

INTERNATIONAL COURT OF JUSTICE

DECLARATION OF INTERVENTION UNDER ARTICLE 63
OF THE PRINCIPALITY OF LIECHTENSTEIN

In the case of

*ALLEGATIONS OF GENOCIDE UNDER THE CONVENTION ON THE
PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE*

(UKRAINE v. RUSSIAN FEDERATION)

To the Registrar of the International Court of Justice, the undersigned being duly authorized by the Government of the Principality of Liechtenstein:

1. The Government of the Principality of Liechtenstein has the honor to submit to the Court a Declaration of Intervention pursuant to Article 63, paragraph 2, of the Statute of the International Court of Justice (the “Statute”) in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.
2. Article 82, paragraph 2, of the Rules of the Court provides that a declaration submitted by a State in accordance with its right of intervention contained in Article 63 of the Statute shall state the name of the agent and “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 after 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 and fulfilment of the Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention” or “Convention”).¹ The Application instituting proceedings was accompanied by a request to the Court for the indication of provisional measures in accordance with Article 41 of the Statute.² Ukraine states that its Application:

“concerns a dispute ... relating to the interpretation, application and fulfilment of the [Genocide Convention]”. Specifically, it contends that “... the Russian Federation has falsely claimed that acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine, and on that basis recognized the so-called ‘Donetsk People's Republic’ and ‘Luhansk People's Republic’, and then declared and 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.”³
5. On 7 March 2022, the Russian Federation filed a document to the Registry of the Court stating its position regarding the alleged “lack of jurisdiction” of the Court in this case.
6. On 16 March 2022, the Court rejected the Russian Federation’s dispute of jurisdiction *prima facie* in its Order indicating provisional measures and further indicated that:

¹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Application instituting proceedings of 26 February 2022.

² *Ibid.*

³ *Ibid.*

(I) 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 (I) above;

(3) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

7. On 30 March 2022, pursuant to Article 63, paragraph 1, of the Statute of the Court, the Registrar of the Court duly notified the Government of the Principality of Liechtenstein 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."⁴
8. 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 the case."⁵
9. By this present Declaration, the Principality of Liechtenstein avails itself of the right to intervene conferred upon it by Article 63, paragraph 2, of the Statute. The Court has recognized that Article 63 confers a "right" of intervention⁶ and 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."⁷ The Court has also recognized that the obligations in the Convention are owed *erga omnes partes* so that any State Party to the Convention has a legal interest in the other State Parties' compliance with the Convention.⁸
10. Liechtenstein considers that the proper interpretation of the provisions of the Genocide Convention is necessary in order to ensure strict compliance with the Convention, which is an imperative for protecting human rights law, ensuring the respect for international law and upholding the rule of law at the international level, both core tasks of the United Nations and foreign policy priorities for the Government of Liechtenstein.
11. In addition, the preamble of the Convention indicates the object and purpose to further "the spirit and aims of the United Nations". This object and purpose entails that in their efforts to interpret, apply and fulfil the Convention in accordance with the Vienna Convention on the Law of Treaties which forms customary international law, State Parties may not act in a manner that contradicts the spirit and aims of the UN Charter. The proper construction of the Genocide Convention must be safeguarded and upheld given the fundamental norms it enshrines.

⁴ Letter from the Registrar of the Court of 30 March 2022 — see **Annex (1)**.

⁵ Letter from the Registrar of the Court of 30 March 2022 — see **Annex (1)**.

⁶ *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.

⁷ *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.

⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment of 22 July 2022, at paras. 107-109.

II. The Case and the Convention to which this Declaration of Intervention Relates

12. 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 (Ukraine v. Russian Federation)*. Proceedings were instituted by Ukraine against the Russian Federation on 26 February 2022. The case raises questions concerning the construction of the Genocide Convention.

III. The Basis on which Liechtenstein is a Party to the Convention

13. On 24 March 1994, the Principality of Liechtenstein deposited its instrument of accession to the Genocide Convention with the Secretary-General of the United Nations in accordance with Article XI of the Convention. Upon that instrument becoming effective on 22 June 1994, Liechtenstein became a Contracting Party of the Genocide Convention in accordance with Article XIII of the Convention. Liechtenstein has not filed any reservations, declarations or objections to the Convention, and remains a party to the Convention.

IV. Identification of the Particular Provisions of the Convention the Construction of which is in question

14. In the present submission, the Principality of Liechtenstein focuses on the construction of Article IX of the Convention on the jurisdiction of the Court in conjunction with Articles I and II of the Convention.

V. Statement of the Construction of those Provisions for which Liechtenstein Contends

15. 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. 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."
16. For the Principality of Liechtenstein, there are two parts of this provision that are relevant for its statement on the provision's construction: the notion of "dispute" and "relating to [the] fulfilment of the present Convention". Hence, the following parts of the submission will focus on the interpretation of these two parts.
17. The Principality of Liechtenstein is of the view that the notion of "dispute" is well established in the jurisprudence of the Court. 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

⁹ *The 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.*

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

18. Against this backdrop, in the case at hand, there is a dispute between Ukraine and the Russian Federation not only *prima facie* but also *ratione materiae*.

With regard to the other relevant part of Article IX, namely "relating to [the] fulfilment of the present Convention", Liechtenstein is of the opinion that the broad interpretation of this phrase is supported by its ordinary meaning and its context in the provision as well as by the object and purpose of the provision itself.

19. Under Article I of the Genocide Convention, "[t]he Contracting Parties confirmed that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish." Article II of the Convention defines the acts that constitute genocide.
20. Further, the ordinary meaning of Article IX makes it clear that there is no need to establish genocidal acts as a basis to affirm the Court's jurisdiction. Rather, the Court has jurisdiction over the question whether genocidal acts have been or are being committed or not. 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 genocide. With a view to the question of positive fulfilment, the Court therefore has jurisdiction over the question whether a Contracting Party of the Genocide Convention has done enough to prevent and punish genocide. In a negative way, the Court can also adjudicate whether a Contracting Party has failed to fulfil these obligations.
21. This means that the Court also needs to establish whether there have been acts that constitute genocide according to Article II of the Convention in the first place, triggering the obligations of prevention and punishment laid down in Article I. As an *actus contrarius*, the Court must thus also have jurisdiction over the question whether the acts in question do not constitute genocide, establishing that the Contracting Party in question has not violated its obligation to prevent and punish genocide. In a negative way, this would mean that the Contracting Party has in fact not failed to fulfil its obligation under the Convention.
22. Finally, the object and purpose of the Genocide Convention give further support to Liechtenstein's interpretation. In its 1951 Advisory Opinion, the Court held:

"The Convention was manifestly adopted for a purely humanitarian and civilizing purpose.... 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."¹³

18; *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.

¹³ *Reservations to the Genocide Convention, Advisory Opinion of 28 May 1951*, I.C.J. Reports 1951, p. 23.

23. Against this backdrop, the Convention's object and purpose also include a common interest for all Contracting Parties to find out whether specific acts indeed qualify as genocide as defined in Article II of the Convention to be in a position at all to accomplish the "humanitarian and civilizing purpose" to prevent and punish this crime.
24. Further, the Convention's object and purpose prohibit 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. This reasoning favors a reading of Article IX of the Genocide Convention, according to which disputes relating to the fulfilment include disputes about the abuse of the Convention's authority to justify a State's action vis-a-vis another State party to the Convention.

VI. List of Documents in Support

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

(Annex 1) Letter from the Registrar of the International Court of Justice to the Permanent Representative of the Principality of Liechtenstein to the United Nations, dated 30 March 2022;

(Annex 2) Instrument of accession by the Government of the Principality of Liechtenstein to the Genocide Convention, dated 10 February 1994;

(Annex 3) Depositary notification on the accession of Liechtenstein to the Genocide Convention, dated 6 June 1994.

VII. Conclusion

26. The Principality of Liechtenstein is of the view that the Court has jurisdiction in the *case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

VIII. Closing Remarks

27. The Principality of Liechtenstein wishes to assure the Court that the intervention was filed "as soon as possible" as stipulated in Article 82 of the Rules of the Court.
28. Should the Court accept the intervention by the Principality of Liechtenstein, 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 86, paragraph 1, of the Rules of the Court.
29. It further informs the Court that it is willing to assist the Court in grouping its intervention together with similar interventions from other States, for future stages of the proceedings, if the Court deems such a measure helpful for the expedient administration of justice.
30. The Principality of Liechtenstein reserves the right to supplement the present Declaration and the scope of its observations to the extent that additional matters of jurisdiction or the merits arise as the case progresses, or as the Principality of Liechtenstein becomes aware of them upon receipt (in

accordance with Article 86, paragraph 1, of the Rules) of the pleadings and documents annexed to them.

A handwritten signature in blue ink, consisting of a stylized 'P' followed by a horizontal line and a small flourish.

Ambassador Pascal Schafhauser, Agent

CERTIFICATION

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



Ambassador Pascal Schafhauser, Agent



156413

30 March 2022

Excellency,

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

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

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

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

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

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

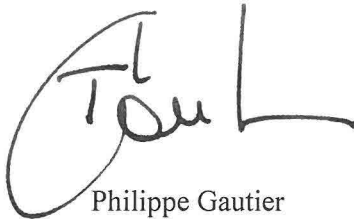
In the above-mentioned Application, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”) is invoked both as a basis of the Court’s jurisdiction and as a substantive basis of the Applicant’s claims on the merits. In particular, the Applicant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

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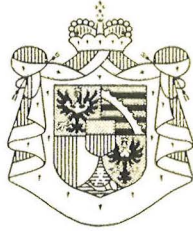
[Letter to the States parties to the Genocide Convention
(except Ukraine and the Russian Federation)]

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

Accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Philippe Gautier', written in a cursive style.

Philippe Gautier
Registrar



KOPIE

**NOUS,
HANS ADAM II,
Prince Régnant de Liechtenstein,**

après avoir vu et examiné


la Convention pour la prévention et la répression du crime de génocide du 9 décembre 1948,

DECLARONS

adhérer à la dite Convention, promettant au nom de la Principauté de Liechtenstein de l'observer consciencieusement et en tout temps, en tant que cela dépend de Nous.

En foi de quoi Nous avons signé le présent instrument d'adhésion et muni de Notre sceau.

Ainsi fait à Vaduz, le 10 février 1994



Mario Frick

Mario Frick
Chef du Gouvernement

HA

Hans Adam II
Prince Régnant



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



REFERENCE: C.N.109.1994.TREATIES-1 (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

ACCESSION BY LIECHTENSTEIN

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

On 24 March 1994, the instrument of accession by the Government of Liechtenstein to the above-mentioned Convention was deposited with the Secretary-General.

In accordance with its article XIII (3), the Convention will enter into force for Liechtenstein on the ninetieth day following the date of deposit of the instrument, i.e. on 22 June 1994.

6 June 1994

SJ

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