

Before the  
INTERNATIONAL COURT OF JUSTICE

WRITTEN OBSERVATIONS OF THE UNITED KINGDOM OF GREAT  
BRITAIN AND NORTHERN IRELAND ON THE PRELIMINARY  
OBJECTIONS OF THE RUSSIAN FEDERATION

5 July 2023

In the case of

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

(UKRAINE v. RUSSIAN FEDERATION: 32 STATES INTERVENING)

---

## TABLE OF CONTENTS

Introduction.....	3
I. The term “dispute” in Article IX of the Genocide Convention is to be given the broad meaning normally given to it under international law .....	4
II. A dispute relating to the interpretation, application or fulfilment of the Genocide Convention falls within Article IX of the Convention irrespective of whether there exists between the parties, based on the same facts, a dispute concerning international legal rights and obligations extrinsic to the Genocide Convention.....	14
III. Article IX confers jurisdiction over a claim for a declaration that the applicant State has complied with the Genocide Convention where this is in dispute between the parties .....	16
IV. Article IX of the Genocide Convention confers on the Court jurisdiction <i>ratione materiae</i> to determine the extent to which Article I allows or requires a Contracting Party to engage in certain conduct that might otherwise be unlawful under international law.....	21
Conclusion .....	24

## INTRODUCTION

1. These Written Observations on the Preliminary Objections of the Russian Federation are submitted to the Court in accordance with its Order of 5 June 2023 (“**the Order**”) in relation to the intervention pursuant to Article 63, paragraph 2, of the Statute of the Court of the United Kingdom of Great Britain and Northern Ireland (“**the United Kingdom**”) and other States in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*. In that Order, the Court determined that the Declaration of Intervention filed by the United Kingdom (“**the Declaration of Intervention**”) was admissible at the preliminary objections stage of the proceedings in so far as it concerns the construction of Article IX and other provisions of the Convention on the Prevention and Punishment of the Crime of Genocide (“**the Genocide Convention**”) that are relevant for the determination of the jurisdiction of the Court, and fixed the time-limit for the filing of these Written Observations, as provided for in Article 86, paragraph 1, of the Rules of the Court.<sup>1</sup>
2. The United Kingdom intervenes as a party to the Genocide Convention. In accordance with Article 63, paragraph 2, of the Court’s Statute and the Order of the Court, these Written Observations present to the Court the United Kingdom’s position on the issues of construction that are relevant to the Court’s jurisdiction in the present case. They do not deal with any other aspect of the case before the Court.
3. In all matters of construction of the Genocide Convention, reference must naturally be had to the rules of interpretation reflected in the terms of Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties, representing customary international law, as already addressed in the Declaration of Intervention.<sup>2</sup>

---

<sup>1</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Order of 5 June 2023, para. 102(1), (3). In the same Order, the Court held that the declarations of intervention of 31 other States were also admissible at the preliminary objections stage.

<sup>2</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Declaration of Intervention under Article 63 of the United Kingdom of Great Britain and Northern Ireland (“**Declaration of Intervention**”), 1 August 2022, paras. 28–29.

4. In outline, the United Kingdom’s contentions as to the proper construction of the Genocide Convention, insofar as relevant to the determination of the Court’s jurisdiction in the present case, are as follows:
- (a) The term “dispute” in Article IX of the Genocide Convention is to be given the broad meaning normally given to it under international law (see **Section I** below);
  - (b) A dispute relating to the interpretation, application or fulfilment of the Genocide Convention falls within Article IX of the Convention irrespective of whether there exists between the parties, based on the same facts, a dispute concerning international legal rights and obligations extrinsic to the Genocide Convention (see **Section II** below);
  - (c) Article IX confers jurisdiction over a claim for a declaration that the applicant State has complied with the Genocide Convention where this is in dispute between the parties (see **Section III** below); and
  - (d) Article IX of the Genocide Convention confers on the Court jurisdiction *ratione materiae* to determine the extent to which Article I allows or requires a Contracting Party to engage in certain conduct that might otherwise be unlawful under international law (see **Section IV** below).

**I. THE TERM “DISPUTE” IN ARTICLE IX OF THE GENOCIDE CONVENTION IS TO BE GIVEN THE BROAD MEANING NORMALLY GIVEN TO IT UNDER INTERNATIONAL LAW**

5. As outlined in the Declaration of Intervention,<sup>3</sup> Article IX of the Genocide Convention confers on the Court jurisdiction over “[d]isputes ... relating to the interpretation, application or fulfilment” of the Genocide Convention. The existence of a dispute is therefore a precondition to the Court’s jurisdiction. As the Court has recently affirmed, the term “[d]isputes” in Article IX is to be construed in accordance with the meaning given to this term under international law.<sup>4</sup>

---

<sup>3</sup> Declaration of Intervention, paras. 44–47.

<sup>4</sup> *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, para. 63. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Preliminary Objections, Judgment, ICJ Reports 1996, p. 595 at pp. 614–615, para. 29.

6. The existence of a dispute is to be determined objectively, and not with reference to the parties' statements as to whether or not it exists.<sup>5</sup> According to the settled jurisprudence of the Court, a dispute arises wherever:
- (a) there is between the parties “a disagreement on a point of law or fact, a conflict of legal views or interests”,<sup>6</sup>
  - (b) the parties “‘hold clearly opposite views’ with respect to the issue brought before the Court”,<sup>7</sup> and
  - (c) the respondent “was aware, or could not have been unaware, that its views were ‘positively opposed’ by the applicant”.<sup>8</sup>
7. There are four points of construction of the word “[d]isputes” in Article IX which appear to be contested in this case. The United Kingdom sets out below its position on each of these points of construction.
8. *First*, there appears to be disagreement over what forms of statements, exchanges and other conduct are capable of giving rise to a “dispute” which falls within the scope of Article IX of the Genocide Convention. The Russian Federation has, in support of its argument that no relevant dispute existed in this case, argued that:

---

<sup>5</sup> *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 pp. 849–851, paras. 37–43; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, ICJ Reports 2016, p. 255, at p. 270, para. 36; *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Provisional Measures, Order of 7 December 2016, ICJ Reports 2016, p. 1148 at p. 1159, para. 47.

<sup>6</sup> *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, para. 63, citing *Mavrommatis Palestine Concessions*, PCIJ, Series A, No. 2, 1924, p. 11.

<sup>7</sup> See *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, para. 63, citing *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; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 3 at p. 26, para. 50.

<sup>8</sup> See, e.g., *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.

- (a) “[T]here is not a single Note Verbale by Ukraine addressed to the Russian Federation where Ukraine set forth its claims”;<sup>9</sup>
  - (b) “Ukraine itself has never declared the existence of a dispute with the Russian Federation under the Convention in diplomatic correspondence, or during the negotiations with the Russian Federation, or at the meetings of bodies of international organisations before the critical date, or in any other manner capable of reaching the Russian Federation”;<sup>10</sup> and
  - (c) A respondent State’s conduct is capable of providing evidence of a dispute “only when all other reasonable interpretations of the respondent’s conduct and surrounding facts can be excluded”.<sup>11</sup>
9. The United Kingdom’s position is that the term “[d]isputes” in Article IX should not be construed in the manner contended for by the Russian Federation.
10. Properly construed, there is no particular form of exchanges or conduct by which a “dispute” for the purposes of Article IX must be constituted. The Court can ascertain the existence of a dispute from a wide variety of materials pre-dating an application. These materials can include “documents exchanged between the parties”,<sup>12</sup> as well as “any exchanges made in multilateral settings”.<sup>13</sup>
11. Further, the Court has specifically recognised that a dispute can exist even when “there have been no diplomatic exchanges”.<sup>14</sup> In such a situation, the conduct of the parties

---

<sup>9</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Preliminary Objections of the Russian Federation (“**Preliminary Objections**”), 1 October 2022, para. 76.

<sup>10</sup> Preliminary Objections, para. 98.

<sup>11</sup> Preliminary Objections, para. 113, citing *Republic of Ecuador v. United States of America*, PCA Case No. 2012-05, Award, 29 September 2012, para. 223.

<sup>12</sup> *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, para. 64, citing *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, ICJ Reports 2012, p. 422 at pp. 443–445, paras. 50–55.

<sup>13</sup> *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, para. 64, citing *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70 at pp. 94–95, paras. 51, 53. See also *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. 40.

<sup>14</sup> *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. 40.

can establish the existence of a dispute.<sup>15</sup> Any finding to the contrary would be inconsistent with the Court’s settled position that the existence of a dispute is “a matter of substance, and not a question of form or procedure”.<sup>16</sup>

12. Consistent with the focus on substance rather than form, for a “dispute” to exist for the purposes of Article IX, it is not necessary that either party declares (let alone both parties declare) the existence of a dispute. It is established in the Court’s jurisprudence that a dispute can exist based on a view inferred from a party’s conduct, “whatever the professed view of that party”.<sup>17</sup>
13. On that basis, each of the contentions of the Russian Federation set out above is incorrect as a matter of construction:
  - (a) For a “dispute” to exist within the meaning of Article IX, it is not necessary for there to be a note verbale, or any other document, identifying the relevant dispute — contrary to the suggestion of the Russian Federation;<sup>18</sup>
  - (b) The existence of a “dispute” for the purposes of Article IX is not dependent on either party to such a dispute having “declared the existence of a dispute”, whether in one of the forms referred to by the Russian Federation<sup>19</sup> or otherwise; and
  - (c) For the purposes of Article IX, it is not correct that a dispute exists “only when all other reasonable interpretations of the respondent’s conduct and surrounding facts can be excluded”.<sup>20</sup> For example, in the *Bosnian Genocide* case, the

---

<sup>15</sup> *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. 40.

<sup>16</sup> *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, para. 64, citing *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70 at p. 84, para. 30.

<sup>17</sup> *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections, Judgment, ICJ Reports 1998, p. 275 at p. 315, para. 89, as affirmed in *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. 40.

<sup>18</sup> Preliminary Objections, para. 76.

<sup>19</sup> Preliminary Objections, para. 98.

<sup>20</sup> As contended in Preliminary Objections, para. 113. *Republic of Ecuador v. United States of America*, PCA Case No. 2012-05, Award, 29 September 2012, para. 223, cited by the Russian Federation in this context, concerned whether inferences as to a State’s position could be inferred from its silence, where naturally a higher threshold may apply.

existence of an armed conflict was sufficient evidence of a relevant dispute,<sup>21</sup> although there was not and could not have been any suggestion that the parties' conduct in the course of that armed conflict could be explained solely on the basis that they had a dispute about the interpretation, application or fulfilment of the Genocide Convention. This would be an unrealistically high and exclusionary threshold for determining that conduct reflected the existence of a dispute under Article IX of the Convention (or under international law generally) and should thus not be adopted by the Court.

14. *Second*, there is disagreement concerning the degree of specificity with which a dispute must have been identified in order to constitute a dispute within the meaning of Article IX of the Genocide Convention. The Russian Federation has argued that:

- (a) In order for there to be a dispute falling within Article IX in the present case, Ukraine and the Russian Federation must have held “opposite views with respect to *precise obligations arising under the [Genocide] Convention*”, meaning that “Ukraine must demonstrate that *the claims it has put before the Court on the basis of the Convention* had been positively opposed by the Russian Federation”;<sup>22</sup>
- (b) The parties' previous exchanges “must have been specific enough ... that the Parties were aware, or could not have been unaware, that they hold positively opposed views with respect to the *specific obligations under the Convention*, which are the subject-matter of Ukraine's claim before the Court”;<sup>23</sup>
- (c) Ukraine “must demonstrate that a dispute existed with respect to *each of the claims as formulated in the Memorial*”;<sup>24</sup>
- (d) A dispute does not exist under Article IX in this case because “Ukraine has not produced any evidence that, before instituting these proceedings, it clarified the

---

<sup>21</sup> *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 pp. 854–855, para. 54, referring to *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Preliminary Objections, Judgment, ICJ Reports 1996, p. 595 at pp. 614–615, paras. 27–29.

<sup>22</sup> Preliminary Objections, para. 63 (emphasis added).

<sup>23</sup> Preliminary Objections, para. 65 (emphasis added).

<sup>24</sup> Preliminary Objections, para. 72 (emphasis added).



way in which, in its view, the Russian Federation could have *specifically violated its obligations under Articles I and IV of the Convention*”;<sup>25</sup> and

(e) The statements which Ukraine alleges evidenced the existence of a dispute “contain no mentions of the Genocide Convention, much less of Ukraine’s (or the Russian Federation’s) responsibility under the Convention”.<sup>26</sup>

15. These contentions as to the specificity of what is required for a dispute to exist within the meaning of Article IX go well beyond what the Court has set as the relevant standard. In particular, the Court has stated that it is not necessary for there to have been, in exchanges between the parties, any “specific reference” to the international treaty which forms the basis for the claims ultimately brought before the Court.<sup>27</sup> It follows ineluctably that there is also not a requirement that the applicant State must have referred to specific *provisions* of the treaty or “precise” or “specific” obligations arising under that treaty,<sup>28</sup> let alone have asserted that the respondent State is responsible for any violation of those specific obligations.<sup>29</sup> Since the matter is one of substance rather than form, a dispute within the meaning of Article IX can arise without the applicant State having articulated the specific claims of which it ultimately seises the Court.<sup>30</sup>
16. Instead, the threshold set by the Court is that exchanges between the parties must refer to the subject-matter of the Genocide Convention with sufficient clarity to identify that a dispute has arisen under it.<sup>31</sup> It is significant that the Court affirmed this test in the recent Judgment on Preliminary Objections in *The Gambia v. Myanmar*, in which

---

<sup>25</sup> Preliminary Objections, para. 73 (emphasis added).

<sup>26</sup> Preliminary Objections, para. 101.

<sup>27</sup> *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, para. 72, citing *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70, at p. 85, para. 30. Cf Preliminary Objections, para. 101. See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Jurisdiction and Admissibility, Judgment, ICJ Reports 1984, p. 392 at p. 428, para. 83 (“In the view of the Court, it does not necessarily follow that, because a State has not expressly referred in negotiations with another State to a particular treaty as having been violated by conduct of that other State, it is debarred from invoking a compromissory clause in that treaty”).

<sup>28</sup> Cf Preliminary Objections, paras. 63, 65.

<sup>29</sup> Cf Preliminary Objections, paras. 73, 101.

<sup>30</sup> Cf Preliminary Objections, paras. 63, 72.

<sup>31</sup> *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, para. 72, citing *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70, at p. 85, para. 30.

Myanmar, like the Russian Federation, had argued that the applicant State was required to have identified, prior to instituting proceedings, “the provisions of international law said to have been ... breached” by the respondent State.<sup>32</sup> Myanmar similarly contended that it was necessary that “the respondent State could not have been unaware that a breach of such specific treaty provision was being alleged”.<sup>33</sup> This is strikingly similar to the construction advanced by the Russian Federation in the present claim, and the Court has already rejected it.

17. The Russian Federation seeks to support its construction of Article IX with reference to *Questions relating to the Obligation to Prosecute or Extradite*.<sup>34</sup> In that case, the Court found that Belgium’s references in diplomatic correspondence to Senegal’s obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“**the Torture Convention**”) gave rise to a dispute concerning the interpretation and application of that Convention, but did not give rise to a dispute concerning Senegal’s obligations with respect to obligations to prosecute an individual for crimes against humanity, war crimes or genocide under customary international law.<sup>35</sup> This was on the basis that the Court considered any relevant obligations under customary international law to be “clearly distinct from” those under the Torture Convention and to “raise[] quite different legal problems”.<sup>36</sup> Therefore, a reference to the Torture Convention did not with sufficient clarity indicate that a dispute had crystallised between the parties over the existence of substantively distinguishable obligations under customary international law regarding crimes against humanity, war crimes or genocide.<sup>37</sup> Accordingly, this case does not stand for the proposition, as the Russian Federation asserts, that “a dispute could not arise until the applicant State alleged a breach of a specific obligation”.<sup>38</sup> It was the absence of a

---

<sup>32</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections of Myanmar, 20 January 2021, para. 531.

<sup>33</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections of Myanmar, 20 January 2021, para. 533.

<sup>34</sup> Preliminary Objections, para. 68, citing *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, ICJ Reports 2012, p. 422 at pp. 444–445, para. 54.

<sup>35</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, ICJ Reports 2012, p. 422 at p. 445, para. 53.

<sup>36</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, ICJ Reports 2012, p. 422 at p. 445, para. 54.

<sup>37</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, ICJ Reports 2012, p. 422 at pp. 444–445, paras. 52–55.

<sup>38</sup> Preliminary Objections, para. 68.

sufficiently clear reference to the subject-matter of customary international law that was determinative of the absence of a dispute under customary international law.

18. *Third*, there is disagreement over whether a “dispute” can arise for the purposes of Article IX of the Convention only if the conduct said to form the basis of the dispute emanated from officials of a certain seniority within the State. The United Kingdom contends that, consistent with the Court’s previous jurisprudence, in order to determine the existence of a dispute, the Court should “take[] into account in particular *any* statements or documents exchanged between the parties”,<sup>39</sup> without limiting itself to statements or documents from only the most senior echelons of the parties’ governments. Naturally (and as the Court has also recognised), “the author of the statement or document” (among other matters, such as the document’s content) is a matter meriting “special attention”,<sup>40</sup> and “primary attention” is likely to be given to “statements made or endorsed by the Executive of the two Parties”.<sup>41</sup> However, that does not preclude statements of other officials of the parties being capable of giving rise to, and having probative value as to the existence of, a dispute.
19. The Russian Federation suggests that Ukraine is unable to establish the existence of a dispute based on “statements made by Ukrainian low-ranking officials” on the basis that “[t]hose officials work in State bodies that do not have the authority to represent the view of a State at the international level”.<sup>42</sup> As to statements made by Russian officials, the Russian Federation similarly contends that the existence of a dispute cannot be derived from “statements that do not represent the position of the State on the international level (because the authority to speak on behalf of the Russian Federation is not included in the mandate of the speakers)”.<sup>43</sup>
20. The suggestion that a dispute under Article IX of the Genocide Convention can arise only on the basis of statements made by officials with so-called “authority to represent

---

<sup>39</sup> *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, para. 64 (emphasis added).

<sup>40</sup> *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, para. 64, citing *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70 at p. 100, para. 63.

<sup>41</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70 at p. 87, para. 37.

<sup>42</sup> Preliminary Objections, para. 99.

<sup>43</sup> Preliminary Objections, para. 108 (internal citation omitted).

the view of the State at the international level”<sup>44</sup> contradicts the existing case law. The Court has taken an inclusive view of the statements which can be relevant, while unsurprisingly attributing the greatest weight to statements by senior officials.

21. There is no single test for which individuals are capable of representing the State at the international level; rather, which individuals meet this description depends on context. The Russian Federation refers to *Democratic Republic of the Congo v. Rwanda (New Application)*, in which the Court found that a small number of very senior representatives of a State “are deemed to represent the State” in relation to “the performance ... of unilateral acts having the force of international commitments” and the State’s accession to treaties.<sup>45</sup> There is a clear rationale for that finding in the context of that case: a State should not become bound by new international legal obligations through the conduct of actors over whom it has limited control or knowledge and who do not meaningfully represent its policy or interests. However, the same concerns do not arise in relation to the crystallisation of a dispute falling within the Court’s jurisdiction, and there is no reason to impose the same strict limitations on which officials of a State can engage in conduct that is relevant for those purposes. That is why, after referring explicitly to the same paragraph of *Democratic Republic of Congo v. Rwanda*, the Court in *Georgia v. Russian Federation* said merely that, in determining the existence of a dispute, statements of the parties’ most senior representatives would be given “primary attention”, but not to the exclusion of statements by lower-ranking officials.<sup>46</sup>
22. *Fourth*, there is a disagreement about whether a dispute under Article IX of the Genocide Convention, properly construed, requires one State to have invoked the other State’s responsibility for an alleged breach of the Genocide Convention. The Court has not in any previous case identified an invocation of responsibility as a precondition to the existence of a dispute, and the United Kingdom’s position is that no such requirement exists as a matter of construction of Article IX. To the contrary, in *Lockerbie*, one of the United Kingdom’s grounds for contesting the Court’s jurisdiction was that “it had never itself invoked the Montreal Convention”, which was the treaty

---

<sup>44</sup> Preliminary Objections, para. 99.

<sup>45</sup> *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. 27, para. 46.

<sup>46</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70 at p. 87, para. 37.

pursuant to which Libya had seized the Court, seeking a declaration as to its own compliance with the treaty's terms.<sup>47</sup> This fact did not prevent the Court from finding that there was a dispute between the parties concerning the interpretation and application of that convention.<sup>48</sup>

23. In contrast, the Russian Federation argues that no dispute exists in this case as to whether Ukraine breached its obligations under the Genocide Convention on the grounds that “the Russian Federation has not invoked Ukraine’s responsibility under the Convention” and “Ukraine has produced no evidence showing that the Russian Federation has taken the necessary steps to invoke Ukraine’s responsibility for the breach of the obligations under the Convention”.<sup>49</sup> In this context, it refers to certain commentaries of the International Law Commission (“**the ILC**”) in relation to the Draft Articles on Responsibility of States for Internationally Wrongful Acts (“**the ILC Commentary**”).<sup>50</sup>
24. The ILC Commentary does not, however, concern the requirements of a “dispute” for the purposes of a compromissory clause such as Article IX of the Genocide Convention. In fact, it specifically states that “[t]he present articles are not concerned with questions of the jurisdiction of international courts and tribunals, or in general with the conditions for the admissibility of cases brought before such courts or tribunals”.<sup>51</sup> The Court has found the ILC Commentary to be irrelevant in the context of determining whether a dispute exists, including specifically with reference to the passage on the notice requirement cited by the Russian Federation.<sup>52</sup> Rather, the Court has repeatedly held

---

<sup>47</sup> *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 1998, p. 9 at p. 19, para. 27.

<sup>48</sup> *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 1998, p. 9 at pp. 21–22, para. 29.

<sup>49</sup> Preliminary Objections, para. 95.

<sup>50</sup> Preliminary Objections, paras. 96–97, quoting International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, in *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 117, para. (2), p. 119, para. (3).

<sup>51</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, in *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 120, para. (1).

<sup>52</sup> *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. 852, para. 45. See also Preliminary Objections, para. 97, quoting International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, in *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 119, para. (3).

that a State is not required to provide notice of its intention to file a case with the Court.<sup>53</sup>

25. More fundamentally, the Russian Federation's argument that an invocation of responsibility is required in order for a "dispute" to exist and thus as a precondition for a State seising the Court is incoherent. The first passage of the ILC Commentary quoted by the Russian Federation<sup>54</sup> identifies what an 'invocation of responsibility' is for the purposes of State responsibility. As quoted by the Russian Federation, one example of such an invocation is "the raising or presentation of a claim against another State or the commencement of proceedings before an international court or tribunal".<sup>55</sup> The Russian Federation's argument is that, in order to invoke another State's responsibility by bringing a claim before the Court, an applicant State must somehow have *already* invoked that State's responsibility. That is illogical. Moreover, the fact that "protest" and "informal diplomatic contacts" do not themselves amount to an invocation of responsibility<sup>56</sup> does not mean that they are incapable of giving rise to a "dispute" that would enable an invocation of responsibility by means of seising the Court to resolve the relevant claims. This is made clear by the text, quoted by the Russian Federation, that "informal diplomatic contacts" transform into an invocation of responsibility "once they involve specific claims by the State concerned, such as ... specific action such as the filing of an application before a competent international tribunal".<sup>57</sup>

## II. A DISPUTE RELATING TO THE INTERPRETATION, APPLICATION OR FULFILMENT OF THE GENOCIDE CONVENTION FALLS WITHIN ARTICLE IX OF THE CONVENTION IRRESPECTIVE OF WHETHER THERE EXISTS BETWEEN THE PARTIES, BASED ON THE

---

<sup>53</sup> *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. 849, para. 38 (citing *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections, Judgment, ICJ Reports 1998, p. 275 at p. 297, para. 39), p. 852, para. 45.

<sup>54</sup> Preliminary Objections, para. 96.

<sup>55</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, in *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 117, para. (2) (explaining that, in contrast, an invocation of responsibility will not arise merely through one State's informal protest).

<sup>56</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, in *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 117, para. (2).

<sup>57</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, in *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 117, para. (2).

SAME FACTS, A DISPUTE CONCERNING INTERNATIONAL LEGAL RIGHTS AND  
OBLIGATIONS EXTRINSIC TO THE GENOCIDE CONVENTION

26. Article IX confers on the Court jurisdiction over any dispute “relating to” the interpretation, application or fulfilment of the Genocide Convention. It is not a requirement that the facts giving rise to that dispute are relevant *only* to the parties’ rights and obligations under the Genocide Convention. The Court has consistently recognised that “[c]ertain acts may fall within the ambit of more than one instrument and a dispute relating to those acts may relate to the ‘interpretation or application’ of more than one treaty or other instrument”.<sup>58</sup> Similarly, the Court has held that “[o]ne situation may contain disputes which relate to more than one body of law and which are subject to different dispute settlement procedures”, including disputes involving the status of territories, outbreaks of armed conflict and alleged breaches of international humanitarian law and of human rights.<sup>59</sup> The Court has never, however, interpreted a compromissory clause as excluding disputes having such a multi-faceted character. Instead, it has affirmed that:

“The fact that a dispute before the Court forms part of a complex situation that includes various matters, however important, over which the States concerned hold opposite views, cannot lead the Court to decline to resolve that dispute, provided that the parties have recognized its jurisdiction to do so and the conditions for the exercise of its jurisdiction are otherwise met.”<sup>60</sup>

27. The fact that compromissory clauses such as Article IX of the Genocide Convention are construed in this way is important given that the Court has long recognised that “legal disputes between sovereign States by their very nature are likely to occur in political contexts, and often form only one element in a wider and long-standing political dispute between the States concerned”.<sup>61</sup> The fact that a dispute has political

---

<sup>58</sup> *Alleged Violations of the 1955 Treaty of Amity, Economic Relations and Consular Relations (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, ICJ Reports 2021, p. 9 at p. 27, para. 56.

<sup>59</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70, at pp. 85–86, para. 32. See also *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, Jurisdiction and Admissibility, Judgment, ICJ Reports 1988, p. 69, at pp. 91–92, para. 54.

<sup>60</sup> *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation: 32 States Intervening)*, Preliminary Objections, Judgment, ICJ Reports 2019, p. 558 at p. 576, para. 28.

<sup>61</sup> *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, ICJ Reports 1980, p. 3, at p. 20, para. 37. See also *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, ICJ Reports 2019, p. 7, at p. 23, para. 36; *Obligation to Negotiate*

elements or “has arisen in a broader context” does not put it beyond the Court’s jurisdiction.<sup>62</sup>

28. The Russian Federation has argued that Ukraine’s claim is outside the Court’s jurisdiction because it engages matters of international law beyond the Genocide Convention, including the recognition of entities as States under customary international law, Article 51 of the Charter of the United Nations and the customary international law right of self-defence. It claims that these are the “real issues at [the] heart of Ukraine’s claims”.<sup>63</sup> However, as a matter of construction of Article IX, a dispute concerning the interpretation, application or fulfilment of the Genocide Convention is within the Court’s jurisdiction, even if it also engages other international legal rights and obligations.

**III. ARTICLE IX CONFERS JURISDICTION OVER A CLAIM FOR A DECLARATION THAT THE APPLICANT STATE HAS COMPLIED WITH THE GENOCIDE CONVENTION WHERE THIS IS IN DISPUTE BETWEEN THE PARTIES**

29. As set out in the Declaration of Intervention, Article IX of the Genocide Convention confers on the Court jurisdiction to declare the applicant State’s compliance with the Convention, where this is a matter in dispute between the parties to a case.<sup>64</sup> In its Declaration of Intervention, the United Kingdom addressed some doubts cast on this proposition by Judges Gevorgian and Bennouna in their Declarations accompanying the Court’s Order on Provisional Measures in the present case.<sup>65</sup> As it set out:

- (a) Article IX confers jurisdiction over “[d]isputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention”. There is nothing in these terms that limits the Court’s jurisdiction

---

*Access to the Pacific Ocean (Bolivia v. Chile)*, Preliminary Objection, Judgment, ICJ Report 2015, p. 592 at p. 604, para. 32.

<sup>62</sup> *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Judgment, ICJ Reports 2020, p. 81, at pp. 100–101, para. 48.

<sup>63</sup> Preliminary Objections, para. 136.

<sup>64</sup> Declaration of Intervention, paras. 31–34.

<sup>65</sup> Declaration of Intervention, para. 32, citing *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Provisional Measures, Order of 16 March 2022, Declaration of Judge Gevorgian, para. 8, Declaration of Judge Bennouna, para. 2.



to cases where it is the applicant State accusing the respondent State of breaching its obligations under the Convention.

- (b) Given the broad meaning given to the term “dispute” under international law,<sup>66</sup> Article IX of the Genocide Convention is sufficiently broad to encompass a disagreement over the lawfulness of the conduct of an *applicant* State.
- (c) The inclusion of the word “fulfilment” in Article IX reinforces both: (i) the breadth of Article IX; and (ii) the view that the clause confers on the Court jurisdiction to issue a declaration that the applicant State is not responsible for a breach of its obligations under the Convention as alleged by the respondent State.
- (d) This construction is confirmed by the fact that Article IX expressly states that disputes shall be referred to the Court “at the request of *any of the parties* to the dispute” (emphasis added), as well as the fact that Article IX expressly encompasses disputes “relating to the responsibility of a State for genocide or any of the other acts enumerated in article III”. Where there is a dispute concerning whether a State bears responsibility for genocide or any violations of Article III, “any of the parties” to that dispute, including the State accused of breaching the Convention, has the right to submit the dispute to the Court.

30. In his Separate Opinion to the Court’s Order on Provisional Measures, Judge Robinson affirmed the Court’s jurisdiction to determine whether Ukraine (as the applicant State) had breached the Genocide Convention, stating:

“[T]here is nothing in doctrine or practice that precludes the Court from having jurisdiction to find that an applicant has not committed a breach of a treaty, where that applicant has requested the Court to make such a finding.”<sup>67</sup>

31. The United Kingdom supports this view of the scope of Article IX. In particular, it agrees that this construction is consistent with the Court’s practice. The Court’s general position is that, provided that “the two sides hold clearly opposite views concerning the question of the performance of non-performance of certain’ international

---

<sup>66</sup> See Section I above.

<sup>67</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Provisional Measures, Order of 16 March 2022, Separate Opinion of Judge Robinson, para. 16.

obligations”, then “[i]t does not matter which one of them advances a claim and which one opposes it”.<sup>68</sup> This established principle is reflected in the fact that there are multiple cases in which the Court has accepted jurisdiction over a claim for a finding that the applicant State has acted in accordance with its international obligations.

- (a) In *Rights of Nationals of the United States of America in Morocco*, France (the applicant State) sought a declaration that certain decrees within Morocco were in accordance with France’s legal obligations under conventions between itself and the United States.<sup>69</sup> The Court accepted jurisdiction over this claim.<sup>70</sup>
- (b) In *Lockerbie*, Libya sought declarations as to its own compliance with the Montreal Convention, and the Court accepted jurisdiction over this question given that it determined this was a matter in dispute between the parties.<sup>71</sup> This was in circumstances in which the compromissory clause in Article 14 of the Montreal Convention conferred jurisdiction over “[a]ny dispute ... concerning the interpretation or application of this Convention”, but did not have the additional textual indicators in Article IX of the Genocide Convention, including in particular the express indication that “any of the parties to the dispute” may seise the Court. Article IX of the Genocide Convention is thus even clearer that the Court has jurisdiction over claims for declarations of compliance by the applicant State.

32. The Russian Federation appears to accept that Article IX, properly construed, confers on the Court jurisdiction to determine Ukraine’s claim for a declaration that it has not violated the Genocide Convention, given that its only preliminary objection to the claim is characterised as one relating to admissibility.<sup>72</sup> However, it raises a number of points

---

<sup>68</sup> *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 3 at p. 26, para. 50, quoting *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, First Phase, Advisory Opinion, ICJ Reports 1950, p. 65 at p. 74.

<sup>69</sup> *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, Judgment, ICJ Reports 1952, p. 176 at p. 182.

<sup>70</sup> See dispositive paragraph at *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, Judgment, ICJ Reports 1952, p. 176 at p. 212.

<sup>71</sup> *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 1998, p. 9 at p. 14, paras. 13–14, pp. 30–31, para. 53.

<sup>72</sup> Preliminary Objections, paras. 274–288.

of construction which, if accepted, could also affect the Court's jurisdiction, and the United Kingdom thus addresses these matters of construction below.

33. *First*, the Russian Federation contends that “there is *no* textual basis in the Convention for the Court to entertain” Ukraine’s claim regarding its own compliance with the Genocide Convention.<sup>73</sup> It states that the question of “whether Ukraine did or did not breach the Convention” can “be considered only in the framework of an application brought *against* Ukraine, not *by* Ukraine”.<sup>74</sup> The United Kingdom disagrees with this proposition as a matter of construction, given: (i) the multiple textual indicators in Article IX supporting the Court’s jurisdiction over a claim by an applicant State for a declaration of its own compliance with the Genocide Convention where this is a matter in dispute, as addressed above;<sup>75</sup> and (ii) the practice of the Court (also addressed above<sup>76</sup>) resolving claims regarding the applicant State’s compliance with its international obligations. Given that Article IX permits “any of the parties” to a dispute concerning a State’s responsibility for genocide to seise the Court, such a claim cannot properly be characterised as “premature”, let alone as an attempt by Ukraine to “adjudicate its own responsibility”, as the Russian Federation asserts.<sup>77</sup>
34. *Second*, the Russian Federation is wrong to suggest that the possibility of a State seeking a declaration of its own compliance with an international treaty “is currently reserved for the [World Trade Organization (“WTO”)]” and is “not directly transposable to the Court”,<sup>78</sup> that there is an “absence of such *reverse compliance* claims in the Court’s jurisprudence”,<sup>79</sup> and that resolving such a claim would “not [be] in accordance with the practice of the Court”.<sup>80</sup> As set out above,<sup>81</sup> the Court has repeatedly construed its own jurisdiction as permitting it to resolve such claims. In any event, naturally, the fact that the WTO dispute settlement mechanisms allow for such claims does not provide any support for an argument that Article IX of the Genocide Convention excludes them.

---

<sup>73</sup> Preliminary Objections, para. 279 (emphasis in original).

<sup>74</sup> Preliminary Objections, para. 280.

<sup>75</sup> See para. 29 above.

<sup>76</sup> See para. 31 above.

<sup>77</sup> Preliminary Objections, paras. 280, 282.

<sup>78</sup> Preliminary Objections, para. 276.

<sup>79</sup> Preliminary Objections, para. 287 (emphasis in original).

<sup>80</sup> Preliminary Objections, para. 288.

<sup>81</sup> See para. 31 above.

35. *Third*, as set out above,<sup>82</sup> the fact that the Russian Federation has “not yet invoked the international responsibility of Ukraine for violations of the Convention”<sup>83</sup> is irrelevant to whether this dispute falls within Article IX and therefore the jurisdiction of the Court.
36. *Fourth*, the Russian Federation’s claim that “[r]equests of such a nature are extremely rare in inter-State dispute settlement”<sup>84</sup> is irrelevant to the construction of Article IX of the Genocide Convention.
37. *Fifth*, the Russian Federation repeatedly suggests that the Court is not empowered to exercise fact-finding powers, stating:
- (a) The Court “is tasked with settling legal disputes and not acting as a fact-finding body”;<sup>85</sup>
  - (b) The Court “is tasked with resolving legal disputes between States, not with assessing factual matters before a legal dispute has actually materialised”;<sup>86</sup>
  - (c) The case concerning *Rights of Nationals of the United States of America in Morocco*, over which the Court accepted jurisdiction, is distinguishable from the present case because “France asked the Court a question of purely legal nature that did not hinge upon the examination of evidence”.<sup>87</sup>
38. However, it is beyond doubt that Article IX confers on the Court jurisdiction to determine not only purely legal questions, but also to resolve disputes of a factual nature. Article IX expressly includes disputes concerning the “application” and “fulfilment” of the Genocide Convention. Disputes relating to the “application” of a Convention have been held to “include not only those relating to the question [of] whether the application of a particular clause has or has not been correct, but also those bearing upon the applicability of these articles, that is to say, upon any act or omission creating a situation contrary to the said articles”.<sup>88</sup> This obviously includes factual

---

<sup>82</sup> See paras. 22–25.

<sup>83</sup> Preliminary Objections, para. 275.

<sup>84</sup> Preliminary Objections, para. 275.

<sup>85</sup> Preliminary Objections, para. 277.

<sup>86</sup> Preliminary Objections, para. 286.

<sup>87</sup> Preliminary Objections, para. 287(a), citing *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, Judgment, ICJ Reports 1952, p. 176 at pp. 179–180.

<sup>88</sup> *Factory at Chorzów*, Jurisdiction, Judgment No. 8, 1927, PCIJ, Series A, No. 9, pp. 20–21. See also Dissenting Opinion of Judge Ehrlich, p. 39 (the term “application” refers to the process of “determining the consequences which the rule attaches”).

matters to be resolved through the examination of evidence. Further, the Court could hardly rule on the “fulfilment” of the Genocide Convention or a dispute “relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III” (both expressly included within Article IX) without exercising its ordinary fact-finding powers. Thus, the jurisdiction arising from Article IX plainly encompasses jurisdiction to resolve factual disputes, insofar as they relate to the application or fulfilment of the Genocide Convention. Indeed, the Court has previously exercised its jurisdiction under Article IX to carry out such fact-finding.<sup>89</sup>

39. *Sixth*, the Russian Federation suggests that there is some constraint on the Court’s jurisdiction under Article IX “while criminal investigations on the commission of the crime of genocide are ongoing”.<sup>90</sup> There is no basis for any such restriction in Article IX. Any party to a dispute concerning the interpretation, application or fulfilment of the Genocide Convention can submit the dispute to the Court — and the Court can exercise jurisdiction over it — irrespective of whether any State is carrying out separate investigations into an alleged commission of genocide.

**IV. ARTICLE IX OF THE GENOCIDE CONVENTION CONFERS ON THE COURT JURISDICTION *RATIONE MATERIAE* TO DETERMINE THE EXTENT TO WHICH ARTICLE I ALLOWS OR REQUIRES A CONTRACTING PARTY TO ENGAGE IN CERTAIN CONDUCT THAT MIGHT OTHERWISE BE UNLAWFUL UNDER INTERNATIONAL LAW**

40. In its Second Preliminary Objection, the Russian Federation contends that “Ukraine’s claims must be dismissed because the Court manifestly lacks jurisdiction *ratione materiae* under Article IX of the Convention”.<sup>91</sup> The thrust of Russia’s objection is that Ukraine has read into Articles I and IV of the Convention an “implicit obligation” to “act within the limits of international law” and that Ukraine suggests that the Convention contains “an additional implicit obligation not to ‘misapply’, ‘misuse’, or ‘abuse’ the Convention for the purpose of violating other rules of international law”.<sup>92</sup>

---

<sup>89</sup> See, e.g., *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; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, ICJ Reports 2015, p. 3.

<sup>90</sup> Preliminary Objections, paras. 277. See also para. 286 (the Court cannot exercise jurisdiction “while the competent authorities of the Russian Federation find themselves in ongoing criminal investigations”).

<sup>91</sup> Preliminary Objections, para. 138.

<sup>92</sup> Preliminary Objections, para. 142.

Accordingly, in the Russian Federation's view, Ukraine is engaged in "expanding the Court's jurisdiction under Article IX over matters that manifestly fall outside the subject-matter of the Convention".<sup>93</sup>

41. The construction of the Genocide Convention which the Russian Federation advances in its Second Preliminary Objection is flawed because Article IX confers jurisdiction over the question of the extent to which Article I allows or requires a Contracting Party to engage in certain conduct that might otherwise be unlawful under international law. The Court therefore has jurisdiction *ratione materiae* to determine whether the duty to punish genocide in Article I is subject to a constraint (or "implicit obligation") regarding the commission of acts otherwise contrary to international law, provided that this point of interpretation is in dispute between the parties. The same reasoning would apply to the duty to punish in Article IV.<sup>94</sup>
42. As a preliminary point, as set out in the Declaration of Intervention, Article IX of the Genocide Convention confers on the Court jurisdiction over the question of the extent to which the Convention requires Contracting Parties to act in good faith in ascertaining the existence or serious risk of genocide and in responding to any such genocide or serious risk of genocide.<sup>95</sup> As the Court has observed, the principle of good faith "obliges the Parties to apply [a treaty] in a reasonable way and in such a manner that its purpose can be realized".<sup>96</sup> A dispute concerning the "interpretation, application or fulfilment" of a provision, including a dispute as to whether the undertaking "to prevent and punish" genocide in Article I is to be construed as subject to such a good faith requirement, is a dispute within the jurisdiction conferred by Article IX.
43. Similarly, a dispute as to whether a Contracting Party has in fact acted in good faith in purporting to perform its undertaking under Article I, including in relation to ascertaining the existence or serious risk of genocide, and responding in accordance with its undertaking to prevent and punish genocide, is a dispute concerning "the

---

<sup>93</sup> Preliminary Objections, para. 141 (emphasis in original).

<sup>94</sup> Article IV was addressed by the United Kingdom in the Declaration of Intervention in the context of the merits: Declaration of Intervention, paras. 63–65.

<sup>95</sup> Declaration of Intervention, paras. 35–38.

<sup>96</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, ICJ Reports 1997, p. 7 at p. 79, para. 142.

interpretation, application or fulfilment” of Article I and falls within the scope of Article IX and the Court’s jurisdiction *ratione materiae*.<sup>97</sup>

44. Specifically in relation to the Second Preliminary Objection, the Russian Federation argues that “the Convention does not incorporate an indefinite scope of other rules of international law, including those in relation to the use of force, territorial integrity, self-determination and the recognition of States, through an alleged implicit obligation to ‘act within the limits of international law’”.<sup>98</sup> Although it is a matter for the merits, the United Kingdom’s position (as expressed in the Declaration of Intervention<sup>99</sup>) is that Article I, properly construed, does not authorise acts purportedly taken to “prevent” genocide which would entail breaches of the rules prohibiting aggression, war crimes or crimes against humanity.<sup>100</sup> That Article I of the Genocide Convention does not authorise such conduct is consistent with the object and purpose of the Convention being to prevent a “crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world”,<sup>101</sup> as set out in the first preambular paragraph of the Convention. Accordingly, the “scope” of other rules of international law said to impliedly constrain conduct permitted by Article I is not “indefinite”, as the Russian Federation portrays the argument. In any event, under Article IX of the Genocide Convention, all that is relevant at the present preliminary stage is whether there is a dispute between the parties that is capable of falling within the scope of the Convention because it concerns the Convention’s interpretation, application or fulfilment.<sup>102</sup> In this case and at this stage, there *is* a dispute as to the extent to which such other rules of international law are relevant to the interpretation

---

<sup>97</sup> Declaration of Intervention, para. 37.

<sup>98</sup> Preliminary Objections, para. 215.

<sup>99</sup> Declaration of Intervention, paras. 59–62.

<sup>100</sup> This is consistent with the Court’s statement that, in the performance of obligations under Article I of the Genocide Convention, “it is clear that every State may only act within the limits permitted by international law”: *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. 221, para. 430.

<sup>101</sup> See also *Reservations to the Convention on Genocide*, Advisory Opinion, ICJ Reports 1951, p. 15 at p. 23 (“The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality”).

<sup>102</sup> *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, ICJ Reports 2018, p. 272 at p. 315, para. 69; *Oil Platforms (Iran v. United States of America)*, Preliminary Objections, Judgment, ICJ Reports 1996, p. 803 at p. 820, para. 51.

and application of Article I as an implied constraint on the conduct of States permitted by that provision.

45. At this stage, in order to confirm its jurisdiction *ratione materiae*, the Court need only determine that there is a dispute between the parties as to the *existence* of the relevant implied constraint within Article I of the Genocide Convention. Whether such a constraint exists as a matter of the correct interpretation and application of Article I or IV is a matter for the merits phase.

#### CONCLUSION

46. For the reasons set out above, the construction of the Genocide Convention for which the United Kingdom contends is as follows:
- (a) The term “dispute” in Article IX of the Genocide Convention is to be given the broad meaning normally given to it under international law;
  - (b) A dispute relating to the interpretation, application or fulfilment of the Genocide Convention falls within Article IX of the Convention irrespective of whether there exists between the parties, based on the same facts, a dispute concerning international legal rights and obligations extrinsic to the Genocide Convention;
  - (c) Article IX confers jurisdiction over a claim for a declaration that the applicant State has complied with the Genocide Convention where this is in dispute between the parties; and
  - (d) Article IX of the Genocide Convention confers on the Court jurisdiction *ratione materiae* to determine the extent to which Article I allows or requires a Contracting Party to engage in certain conduct that might otherwise be unlawful under international law.



X Sally Langrish X

Sally Langrish  
AGENT OF THE UNITED KINGDOM OF GREAT  
BRITAIN AND NORTHERN IRELAND

X Paul McKell X

Paul McKell  
CO-AGENT OF THE UNITED KINGDOM OF GREAT  
BRITAIN AND NORTHERN IRELAND