

INTERNATIONAL COURT OF JUSTICE

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

(UKRAINE V. RUSSIAN FEDERATION)

WRITTEN OBSERVATIONS OF THE REPUBLIC OF POLAND ON
ARTICLE IX AND OTHER PROVISIONS OF THE CONVENTION ON
THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE
RELEVANT TO THE DETERMINATION OF THE COURT'S JURISDICTION

(ARTICLE 86, PARAGRAPH 1, OF THE RULES OF COURT)

5 JULY 2023

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Written observations of the Republic of Poland

Section I: Introduction

1. These Written Observations are submitted to the Court in accordance with its Order of 5 June 2023 relating to the interventions submitted by Australia, the Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, Canada and the Kingdom of the Netherlands, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Republic of Finland, the French Republic, the Federal Republic of Germany, the Hellenic Republic, Ireland, the Italian Republic, the Republic of Latvia, the Principality of Liechtenstein, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Malta, New Zealand, the Kingdom of Norway, the Republic of Poland, the Portuguese Republic, Romania, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, and the United States of America pursuant to Article 63 of the Statute of the Court in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*¹. In that Order, the Court decided that the Declaration of Intervention filed by the Republic of Poland pursuant to Article 63, paragraph 2, of the Statute was admissible, and fixed the time limit for filing these Written Observations, as provided for in Article 86, paragraph 1, of the Rules of the Court ("the Rules")².
2. The Republic of Poland intervenes in its capacity as a party to the Convention on the Prevention and Punishment of the Crime of Genocide ("Convention"). These Written Observations present to the Court the Republic of Poland's views on construction of Article IX and other provisions of the Convention that are relevant to the determination of the Court's jurisdiction. In accordance with the Order of the Court, the Republic of Poland's intervention does not deal with any other aspect of the case before the Court.

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

² *Ibid.*, paragraph 102.

References to other rules and principles of international law outside the Convention in the written observations will only concern the construction of the Convention's provisions, in accordance with the customary rule of interpretation reflected in Article 31, paragraph 3 (c), of the Vienna Convention on the Law of Treaties ("Vienna Convention")³. The Republic of Poland will not address other matters, such as the existence of a dispute between the Parties, the evidence, the facts, or the application of the Genocide Convention in the present case⁴.

3. In response to the Court's invitation to coordinate with other intervening States, the Republic of Poland has reached a large substantive convergence with the position of other interveners, which are Member States of the European Union.
4. As outlined in its Declaration of Intervention, the Republic of Poland⁵ provided the following summary of the proper construction of Article IX of the Convention:
 - a. Article IX of the Convention, which is a compromissory clause, is a broad formulation that does not contain any specific restrictions;
 - b. The ordinary meaning of Article IX of the Convention makes it clear that there is no need to establish genocidal acts as a basis to affirm the Court's jurisdiction;
 - c. The object and purpose of the Convention give further support to a broad interpretation of its Article IX;
 - d. Article IX of the Convention grants the Court jurisdiction to declare the absence of genocide;
 - e. Article IX of the Convention grants the Court jurisdiction over disputes concerning the unilateral use of military force for the stated purpose of preventing and punishing alleged genocide.

³ *Ibid.*, para. 84.

⁴ *Ibid.*, para. 84.

⁵ Declaration Of Intervention Under Article 63 Of The Statute Of The Court Submitted By The Republic Of Poland, 15 September 2022.

5. An outline of the interpretation of the Convention in these five respects was provided in the Republic of Poland's Declaration of Intervention. These Written Observations further elaborate on the reasoning and authority of this interpretation.

A: Outline of Written Observations

6. Section I of these Written Observations provides an introduction, including a summary of the principles that guide the interpretation of Article IX of the Convention.
7. Section II addresses the proper construction of Article IX of the Convention.
8. Based on the foregoing analysis, Section III presents the conclusions.

B: Principles of Interpretation

9. The interpretation of the Convention, as an international agreement, is governed by the provisions of Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties ("Vienna Convention")⁶. These provisions, as indicated by the Court on numerous occasions, reflect customary law and can be applied also to treaties concluded before the Vienna Convention's date of adoption. This was also the practice of the Court⁷.
10. Article 31 of the Vienna Convention provides as the general rule of interpretation that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". The "context" includes the text and structure of the whole treaty, including its preamble and any annexes⁸. The "object and purpose" may emerge from a consideration of the treaty's aims as may be reflected, for example, in its scheme and preamble⁹.

⁶ Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, 1155 UNTS 331 (entered into force on 27 January 1980) ("Vienna Convention"). Ukraine acceded to the Vienna Convention on 14 May 1986; the Russian Federation acceded on 29 April 1986.

⁷ *Kasikili/Sedudu Island (Botswana/Namibia)*, *I.C.J. Reports 1999*, p.18.

⁸ See, for example, *Application of the Interim Accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia v Greece)*, Judgment of 5 December 2011, paragraphs 97 and 98.

⁹ See, for example, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, *I.C.J. Reports 1996*, p. 803 at p. 813 (paragraph 27).

11. Such interpretation must also consider the subsequent practice of the parties to the treaty (Article 31(3)(a) and (b) of the Vienna Convention) and may also be confirmed by reference to supplementary means of interpretation (Article 32 of the Vienna Convention). This Court has frequently examined the supplementary means of interpretation for confirmation when it has found that useful in conjunction with the general rule¹⁰.
12. An interpreter must also take into account any relevant rules of international law applicable in the relations between the parties, including any developments in those rules since the adoption of the treaty (Article 31(3)(c) of the Vienna Convention). Furthermore, the principle of good faith requires a party to apply a treaty provision "in a reasonable way and in such a manner that its purpose can be realised"¹¹.

Section II: The proper construction of Article IX

13. Article IX of the Genocide Convention provides that:

“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.”

14. In its order indicating provisional measures of 16 March 2022, the Court affirmed its jurisdiction *prima facie* on the basis of Article IX of the Genocide Convention¹².

¹⁰ See, for example: Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, *I.C.J. Reports 1994*, p. 6 at p. 27 (paragraph 55); Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russia), Preliminary Objections, Judgment of 1 April 2011, at paragraph 142.

¹¹ Gabcikovo-Nagymaros Project (Hungary/Slovakia), Judgment of 25 September 1997, *I.C.J. Reports 1997*, p.7 at p. 79 (paragraph 142).

¹² 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, paras. 28-49.

A: Notion of dispute

15. The Republic of Poland contends that the notion of a “dispute” is already well-established in the case law of the Court and supports the current interpretation. Accordingly, it concurs with the meaning given to the word “dispute” as “a disagreement on a point of law or fact, a conflict of legal views or of interests” between parties.¹³ In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other”¹⁴. The two sides must “hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations”¹⁵.
16. It follows from the jurisprudence of the Court that “it is not necessary that a State must expressly refer to a specific treaty in its exchanges with the other State to enable it later to invoke that instrument before the Court . . . the exchanges must refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to identify that there is, or may be, a dispute with regard to that subject-matter”¹⁶.
17. The Court has previously confirmed that the “conduct of the parties may also be relevant” to the assessment of whether or not a dispute exists, “especially when there have been no diplomatic exchanges”¹⁷.
18. Furthermore, the conclusion that the parties hold clearly opposite views concerning the performance or non-performance of legal obligations does not require that the respondent must expressly oppose the claims of the applicant¹⁸: “in case the respondent has failed to reply to the applicant’s claims, it may be inferred from this silence, in certain

¹³ *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, *P.C.I.J.*, Series A, No. 2, p. 11.

¹⁴ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment of 21 December 1962, *I.C.J. Reports 1962*, p. 319, at p. 328.

¹⁵ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, *I.C.J. Reports 2018*, p. 406, at p. 414, para. 18; ICJ, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, *I.C.J. Reports 2016*, p. 3, at p. 26, para. 50, citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion*, *I.C.J. Reports 1950*, p. 74.

¹⁶ *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.

¹⁷ *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, *I.C.J. Reports 2016*, p. 850, para. 40.

¹⁸ *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, paras. 71.

circumstances, that it rejects those claims and that, therefore, a dispute exists”¹⁹. As it was observed: “[e]gregious conduct can create a dispute *ipso facto*, without the need for a letter before action or other communication”²⁰. This would be in line with the Court’s pronouncement that the “conduct of the parties subsequent to the application may be relevant for various purposes, in particular to confirm the existence of a dispute”²¹.

19. Finally, the fact that certain conduct may give rise to a dispute that falls within the ambit of more than one treaty does not create an obstacle to the jurisdiction of the Court under the treaty invoked by the Applicant, provided that all conditions of the treaty in question are fulfilled²².

**B: Article IX of the Convention is formulated in broad terms
and covers disputes over "fulfilment"**

20. In the Bosnian Genocide case, the Court noted the “one unusual feature” of Article IX distinguishing it from “a standard dispute settlement provision” is that the Court’s jurisdiction “includ[es] those disputes relating to the responsibility of a State for genocide”²³. That term must be understood to add something to this Court’s jurisdiction, consistent with the principle that each term of a treaty should be given effect and not rendered superfluous²⁴. It appears that ‘by inserting all the three alternative terms, drafters had sought to ‘give a coverage as exhaustive as possible to the compromissory

¹⁹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Judgment of 22 July 2022, p. 27, para. 71.

²⁰ Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment, *I.C.J. Reports 2016*, Dissenting Opinion of Judge Crawford, p. 1100, para. 17.

²¹ 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. 64.

²² 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 of 3 February 2021, para. 56.

²³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, *I.C.J. Reports 2007*, p. 114, paras. 168–169; Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, *I.C.J. Reports 2006*, Joint Separate Opinion of Judges Higgins, Kooijmans, Elaraby, Owada, and Simma, p. 72, para. 28; 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, Declaration of Judge Oda, *I.C.J. Reports 1996 (II)*, p. 627, para. 5.

²⁴ See 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*, pp. 125–126, paras. 133–134.

clause' and to "close down all possible loopholes"²⁵ weakening the jurisdictional reach of the Court.

21. The *travaux préparatoires* confirm the added breadth intended by the word "fulfilment". The purpose pursued in 1948 was to grant the Court a jurisdiction as wide as possible during the life of the Convention, forestalling all the potential subtle arguments denying jurisdiction on account of an insufficient link with that Convention²⁶.
22. The ordinary meaning of the phrase "relating to the interpretation, application or fulfilment of the Convention" may be divided in three sub-categories.
23. The first point ("relating to") establishes a link between the dispute and the Convention.
24. The second point ("interpretation, application or fulfilment of the Convention") encompasses three terms. While interpretation is typically understood as the process of 'explaining the meaning' of a legal norm, "application" is the 'action of putting something into operation' in a given case.²⁷ The term "fulfilment" partially overlaps with the term "application", and it may be understood to refer to an application that "meets the requirements" of a norm²⁸. Nevertheless, the addition of the term "fulfilment" supports a broad interpretation of Article IX.
25. The third point ("of the Convention") makes it clear that the compromissory clause refers back to all the Convention's provisions. In other words, Article IX does not create further substantive rights or obligations for the parties; the substantive legal norms that are subject to the Court's jurisdiction must be found elsewhere in the Convention. At the

²⁵ C. Tams, Article IX, note 45, in: Tams/Gerster/Schiffbauer, *Convention on the Prevention and Punishment of Genocide: A Commentary* (London: Beck/Hart, 2014).

²⁶ R. Kolb, "The Scope Ratione Materiae of the Compulsory Jurisdiction of the ICJ", in Paola Gaeta, ed., *The UN Genocide Convention: A Commentary* (Oxford, New York: Oxford University Press 2009), p. 453.

²⁷ C. Tams, Article IX, note 45, in: Tams/Gerster/Schiffbauer, *Convention on the Prevention and Punishment of Genocide, A Commentary* (London: Beck/Hart, 2014).

²⁸ *Ibid.*

same time, the *renvoi* relates to the entire life of the Convention, including breaches thereof²⁹.

26. For example, there can be a dispute about the interpretation, application, or fulfilment of the Convention when one State alleges that another State has committed genocide³⁰. In that scenario, the Court verifies the factual basis for such an allegation. If it is not satisfied that any acts of genocide were actually committed by the respondent State, it may decline its jurisdiction³¹.

27. While this scenario of (alleged) responsibility for acts of genocide constitutes an important type of dispute over the Convention's "interpretation, application or fulfilment", it is not the only one. In the case *Bosnia and Herzegovina v. Yugoslavia*, the applicant alleged several violations of the Convention by the respondent, including a failure to prevent and punish genocide under Article I³², and the Court affirmed its jurisdiction *ratione materiae*³³. In the case *The Gambia v. Myanmar* (pending), the applicant claimed that the respondent was not only responsible for prohibited acts under Article III, but that it was also breaching its obligations under the Convention by failing to prevent genocide in violation of Article I and failing to punish genocide in violation of Articles I, IV and V³⁴. In these examples, one State alleges that another State is not honouring its commitment to "prevent" and "punish" genocide, because it grants impunity to acts of genocide committed on its territory. Therefore, disputes can exist over "non-action" as a violation of the substantive obligations under Article I, IV and V.

²⁹ R. Kolb, "The Scope Ratione Materiae", (note 26), p. 453.

³⁰ 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. 43, at p. 75, para. 169.

³¹ Case Concerning Legality of Use of Force (*Yugoslavia v. France*), Provisional Measures, Order of 2 June 1999, *I.C.J. Reports 1999*, p. 363, at pp. 372-373, paras. 24-31. Later, the ICJ declined its jurisdiction on the ground that Serbia and Montenegro did not have access to the Court, at the time of the institution of the proceedings, under Article 35 of the Statute (see, e.g., ICJ, Case Concerning Legality of Use of Force (*Serbia and Montenegro v. France*), Preliminary Objections, Judgment of 15 December 2004, *I.C.J. Reports 2004*, p. 595).

³² Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Yugoslavia*), Preliminary Objections, Judgment of 11 July 1996, *I.C.J. Reports 1996*, p. 595, at p. 614, para. 28 and p. 603, para. 4.

³³ *Ibid.*, pp. 615-617, paras. 30-33.

³⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), Judgment of 22 July 2022, p. 12, para. 24, Points (1) (c), (d) and (e).

28. The ordinary meaning of Article IX of the Convention makes it clear that there is no need to establish genocidal acts as a basis to affirm the Court's jurisdiction. Article IX does not entail any limitations for reverse compliance judgments. Thus, where there is a dispute concerning whether a State has engaged in conduct contrary to the Convention, the State accused of such conduct has the same right to submit the dispute to the Court as the State that has made the accusation. As a result, the Court has jurisdiction over the question of whether genocidal acts have been or are being committed.³⁵
29. The context of the phrase ("relating to ...") further confirms this reading. In particular, the unusual feature of the words "including" in the intermediate sentence indicates a broader scope for Article IX of the Convention when compared to a standard compromissory clause³⁶. Disputes relating to a State's responsibility for genocide or for any of the other acts enumerated in Article III are therefore only one type of dispute covered by Article IX, "included" in the wider phrase concerning disputes "relating to the interpretation, application and fulfilment" of the Convention.
30. Hence, the context of the phrase ("relating to") in Article IX confirms that the Court's jurisdiction extends beyond disputes between States over responsibility for alleged genocidal acts and also covers disputes between States over the absence of genocide and the performance of treaty obligations by one or more State parties.
31. Such an approach is corroborated by the Convention's object and purpose. Its preamble reads:

"The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under

³⁵ 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, p. 10, para. 43; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Order of 23 January 2020, *I.C.J. Reports 2020*, p. 14, para. 30.

³⁶ Case Concerning 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. 43, at p. 75, para. 169.

international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,
Recognizing that at all periods of history genocide has inflicted great losses on humanity,
and
Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,
Hereby agree as hereinafter provided..."

32. The Court noted in 1951:

"The objects of such a convention must also be considered. 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. In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions"³⁷.

33. The Preamble's reference to "the spirit and aims of the United Nations" indicates the Convention's humanitarian object and purpose, which could be undermined by applying a narrow reading of its provisions.

³⁷ Reservations to the Convention on Genocide, Advisory Opinion, *I.C.J. Reports 1951*, p. 23.

34. It is to be noted that the Court considered the prohibition of genocide has the character of a peremptory norm (*jus cogens*).³⁸ This Court has also acknowledged that the rights and obligations enshrined in the Convention have an *erga omnes* character³⁹.
35. The importance of the issue regulated by the Convention makes reverse compliance interpretation of particular value as it can contribute to understanding the term genocide under the Convention and influence its appropriate future application.
36. At the most general level, taking into account the Convention's object and purpose, including the Court's pronouncements on this issue, the Republic of Poland wishes to stress that the exclusion of such types of disputes would run counter to the Convention's provisions, as well as to the humanitarian and civilizing purposes for which it was adopted.
37. To claim that the Convention does not govern the question of whether one State's allegations with respect to another State's violations of the Convention are valid would be a very formalistic reading of the Convention, which would go against its object and purpose. Moreover, such a reading would ignore systemic interpretation in accordance with article 31 (3) (c) of the Vienna Convention on the Law of Treaties. In this context it is worth noting Security Council Resolution 2150 (2014), which "Calls upon States to recommit to prevent and fight against genocide, and other serious crimes under international law"⁴⁰.

**C: Article IX of the Genocide Convention applies to disputes
about false and abusive allegations of genocide**

38. The Republic of Poland now wishes to examine more precisely one scenario of a dispute under Article IX, namely, a false and abusive allegation by one State that another State has committed genocide.

³⁸ Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, *I.C.J. Reports 2006*, pp. 31-32, para. 64).

³⁹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, Preliminary Objections, *I.C.J. Reports 1996*, p. 615, para. 31.

⁴⁰ Resolution 2150 (2014) Adopted by the Security Council at its 7155th meeting, 16 April 2014. Para 1; see also Resolution 2171 (2014) Adopted by the Security Council at its 7247th meeting, 21 August 2014, para 16.

39. In doing so, the Republic of Poland has carefully reviewed whether the Convention enables a State to seize the Court of a dispute concerning allegations of genocide made by another State⁴¹.

40. Republic of Poland contends that Article IX of the Genocide Convention applies also to disputes relating to false and abusive allegations of genocide, as they raise the question of compliance with Article I of the Convention, which provides context for the construction of Article IX. Article I reads:

“The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”

41. According to Article I of the Genocide Convention, all States Parties are obliged to prevent and punish genocide. As the Court already emphasised, in fulfilling their duty to prevent genocide, Contracting Parties must act within the limits permitted by international law⁴². Moreover, carrying out the obligation set forth under Article I must be done in good faith (Article 26 of the Vienna Convention⁴³). 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”⁴⁴. Good faith interpretation thus operates as a safeguard against misuse of the terms and institutions of the Genocide Convention. As “one of the basic principles governing the creation and performance of legal obligations”, good faith is also directly linked to the “trust and confidence [that] are inherent in international co-operation”⁴⁵.

⁴¹ For a discussion of this question, see, e.g., Order on Provisional Measures (n 9), Declaration of Judge Bennouna, para. 2.

⁴² Case Concerning 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. 43, at p. 221, para. 430; 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. 57.

⁴³ Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections, Judgment, *I.C.J. Reports 1998*, p. 275, 296, para. 38: “The Court observes that the principle of good faith is a well-established principle of international law. It is set forth in Article 2, paragraph 2, of the Charter of the United Nations; it is also embodied in Article 26 of the Vienna Convention on the Law of Treaties of 23 May 1969.”

⁴⁴ Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, *I.C.J. Reports 1997*, p. 7, at p. 79, para. 142.

⁴⁵ Nuclear Tests (Australia v. France), *I.C.J. Reports 1974*, p. 7, at p. 142.

42. In Republic of Poland's view, the notion of "undertake to prevent" implies that each State Party must assess whether genocide or a serious risk of genocide exists prior to taking action pursuant to Article I⁴⁶. Such an assessment must be based on substantial evidence⁴⁷.

43. Moreover, the Genocide Convention provides guidance concerning the lawful means by which the Contracting Parties may prevent and punish genocide. While "Article I does not specify the kinds of measures that a Contracting Party may take to fulfil this obligation",⁴⁸ "the Contracting Parties must implement this obligation in good faith, taking into account other parts of the Convention, in particular Articles VIII and IX, as well as its Preamble".⁴⁹ Rather than making false and abusive allegation of genocide against another State without having discharged its due diligence obligations, a State may refer the issue in question to the United Nations' political or judicial organs⁵⁰.

44. It follows that a false and abusive allegation by one State against another runs counter to the obligation to apply Article I of the Convention in good faith and thus distorts the terms of the Convention. Accordingly, Article IX also covers such disputes.

D: Article IX of the Genocide Convention applies to dispute about otherwise unlawful action as means for prevention and punishment of genocide

45. Another important scenario under Article IX of the Convention concerns disputes about otherwise unlawful actions as a means for the prevention and punishment of genocide. A State may not claim to enforce international law by violating international law. As the Court explained in *Bosnian Genocide*, "it is clear that every State may only act within the

⁴⁶ Case Concerning 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. 43, at pp. 221-222, paras. 430-431.

⁴⁷ Case Concerning 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. 43, at p. 90, para. 209.

⁴⁸ *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. 56.

⁴⁹ *Ibid.*

⁵⁰ *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, Separate Opinion of Judge Robinson, para. 30.

limits permitted by international law.”⁵¹. This passage appears in a section of the Court’s judgment in *Bosnian Genocide* discussing the obligation to prevent genocide under Article I of the Convention⁵². Thus: “Article I of the Convention imposes an obligation on Russia not only to act to prevent genocide, but to act within the limits permitted by international law to prevent genocide”⁵³.

46. The scope of the “undertaking to prevent” is further coloured by the final recital in the preamble, which emphasizes the need for “international co-operation”. Moreover, under Article VIII of the Convention, States may call upon the competent organs of the UN to take action, and Article IX of the Convention provides for judicial settlement. All this speaks in favour of a duty to employ multilateral and peaceful means to prevent genocide first before taking unilateral action as a matter of last resort. Such a reading also coincides with Chapter VI of the UN Charter, which contains a general obligation of States to settle disputes by peaceful means. As stressed by New Zealand⁵⁴, Article IX of the Convention gives effect to the parties’ pre-existing obligations under Articles 2(3) and 33 of the Charter of the United Nations and customary international law to settle their disputes peacefully. The Republic of Poland emphasizes that all State Parties are obliged to suppress genocide worldwide for the benefit of mankind, and not to protect their own interests.

47. In conclusion, the Court's jurisdiction under Article IX of the Convention extends to disputes concerning the unilateral action for the stated purpose of preventing and punishing alleged genocide, as it encompasses issues of interpretation concerning several provisions of the Convention⁵⁵.

⁵¹ 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. 221, para. 430.

⁵² *Ibid.*

⁵³ Provisional Measures Order of 16 March 2022, Separate Opinion of Judge Robinson, para. 27.

⁵⁴ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*), Declaration of Intervention of New Zealand of 28 July 2022, para. 25. Separate Opinion of Judge Robinson, para. 27.

⁵⁵ 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, p. 11, para. 45.

Section III: Conclusion

48. The ordinary meaning of Article IX of the Convention and its context, along with the object and purpose of the entire Convention, show that a dispute regarding acts carried out by one State against another State based on claims of genocide falls under the notion of a “dispute between Contracting Parties relating to the interpretation, application or fulfilment of the present Convention”. Thus, this provision concerns a situation in which one State invokes the commission of genocide by another State and the latter opposes such a claim.⁵⁶ As a result, if the representative of one State makes a general allegation that another State has committed genocide and tries to infer from this allegation certain rights, such conduct is covered by the subject matter of the Convention. Certainly, such behaviour cannot be considered insignificant from the perspective of the Convention’s jurisdictional and substantive provisions.

49. Thus, the jurisdiction of the Court under Article IX of the Convention also applies to disputes concerning otherwise unlawful unilateral action for the stated purpose of preventing and punishing alleged genocide.

50. Finally, from a systemic perspective, it is posited that the Court, as the principal judicial organ of the United Nations, whose primary function is the preservation of international peace and security, has a positive obligation to contribute to that aim by providing a judicial framework for the resolution of legal conflicts, especially one which not only threatens international peace and security but also has escalated to a full-scale military invasion involving enormous human suffering and continuing loss of life.⁵⁷



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⁵⁶ 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. 43, at p. 75, para. 169.

⁵⁷ Legality of Use of Force (Yugoslavia v. United States of America). Request for the Indication of Provisional Measures (Removal from List), *I.C.J. Reports 1999*, Declaration of Judge Koroma, p. 930.