of whether genocide is occurring or at serious risk of occurring. This could include, for example, relying on independent investigations conducted under UN auspices.

37. Article VIII is also relevant to the analysis of what conduct may or may not be justified by the duty to prevent genocide. This analysis should be guided by the spirit and aims of the United Nations, as set out in Article 1 of the UN Charter,³² which states that the purposes of the United Nations are, *inter alia*:

[t]o maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

²⁸ *Ibid.*, para 430.

²⁹ *Ibid.*, para 430.

³⁰ *Ibid.*, para 431.

³¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbian and Montenegro)*, Judgement, ICJ Reports 2007, p. 43, para 427.

³² *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para 58. Furthermore, Article 103 of the UN Charter provides that “in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”

The analysis of what conduct may or may not be justified by the duty to prevent genocide should also be guided by a consideration of what conduct is legally permissible under general international law and the UN Charter, whether acting alone or collectively.

38. In light of the above, the duty to prevent genocide entails a due diligence obligation to assess whether there is a genocide or a serious risk of genocide before taking further action in fulfilment of Article I. This assessment should be based on all available information, in particular from independent and credible sources, and guided by the definition of genocide in Article II of the Genocide Convention. Contracting Parties are encouraged to act collectively to prevent genocide, in accordance with the spirit and aims of the United Nations. They must also ensure that any actions taken to prevent genocide are in compliance with the UN Charter and other international legal obligations.

Duty to Punish

39. The duty to punish outlined in Article I must be read with Articles IV to VII of the Genocide Convention, and thus interpreted as an obligation to investigate and prosecute persons accused of genocide, and to punish persons found to be guilty of genocide. Specifically, Articles IV to VII state:

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 provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or 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.

40. Pursuant to these provisions, a Contracting Party discharges its obligation to punish genocide by prosecuting persons subject to criminal jurisdiction within its own criminal courts; by cooperating with competent international tribunals when it has accepted their jurisdiction; and by extraditing persons accused of genocide for trial in other States, as relevant.

41. In light of the above, the duty to punish outlined in Article I relates to punitive measures of a criminal law character directed against persons capable of being found criminally responsible; it cannot serve as justification for actions aimed at punishing another Contracting Party for a genocide or alleged genocide. In this regard, Article IX of the Genocide Convention outlines a system of dispute resolution between Contracting Parties by providing that disputes relating to the interpretation, application or fulfillment of the Convention shall be submitted to the Court.

V. Documents in Support of the Joint Declaration

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

- (a) Letter of 30 March 2022 from the Registrar of the International Court of Justice to the Ambassador of Canada to the Kingdom of the Netherlands;
- (b) Letter of 30 March 2022 from the Registrar of the International Court of Justice to the Minister of Foreign Affairs of the Kingdom of the Netherlands;
- (c) Instrument of ratification by the Government of Canada of the Genocide Convention;
- (d) Instrument of ratification by the Government of the Kingdom of the Netherlands to the Genocide Convention.

VI. Conclusion

43. On the basis of the information set out above, Canada and the Netherlands avail themselves of the right conferred upon them by Article 63, paragraph 2, of the Statute to intervene as non-parties in the proceedings brought by Ukraine against Russia in this case. Canada and the Netherlands reserve their rights to supplement or amend this Joint Declaration, and any associated Written Observations submitted with respect to it, as they consider necessary in response to any developments in the proceedings.

44. The Government of Canada has appointed the undersigned as Agent for the purposes of the present Joint Declaration. Ms. Carolyn Knobel, Director General and Deputy Legal Adviser, Global Affairs Canada, is Deputy Agent. It is requested that all communications in this case be sent to the following address:

Embassy of Canada
Sophialaan 7, The Hague
The Netherlands

45. The Government of the Kingdom of the Netherlands has appointed the undersigned as Agent for the purposes of the present Joint Declaration. Ms. Mireille Hector, Deputy Legal Adviser, Ministry of Foreign Affairs of the Kingdom of the Netherlands, is Co-Agent. It is requested that all communications in this case be sent to the following address:

Ministry of Foreign Affairs of the Kingdom of the Netherlands
International Law Division
Rijnstraat 8
2515XP The Hague
The Netherlands

Respectfully,



Alan H. Kessel
Assistant Deputy Minister and Legal Adviser,
Agent of the Government of Canada
Global Affairs Canada



René J.M. Lefeber
Legal Adviser
Agent of the Government of the Kingdom of
the Netherlands

ANNEX A: Letter of 30 March 2022 from the Registrar of the International Court of Justice to the Ambassador of Canada to the Kingdom of the Netherlands

ANNEX B: Letter of 30 March 2022 from the Registrar of the International Court of Justice to the Minister of Foreign Affairs of the Kingdom of the Netherlands

ANNEX C: Instrument of ratification by the Government of Canada of the Genocide Convention

ANNEX D: Instrument of ratification by the Government of the Netherlands of the Genocide Convention

CERTIFICATION

I certify that the documents attached by way of Annexes to this Declaration are true copies of the originals thereof.



Alan H. Kessel
Agent of the Government of Canada



René J.M. Lefeber
Agent of the Government of the Kingdom of
the Netherlands



156413

30 March 2022

Excellency,

I have the honour to refer to my letter (No. 156253) dated 2 March 2022 informing your Government that, on 26 February 2022, Ukraine filed in the Registry of the Court an Application instituting proceedings against the Republic of the Russian Federation in the case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation). A copy of the Application was appended to that letter. The text of the Application is also available on the website of the Court (www.icj-cij.org).

Article 63, paragraph 1, of the Statute of the Court provides that:

[w]henever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith”.

Further, under Article 43, paragraph 1, of the Rules of Court:

“Whenever the construction of a convention to which States other than those concerned in the case are parties may be in question within the meaning of Article 63, paragraph 1, of the Statute, the Court shall consider what directions shall be given to the Registrar in the matter.”

On the instructions of the Court, given in accordance with the said provision of the Rules of Court, I have the honour to notify your Government of the following.

In the above-mentioned Application, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”) is invoked both as a basis of the Court’s jurisdiction and as a substantive basis of the Applicant’s claims on the merits. In particular, the Applicant seeks to found the Court’s jurisdiction on the compromissory clause contained in Article IX of the Genocide Convention, asks the Court to declare that it has not committed a genocide as defined in Articles II and III of the Convention, and raises questions concerning the scope of the duty to prevent and punish genocide under Article I of the Convention. It therefore appears that the construction of this instrument will be in question in the case.

H.E. the Ambassador of Canada
to the Kingdom of the Netherlands
Embassy of Canada
The Hague

Your country is included in the list of parties to the Genocide Convention. The present letter should accordingly be regarded as the notification contemplated by Article 63, paragraph 1, of the Statute. I would add that this notification in no way prejudices any question of the possible application of Article 63, paragraph 2, of the Statute, which the Court may later be called upon to determine in this case.

Accept, Excellency, the assurances of my highest consideration.



Philippe Gautier
Registrar



156413

Le 30 mars 2022

Excellence,

J'ai l'honneur de me référer à ma lettre (n° 156253) en date du 2 mars 2022, par laquelle j'ai porté à la connaissance de votre Gouvernement que l'Ukraine a, le 26 février 2022, déposé au Greffe de la Cour internationale de Justice une requête introduisant une instance contre la Fédération de Russie en l'affaire relative à des Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie). Une copie de la requête était jointe à cette lettre. Le texte de ladite requête est également disponible sur le site Internet de la Cour (www.icj-cij.org).

Le paragraphe 1 de l'article 63 du Statut de la Cour dispose que

«[L]orsqu'il s'agit de l'interprétation d'une convention à laquelle ont participé d'autres Etats que les parties en litige, le Greffier les avertit sans délai».

Le paragraphe 1 de l'article 43 du Règlement de la Cour précise en outre que

«[L]orsque l'interprétation d'une convention à laquelle ont participé d'autres Etats que les parties en litige peut être en cause au sens de l'article 63, paragraphe 1, du Statut, la Cour examine quelles instructions donner au Greffier en la matière».

Sur les instructions de la Cour, qui m'ont été données conformément à cette dernière disposition, j'ai l'honneur de notifier à votre Gouvernement ce qui suit.

Dans la requête susmentionnée, la convention de 1948 pour la prévention et la répression du crime de génocide (ci-après la «convention sur le génocide») est invoquée à la fois comme base de compétence de la Cour et à l'appui des demandes de l'Ukraine au fond. Plus précisément, celle-ci entend fonder la compétence de la Cour sur la clause compromissoire figurant à l'article IX de la convention, prie la Cour de déclarer qu'elle ne commet pas de génocide, tel que défini aux articles II et III de la convention, et soulève des questions sur la portée de l'obligation de prévenir et de punir le génocide consacrée à l'article premier de la convention. Il semble, dès lors, que l'interprétation de cette convention pourrait être en cause en l'affaire.

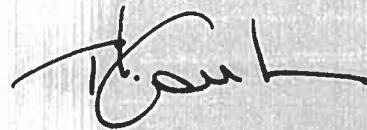
./.

Son Excellence l'Ambassadeur du Canada
auprès du Royaume des Pays-Bas
Ambassade du Canada
La Haye

Votre pays figure sur la liste des parties à la convention sur le génocide. Aussi la présente lettre doit-elle être regardée comme constituant la notification prévue au paragraphe 1 de l'article 63 du Statut. J'ajoute que cette notification ne préjuge aucune question concernant l'application éventuelle du paragraphe 2 de l'article 63 du Statut sur laquelle la Cour pourrait par la suite être appelée à se prononcer en l'espèce.

Veillez agréer, Excellence, les assurances de ma très haute considération.

Le Greffier de la Cour,

A handwritten signature in black ink, appearing to read 'P. Gautier', with a long horizontal stroke extending to the right.

Philippe Gautier



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.

./.

H.E. the Minister for Foreign Affairs
of the Kingdom of the Netherlands
Ministry of Foreign Affairs of the Netherlands
The Hague

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 long horizontal stroke extending to the right.

Philippe Gautier
Registrar



156413

Le 30 mars 2022

Excellence,

J'ai l'honneur de me référer à ma lettre (n° 156253) en date du 2 mars 2022, par laquelle j'ai porté à la connaissance de votre Gouvernement que l'Ukraine a, le 26 février 2022, déposé au Greffe de la Cour internationale de Justice une requête introduisant une instance contre la Fédération de Russie en l'affaire relative à des Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie). Une copie de la requête était jointe à cette lettre. Le texte de ladite requête est également disponible sur le site Internet de la Cour (www.icj-cij.org).

Le paragraphe 1 de l'article 63 du Statut de la Cour dispose que

«[I]orsqu'il s'agit de l'interprétation d'une convention à laquelle ont participé d'autres Etats que les parties en litige, le Greffier les avertit sans délai».

Le paragraphe 1 de l'article 43 du Règlement de la Cour précise en outre que

«[I]orsque l'interprétation d'une convention à laquelle ont participé d'autres Etats que les parties en litige peut être en cause au sens de l'article 63, paragraphe 1, du Statut, la Cour examine quelles instructions donner au Greffier en la matière».

Sur les instructions de la Cour, qui m'ont été données conformément à cette dernière disposition, j'ai l'honneur de notifier à votre Gouvernement ce qui suit.

Dans la requête susmentionnée, la convention de 1948 pour la prévention et la répression du crime de génocide (ci-après la «convention sur le génocide») est invoquée à la fois comme base de compétence de la Cour et à l'appui des demandes de l'Ukraine au fond. Plus précisément, celle-ci entend fonder la compétence de la Cour sur la clause compromissoire figurant à l'article IX de la convention, prie la Cour de déclarer qu'elle ne commet pas de génocide, tel que défini aux articles II et III de la convention, et soulève des questions sur la portée de l'obligation de prévenir et de punir le génocide consacrée à l'article premier de la convention. Il semble, dès lors, que l'interprétation de cette convention pourrait être en cause en l'affaire.

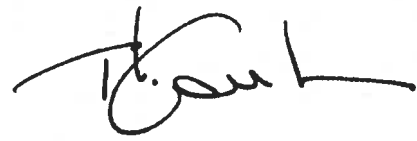
./.

Son Excellence
Monsieur le Ministre des affaires étrangères des Pays-Bas
Ministère des affaires étrangères des Pays-Bas
La Haye

Votre pays figure sur la liste des parties à la convention sur le génocide. Aussi la présente lettre doit-elle être regardée comme constituant la notification prévue au paragraphe 1 de l'article 63 du Statut. J'ajoute que cette notification ne préjuge aucune question concernant l'application éventuelle du paragraphe 2 de l'article 63 du Statut sur laquelle la Cour pourrait par la suite être appelée à se prononcer en l'espèce.

Veillez agréer, Excellence, les assurances de ma très haute considération.

Le Greffier de la Cour,

A handwritten signature in black ink, appearing to read 'P. Gautier', with a long horizontal stroke extending to the right.

Philippe Gautier



I, LESTER BOWLES PEARSON,

Secretary of State for External Affairs in
the Government of Canada do hereby certify
that the Government of Canada ratifies the
Convention on the Prevention and Punishment
of the Crime of Genocide, which Convention
was open for signature on December 9, 1948,
and which was signed by duly authorized
representatives of the Government of
Canada on November 28, 1949.

100-100-100
31 SEPT 1952
(2)

IN WITNESS WHEREOF

I have signed and sealed this Instrument
of Ratification.

DONE at Ottawa this *seventh*
day of *August*, 1952.

L.M. Pearson
Secretary of State
for External Affairs.

Nous JULIANA, par
la grâce de Dieu, Reine des Pays-Bas,
Princesse d'Orange-Nassau, etc., etc., etc.

À tous ceux qui les présentes
verront, Salut!

Ayant vu et examiné la Convention pour la
prévention et la répression du crime de génocide,
Convention ouverte à la signature le 9 décembre 1948
et dont les textes anglais et français suivent:

Approuvons par les présentes, pour le Royaume en Europe, le Surinam et les Antilles Néerlandaises, dans toutes les dispositions qui y sont contenues, la Convention reproduite ci-dessus, Déclarons y adhérer et Promettons qu'elle sera inviolablement observée.

En foi de quoi, Nous avons donné les présentes, signées de Notre main et avons ordonné qu'elles fussent revêtues de Notre sceau Royal.

Donné à Soestdijk, le treizième jour du mois de mai de l'an de grâce mil neuf cent soixante-six.

