



**WRITTEN OBSERVATIONS OF
THE REPUBLIC OF LITHUANIA**

IN THE CASE OF

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

(UKRAINE V. RUSSIAN FEDERATION)

5 JULY 2023

1. These written observations are filed pursuant to the Court’s Order dated 5 June 2023 and “concern the construction of Article IX and other provisions of the Convention on the Prevention and Punishment of the Crime of Genocide that are relevant for the determination of the jurisdiction of the Court”.¹ Because “the question of whether the Court was validly seised appears to be a question of jurisdiction”,² these written observations also address the interpretation of Article IX insofar as it concerns the seisin of the Court.

2. Article IX of the 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.”

3. Article IX must be read in the context of the other provisions of the Convention.³

In this regard, Lithuania recalls that “Article IX provides the conditions for recourse to the principal judicial organ of the United Nations in the context of a dispute between Contracting Parties, whereas Article VIII allows any Contracting Party to appeal to other competent organs of the United Nations, even in the absence of a dispute with another Contracting Party.”⁴ Also in contrast to Article IX, Article VIII is exclusively concerned with “the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III.” As the text of Article IX makes clear, the disputes that may be submitted for decision to the Court are not limited to “the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III”, which is the province of Article VIII. Rather, the disputes under Article IX may more broadly “relat[e] to the interpretation, application or fulfilment of the present Convention, including those

¹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of 5 June 2023, para. 102 (1).

² *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, *Jurisdiction and Admissibility, Judgment*, *I.C.J. Reports 1995*, p. 23, para. 43.

³ Article 31, paragraph 2, of the Vienna Convention on the Law of Treaties and see not. *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 2017*, pp. 29-30, paras. 64-65.

⁴ *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*, para. 89.

relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III.” As the Court has made clear, “disputes relating to the responsibility of Contracting Parties for genocide [...] are comprised within a broader group of disputes relating to the interpretation, application or fulfilment of the Convention.”⁵

4. The functional and textual differences between Articles VIII and IX, i.e. their “distinct areas of application”,⁶ indicate that disputes stemming from allegations of acts of genocide may be submitted to the Court for adjudication, even if the claims submitted to the Court by the Applicant do not concern the perpetration of acts of genocide by the Respondent. In other words, the Court’s jurisdiction under Article IX extends to disputes resulting from the contestation by the Applicant of allegations by the Respondent that acts of genocide occurred or were about to occur on the territory of the former. Thus, as set out in its Declaration of Intervention of 22 July 2022, Lithuania considers that when a State accuses another State of committing genocide, or claims that acts of genocide are in the making on its territory, and that the State so accused rejects such accusations, a “dispute” exists under Article IX of the Convention.⁷ This includes instances in which the accusation of genocide is made with a view to justifying acts that may engage other rules of international law.

5. This construction of Article IX is confirmed by two important textual elements present in the said provision:

- *First*, the fact that the disputes must be about the “interpretation, application *or fulfilment*” of the Convention. This wording has been described as “unique as compared with the compromissory clauses found in other multilateral treaties which provide for submission to the International Court of Justice of such disputes between the Contracting Parties as relate to the *interpretation or application* of the treaties in question”.⁸ It has also been underscored that “by

⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 114, para. 169.

⁶ *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, para. 89.

⁷ *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 Republic of Lithuania of 19 July 2022, para. 24.

⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Preliminary Objections, Declaration of Judge Oda, I.C.J. Reports 1996 (II), p. 627, para. 5 (emphasis in the original); see also *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of Congo v. Rwanda)*, Jurisdiction and Admissibility, Judgment, I.C.J.

inserting all the three alternative terms, drafters had sought to ‘give a coverage as exhaustive as possible to the compromissory clause’ and to ‘close down all possible loopholes’.”⁹ In Lithuania’s submission, “the well-established principle in treaty interpretation that words ought to be given appropriate effect”¹⁰ clearly indicates that the addition of the word “fulfilment” extends the type of “disputes” under the Convention that can be submitted to the Court under Article IX. In that regard, Lithuania recalls that the *travaux préparatoires* reveal that a proposal to delete the word “fulfilment” was rejected.¹¹ In light of the customary rules on treaty interpretation reflected in Article 31 of the Vienna Convention on the Law of Treaties,¹² “fulfilment” (in French: “l’exécution”) must be understood in its ordinary linguistic meaning, namely, to refer to the action, act, or process of accomplishment, performance or completion of an obligation.¹³ Thus, when State A protests against State B’s allegations that genocide is occurring or about to occur on State A’s territory, such contestation gives rise to a dispute about the *fulfilment* of the Convention’s obligations that can be submitted to the Court by either State A or State B.

- *Second*, this understanding is reinforced by the fact that “disputes relating the interpretation, application or fulfilment” of the Convention can “be submitted to the International Court of Justice *at the request of any of the parties to the dispute*”. By stating that the seisin of the Court can be the initiative of “any of the parties to the dispute”, the last part of Article IX confirms that recourse to

Reports 2006, Joint Separate Opinion of Judges Higgins, Kooijmans, Elaraby, Owada, and Simma, p. 72, para. 28: “Article IX speaks *not only* of disputes over the interpretation and application of the Convention, but over the “fulfilment of the Convention” (emphasis added).

⁹ C. Tams, “Article IX”, in Tams/Gerster/Schiffbauer (eds.), *Convention on the Prevention and Punishment of Genocide, A Commentary* (Beck 2014), p. 313, para. 45, citing from R. Kolb, “Scope *Ratione Materiae*” in Paola Gaeta (ed.), *The UN Genocide Convention: A Commentary*, (OUP 2009), p. 451.

¹⁰ *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 (I)*, p. 125, para. 133, referring to *Free Zones of Upper Savoy and the District of Gex, Order of 19 August 1929, P.C.I.J., Series A, No. 22*, p. 13.

¹¹ Official Records of the Third Session of the General Assembly, Part I, Sixth Committee, Summary Records of Meetings 21 September–10 December 1948, A/C.6/SR.104, Hundred and fourth meeting, Palais de Chaillot, Paris, Saturday, 13 November 1948, reproduced in H. Abtahi & Ph. Webb (eds.), *The Genocide Convention, The Travaux Préparatoires*, Volume Two (Martinus Nijhoff 2008), p. 1784.

¹² See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Preliminary Objections, Judgment of 6 April 2023*, para. 87.

¹³ Oxford English Dictionary (3rd ed., 2016), *fulfilment* (accessed online at <https://www.oed.com/view/Entry/75295?redirectedFrom=fulfilment#eid>).

it is available to a State that considers itself falsely accused of acts of genocide by another Party to the Convention. While many compromissory clauses allow the seisin of the Court by “any of the parties to the dispute”,¹⁴ the fact that such seisin may concern, under Article IX, a dispute “relating to the (...) fulfilment” of the Convention, and is possible in the absence of any prior negotiations, is significant insofar as the specific configuration of the present dispute is concerned.

6. Lithuania further considers that the object and purpose of the Convention, as eloquently described by the Court in its 1951 Advisory Opinion,¹⁵ also supports the interpretation of Article IX according to which a dispute resulting from allegations of genocide can be submitted to the Court for decision by the State accused of genocide. The higher purposes of the Convention, and the shared interests of States in the prevention and punishment of genocide, confirm that accusing a State of genocide is a serious allegation that must not be made lightly, and be exempt from any judicial control. Without this, the object and purpose of the Genocide Convention, and the obligations contained therein, would be seriously undermined. In order to preserve the integrity of the Convention, Article IX is therefore open to any State party that considers itself falsely accused of genocide by any other State party.¹⁶ Article IX has thus a protective value and effect for States that have accepted it.

7. A State that considers itself falsely accused of genocide may claim that such accusation is the result of a breach of Article I of the Convention and that the actions undertaken for the alleged purpose of preventing the alleged genocide are likewise wrongful under the Convention. The Court has clarified that disputes falling within the scope of Article IX need not necessarily relate to obligations that “are expressly imposed by the actual terms of the Convention”.¹⁷ As Lithuania set out in its Declaration of Intervention in the present dispute, whether or not a party has fulfilled its obligations under the Convention may be particularly salient in relation to the obligation of due

¹⁴ See e.g. International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965), Art. 22.

¹⁵ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951*, p. 23.

¹⁶ Absent any reservation on Article IX by the States parties to the dispute.

¹⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 113, para. 166.

diligence, entailed by Article I, to collect substantial evidence from independent sources that acts of a genocidal nature are being perpetrated, before undertaking any preventive action pursuant to the same provision.¹⁸ Such claim falls within the jurisdiction *ratione materiae* of the Court under Article IX. It would be for the Court to determine, when examining the merits of the case and interpreting Article I, whether that provision entails the obligation of due diligence identified by Lithuania in its Declaration of Intervention and, if so, whether that obligation has been breached.

8. Lithuania also reiterates its position, also set out in its Declaration of Intervention, that the Convention imposes upon States a duty not to engage in military aggression on the basis of factually unsubstantiated allegations of genocide. As developed in the Declaration of Intervention, such a duty flows from Article I, read in conjunction with Article VIII of the Convention. It requires States that purport to allegedly prevent genocide to act diligently, that is to say, to justify their action by reference to substantial evidence from independent sources confirming that genocidal acts are being perpetrated or that there exists “a serious risk that genocide will be committed”.¹⁹ This duty flows from the Court’s recognition that in discharging its duty to prevent genocide, “every State may only act within the limits permitted by international law”,²⁰ and its confirmation that “the acts undertaken by the Contracting Parties ‘to prevent and to punish’ genocide must be in conformity with the spirit and aims of the United Nations, as set out in Article 1 of the United Nations Charter”.²¹ It is Lithuania’s position that claims regarding the compliance with said obligation fall within the jurisdiction *ratione materiae* of the Court under Article IX.

9. Finally, Lithuania recalls that the means by which an international obligation is breached—in particular the means by which the obligation to prevent genocide under Article I is allegedly fulfilled—are irrelevant for jurisdictional purposes. Indeed, as the Court has made clear in the *Oil Platforms* case: “[a]ny action by one of the Parties that is incompatible with [the] obligations [under the 1955 Treaty] is unlawful, regardless of the

¹⁸ *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 Republic of Lithuania of 19 July 2022, para. 20.

¹⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *I.C.J. Reports 2007 (I)*, p. 221, para. 431.

²⁰ *Ibid.*, para. 430.

²¹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order on Provisional Measures of 16 March 2022, para. 58.

means by which it is brought about. A violation of the rights of one party under the Treaty by means of the use of force is as unlawful as would be a violation by administrative decision or by any other means. Matters relating to the use of force are therefore not *per se* excluded from the reach of the Treaty of 1955.”²² This finding applies *mutatis mutandis* to the Genocide Convention. Lithuania further recalls that when the Court has jurisdiction under Article IX, such jurisdiction extends to applying “the rules of general international law on treaty interpretation and on responsibility of States for internationally wrongful acts.”²³ In Lithuania’s opinion, the Court’s jurisdiction necessarily extends also to applying other rules of treaty law, in particular the one concerning the obligation to perform treaties in good faith.²⁴

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Respectfully submitted,



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²² *Case concerning Oil Platforms (Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1996*, p. 803, para. 21.

²³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 105, para. 149.

²⁴ See Art. 26 of the Vienna Convention on the Law of Treaties.