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INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING ALLEGATIONS OF GENOCIDE UNDER THE CONVENTION
ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE
(UKRAINE v. RUSSIAN FEDERATION: 32 STATES INTERVENING)**

**WRITTEN OBSERVATIONS OF THE FRENCH REPUBLIC,
PURSUANT TO ARTICLE 63 OF THE STATUTE OF THE COURT**

5 July 2023

[Translation by the Registry]

PRELIMINARY OBSERVATIONS

1. These written observations are submitted to the International Court of Justice (hereinafter “the Court” or “the ICJ”) in accordance with its Order of 5 June 2023 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. In that Order, the Court decided that the declaration of intervention filed by France under Article 63, paragraph 2, of its Statute was admissible 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 (hereinafter “the Genocide Convention” or “the Convention”) that are relevant for the determination of the jurisdiction of the Court.

3. The Court fixed 5 July 2023 as the time-limit for the filing of the written observations referred to in Article 86, paragraph 1, of the Rules of Court¹.

4. As it stated in its declaration of intervention, France is intervening as a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, whose interpretation is at issue in the present case.

5. According to the jurisprudence of the Court, intervention under Article 63 “is limited to submitting observations on the construction of the convention in question”². In keeping with the Order of 5 June 2023, France will therefore express its views only on those provisions which, at the preliminary objections stage, “have a bearing on the question of the jurisdiction of the Court”³.

6. Consequently, the present observations, which follow on from the declaration of intervention filed by France on 22 September 2022, will deal essentially with the interpretation of Article IX of the Convention, which is relied on as the basis for the jurisdiction of the Court in the case between Ukraine and Russia.

7. In its declaration of intervention, France gave a succinct account of its interpretation of Article IX of the Genocide Convention⁴. The purpose of these written observations is to develop the reasoning and arguments which lie behind that interpretation.

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.

² *Whaling in the Antarctic (Australia v. Japan)*, Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 9, para. 18.

³ *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. 63.

⁴ Declaration of Intervention of the French Republic in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, 12 Sept. 2022, paras. 25-32.

8. In this respect, and as the Court has stated, “the joint presentation of shared views can advance the good administration of justice”⁵. France wishes to emphasize the close co-ordination — in which it has played a full part — that has taken place to this end between all the Member States of the European Union participating in these proceedings.

INTERPRETATION OF ARTICLE IX OF THE GENOCIDE CONVENTION

9. 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.”

10. France interprets Article IX by relying on the customary rules of treaty interpretation, as reflected in Articles 31 to 33 of the 1969 Vienna Convention on the Law of Treaties⁶. In this regard, France recalls the importance of the principle of good faith, which governs the obligation to perform treaties codified in Article 26 of the Vienna Convention on the Law of Treaties and forms the starting-point for the general rule of treaty interpretation set forth in Article 31⁷.

11. The interpretation of Article IX must make it possible to determine which categories of disputes are capable of being submitted to the Court. However, the “unique”⁸ wording of Article 9 contains a number of specific features which have the effect of broadening its scope. The purpose of the present observations will therefore be to examine these in turn.

I. A “dispute”

12. According to established jurisprudence, the notion of a dispute must be understood as “a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons”⁹. For a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other”¹⁰. As the Court has observed, in order for a dispute to be established, “[t]he two sides must hold clearly opposite views concerning the question of the performance or non-performance of

⁵ *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. 88.

⁶ *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004 (I), p. 48, para. 83; *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 502, para. 101; *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996 (II), p. 812, para. 23; *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, I.C.J. Reports 1994, pp. 21-22, para. 41; *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, Judgment, I.C.J. Reports 1991, p. 70, para. 48.

⁷ See below.

⁸ Declaration of Judge Oda, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections, Judgment, I.C.J. Reports 1996 (II), p. 627, para. 5.

⁹ *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, I.C.J. Reports 1962, p. 328.

certain international obligations”¹¹. In this regard, “[i]t does not matter which one of them advances a claim and which one opposes it”¹².

13. Moreover, and again according to its settled jurisprudence, it is for the Court “to determine on an objective basis the subject-matter of the dispute between the parties”¹³. It thus considers that

“in order to determine its jurisdiction *ratione materiae* under a compromissory clause . . . [i]t must ascertain whether the acts of which the applicant complains fall within the provisions of the treaty containing the compromissory clause. This may require the interpretation of the provisions that define the scope of the treaty”¹⁴.

14. Hence, under the jurisprudence of the Court, it would appear necessary, in order to ascertain the true scope of Article IX, to interpret each of its terms, having regard to the provisions of the 1948 Convention as a whole and in the light of its object and purpose.

II. “Between the Contracting Parties”

15. The wording of Article IX imposes only two conditions for seising the Court: the dispute must be between “the Contracting Parties” and submitted “at the request of any of the parties to the dispute”. In this respect, the Court has observed that:

“This phrase clarifies that only a party to the dispute may bring it before the Court, but it does not indicate that such a dispute may only arise between a State party allegedly violating the Convention and a State ‘specially affected’ by such an alleged violation”¹⁵.

16. The terms of Article IX thus imply no restriction as to the configuration of the dispute. In particular, they do not require the applicant to be the State alleging the existence of a genocide attributable to another State party, whose responsibility it seeks to engage. The expression “at the request of any of the parties to the dispute” in no way prejudices the position of either party to the dispute before the Court, whether applicant or respondent.

17. Furthermore, there is nothing in Article IX to prevent an applicant State from asking the Court to find that it has not itself breached its obligations under the Convention, contrary to what the other party to the dispute is alleging. Indeed, “there is nothing in doctrine or practice that precludes

¹¹ *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. 63.

¹² *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 26, para. 50.

¹³ *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)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, p. 575, para. 24.

¹⁴ *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2021, pp. 31-32, para. 75.

¹⁵ *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. 111.

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”¹⁶.

18. It has already happened, moreover, that a State seising the Court has asked it to record a finding that, as the applicant, it has not violated its own international obligations¹⁷.

III. “Relating to . . . the present Convention”

19. According to Article IX, the Court may be seised of all disputes “relating to . . . the present Convention, including those relating to the responsibility of a State for genocide”. The general nature of this wording, in particular the term “relating to”, calls for a number of comments.

20. The form of words in Article IX does not limit the disputes that can be settled by the Court to those involving the violation of certain provisions of the Convention or the commission of certain predetermined acts. This means that a dispute can involve any obligation or any right deriving, for the parties, from the Convention as a whole.

21. This concept emerges clearly from the jurisprudence of the Court. In its Judgment of 3 February 2015 in the case between Croatia and Serbia, the Court found that its jurisdiction was established on the basis of Article IX where the dispute is one “concerning the interpretation, application or fulfilment of the Convention”, and that it must “concern obligations under the Convention itself”¹⁸.

22. On this point, it should be noted that, since the obligation at issue need only *follow* from the Convention, it cannot be expressly formulated¹⁹. The Court has recalled that it “does not consider that a specific reference to a treaty or to its provisions is required” in order to found its jurisdiction under the said treaty²⁰.

23. Hence the dispute, under the terms of Article IX, may concern an obligation or a right inferred from the Convention, and need not necessarily have its origin in the commission of genocide or genocidal acts, for example²¹. As the Court points out:

¹⁶ Declaration of Judge Robinson, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of 16 March 2022, para. 16.

¹⁷ *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, Judgment, I.C.J. Reports 1952; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Application instituting proceedings of 3 Mar. 1992.

¹⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015 (I), p. 55, para. 111, and p. 48, para. 89 (emphasis added).

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, p. 113, para. 166.

²⁰ *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. 72; *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. 85, para. 30.

²¹ Declaration of Judge Oda, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections, Judgment, I.C.J. Reports 1996 (II), p. 629, para. 8.

“The word ‘including’ tends to confirm that disputes relating to the responsibility of Contracting Parties for genocide, and the other acts enumerated in Article III to which it refers, are comprised within a *broader group of disputes* relating to the interpretation, application or fulfilment of the Convention.”²²

24. Moreover, with regard to responsibility, i.e. in the case of unlawful conduct attributable to a State party, the Court has already had occasion to make clear that Article IX “does not exclude any form of State responsibility”²³. That statement is perfectly in accordance with the wording of Article IX, which not only contains no exclusions, but makes the point that it includes all disputes “relating to the responsibility of a State for genocide”. The French version of the text should be taken into account here, as the expression “*en matière de génocide*” is broad enough to cover both commission and non-commission, as well as the accompanying obligations.

25. Indeed, since Article IX states that the Court can be seised of all disputes “relating to . . . the present Convention”, the fact that certain actions or omissions at the origin of the dispute could be characterized differently in legal terms, and possibly fall within the scope of instruments other than the 1948 Convention, has no bearing on the application of this provision. As the Court has stated, “[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”²⁴.

IV. “The interpretation, application or fulfilment” of the Genocide Convention

26. Article IX provides, in the usual manner, for the Court to have jurisdiction over disputes relating to the interpretation of the Convention. Consequently, a dispute regarding the interpretation, in other words the meaning, of one or other of the Convention’s articles, including Article IX itself, is likely to fall within the scope of this clause.

27. In its Judgment of 11 July 1996 on the preliminary objections in the case between Bosnia and Herzegovina and the Federal Republic of Yugoslavia, founded on the Convention, the Court observed that the parties not only differed on the applicability of the Convention, but also “with respect to the meaning and legal scope of several of [its] provisions, including Article IX”²⁵. It thus concluded that a dispute existed between them, as was confirmed in its 2007 Judgment on the merits²⁶. A disagreement between two parties as to the categories of disputes which might fall within the scope of Article IX therefore comes under the Court’s jurisdiction.

²² *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, p. 114, para. 169 (emphasis added).

²³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections, Judgment, I.C.J. Reports 1996 (II), p. 616, para. 32.

²⁴ *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 27, para 56.

²⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections, Judgment, I.C.J. Reports 1996 (II), p. 616, para. 33.

²⁶ *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, p. 107, para. 152.

28. Moreover, there are certain unusual features in the wording of Article IX by comparison with the traditional provisions for settling disputes between the States parties to a treaty²⁷.

29. While compromissory clauses usually refer to disputes relating to “the interpretation and application” of a convention, the one contained in the 1948 Convention also employs the term “fulfilment”, which undoubtedly serves to broaden the scope of Article IX.

30. Indeed, the word “fulfilment” must be considered as “a particular form of application, directed towards compliance in practice with the obligations laid down by the text or assumed in the light of the object and purpose of the treaty”²⁸. In the context of the *travaux préparatoires* of the 1948 Convention, which can be taken as a supplementary means of interpretation within the meaning of Article 32 of the Vienna Convention on the Law of Treaties, the — belated — addition of this term was unquestionably intended to widen the scope of the Court’s jurisdiction. As one author has pointed out:

“the word ‘fulfillment’ was evidently inserted to suggest that the ICJ could also resolve disputes relating to the matter of compliance or non-compliance with the terms of the Convention. This latter provision is especially important in view of the fact that the word ‘fulfillment’ is followed by the clause relating to state responsibility for genocide”²⁹.

31. Such a reading can find support in the discussions of the Sixth Committee, when the amendment was introduced and the word “fulfilment” added to the text of the compromissory clause in the 1948 Convention:

“the word ‘application’ include[s] the study of circumstances in which the convention should or should not apply, while the word ‘fulfilment’ refer[s] to the compliance or non-compliance of a party with the provisions of the convention. *The word ‘fulfilment’ therefore ha[s] a much wider meaning.*”³⁰

32. The addition of this term thus demonstrates that, with regard to the performance of the 1948 Convention, particular attention was given more broadly to the obligations deriving from the principle of *pacta sunt servanda*. These include, in particular, the obligation to perform treaties in good faith.

²⁷ *Ibid.*, p. 114, para. 168.

²⁸ R. Kolb, *La Cour internationale de Justice*, Paris, Pedone, 2013, p. 450 [translation by the Registry]. On these lines, see also C. Tams, L. Berster and B. Schiffbauer, *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary*, Munich/Oxford/Baden-Baden, Beck/Hart/Nomos, 2014, p. 313.

²⁹ L. J. LeBlanc, “The ICJ, The Genocide Convention, and the United States”, *Wisconsin International Law Journal*, Vol. 6, No. 1, 1987, p. 50.

³⁰ Statement of India, A/C.6/SR.103, 12 Nov. 1948, p. 437 (emphasis added).

33. As “a well-established principle of international law”³¹, good faith requires that a text be interpreted, with a view to its performance, “in the light of its object and purpose”³². Those of the Genocide Convention were made clear by the Court in 1951:

“The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as ‘a crime under international law’ involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations . . . 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.”³³

34. Although customary in origin, the obligation to perform the treaty in good faith is necessarily incorporated within it and must be taken into account in any dispute relating to it. In the same way as the rules of interpretation and those of the law of responsibility, the obligation of good faith is indissociable from the treaty whose performance is being examined³⁴.

35. In its Judgment of 25 September 1997 in the case concerning the *Gabčíkovo-Nagymaros Project*, the Court presented the legal effect of good faith in terms of the performance of any treaty as follows:

“Article 26 combines two elements, which are of equal importance. It provides that ‘Every treaty in force is binding upon the parties to it and must be performed by them in good faith.’ This latter element, in the Court’s view, implies that, in this case, it is the purpose of the Treaty, and the intentions of the parties in concluding it, which should prevail over its literal application. The principle of good faith obliges the Parties to apply it in a reasonable way and in such a manner that its purpose can be realized.”³⁵

36. Applied to this treaty, good faith thus provides a “guarantee against any risk of misuse of rights”³⁶ which might lead to a manifestly unreasonable outcome in the light of its “special”³⁷ object and purpose, thereby maintaining the integrity of the Convention.

³¹ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 296, para. 38; *Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974*, p. 268, para. 46.

³² Vienna Convention on the Law of Treaties, Art. 31, para. 1.

³³ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

³⁴ On interpretation and responsibility, see *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*, p. 105, para. 149.

³⁵ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, pp. 78-79, para. 142.

³⁶ *Case concerning filleting within the Gulf of St. Lawrence between Canada and France*, Decision of 17 July 1986, *Reports of International Arbitral Awards*, Vol. XIX, p. 242, para. 27 [translation by the Registry].

³⁷ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

37. Such is the case when the Convention is made use of by a State party for manifestly improper purposes, in order to justify an action that would otherwise be contrary to international law. Article IX thus applies when a dispute arises from the fact that one State party is claimed to be making allegations of genocide against another which are either false or without foundation.

38. Since allegations of such a kind concern the way in which a State party is fulfilling its obligation to prevent and punish genocide, as laid down in Article I of the Convention, the dispute is logically among those for which the jurisdiction of the Court can be established *ratione materiae*, within the meaning of Article IX.

39. The fact is that the obligation of prevention laid down in Article I of the Convention also encompasses a duty to refrain from making use of the Convention in a way that is manifestly incompatible with the principle of good faith. If no such duty were to exist, the Convention could be used improperly, and thus interpreted and fulfilled in a way that contradicts its object and purpose. It would prejudice the very integrity of the Convention if the obligation of prevention laid down in Article I could be misused, in bad faith, in order to justify unilateral measures based on allegations that are false or without foundation.

40. As the Court observed in 2007, genocide or genocidal acts “must occur for there to be a violation of the obligation to prevent”³⁸. Consequently, the obligation of prevention, and the measures adopted to that effect, can only be performed by States parties if they have learned of “the existence of a serious risk that genocide will be committed”, the burden of proving which falls on the party alleging it. Failing a serious risk of genocide, a State party cannot reasonably act on the basis of the Convention without disregarding its terms and, more generally, the principle of good faith.

41. This conclusion applies *a fortiori* since Article VIII of the Convention allows States parties wishing to perform, in good faith, the obligation set forth in Article I to “call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III”.

42. Ultimately, good faith governs both the application and the fulfilment of the 1948 Convention. A dispute over an interpretation, application or fulfilment of any provision of the Convention which is claimed to be improper and tendentious — and therefore incompatible with good faith — consequently falls within the scope of Article IX.

CONCLUSION

43. In accordance with Article 63 of the Statute of the Court, the purpose of the present written observations is to set out France’s views on the interpretation of Article IX of the Genocide Convention, at issue in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*. These written pleadings, submitted at the preliminary objections stage, are without prejudice to the subsequent observations of France in the future phases of the proceedings.

³⁸ *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, p. 222, para. 431.

44. These written observations emphasize that an interpretation of Article IX in good faith, taking account of the object and purpose of the 1948 Convention and of its *travaux préparatoires*, demonstrates that the Court is able to deal with a wide variety of disputes regarding the Convention. Full effect should therefore be given to Article IX. In stating that the Court has jurisdiction over all disputes “relating to” the Genocide Convention as a whole, Article IX sets no limit on the types of disputes that can be submitted to the Court, provided they concern the 1948 Convention.

45. Moreover, by including within its scope disputes relating to the “fulfilment” of the Convention, Article IX underlines the importance of the obligations deriving from the principle of *pacta sunt servanda*, notably that of performing treaties in good faith.
