

INTERNATIONAL COURT OF JUSTICE

WRITTEN OBSERVATIONS OF THE HELLENIC REPUBLIC

In the case of

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

(UKRAINE v. RUSSIAN FEDERATION)

3 JULY 2023

I. INTRODUCTION

1. On 26 February 2022, Ukraine instituted proceedings against the Russian Federation concerning “a dispute ... relating to the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide” (“the Genocide Convention” or “the Convention”)¹, seeking to base the Court’s jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention.²
2. Together with the Application, Ukraine filed a Request for the indication of provisional measures in which it requested the Court to indicate provisional measures “in order to prevent irreparable prejudice to the rights of Ukraine and its people and to avoid aggravating or extending the dispute between the parties under the Genocide Convention”.³
3. On 7 March 2022, a public hearing was held, without the participation of the Russian Federation. However, in a document communicated to the Court on 7 March 2022, the Russian Federation contended that the Court lacked jurisdiction to entertain the case and “request[ed] the Court to refrain from indicating provisional measures and to remove the case from the list”.⁴
4. By an Order dated 16 March 2022, the Court indicated provisional measures.⁵
5. On 23 March 2022, the Court issued an Order that fixed the time-limits for the filing of Ukraine’s Memorial and the Russian Federation’s Counter-Memorial as of 23 September 2022 and 23 March 2023, respectively.⁶

¹ Convention on the Prevention and Punishment of the Crime of Genocide, adopted 9 December 1948, entered into force 12 January 1951, *UNTS*, vol. 78, p. 277.

² *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Application instituting proceedings, filed in the Registry of the Court on 26 February 2022, para. 12.

³ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Request for the indication of provisional measures of 26 February 2022, para. 20.

⁴ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Document (with annexes) from the Russian Federation setting out its position regarding the alleged “lack of jurisdiction” of the Court in the case, dated 7 March 2022, para. 24.

⁵ *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. 86.

⁶ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of 23 March 2022, p. 2.

6. On 30 March 2022, the Registrar of the Court addressed a notification to the States parties to the Genocide Convention, pursuant to Article 63, paragraph 1, of the Statute of the Court, which provides that “[w]henever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith”.⁷

7. On 1 July 2022, Ukraine filed its Memorial.⁸

8. On 3 October 2022, the Russian Federation raised preliminary objections to the jurisdiction of the Court and the admissibility of the Application⁹ and on 3 February 2023 Ukraine filed its written statement of observations and submissions on the preliminary objections of the Russian Federation.¹⁰

9. On 13 October 2022, the Hellenic Republic filed a Declaration of Intervention pursuant to Article 63, paragraph 2, of the Statute of the Court, which confers on every State so notified “the right to intervene in the proceedings”, limiting it to the construction of Article IX of the Genocide Convention.¹¹

10. On 15 November 2022, Ukraine, as provided for in Article 83, paragraph 1, of the Rules of the Court, filed in the Registry of the Court written observations on the Hellenic Republic’s Declaration of Intervention, pleading that it is admissible. On the same day, the Russian Federation, acting pursuant to the said provision, filed written observations on the admissibility of the Declarations of Intervention submitted by ten States, including the Hellenic Republic, requesting the Court to dismiss the Declarations concerned on several

⁷ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Letter from the Registrar of the Court No 156413 to the Contracting Parties to the Genocide Convention, dated 30 March 2022.

⁸ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Memorial submitted by Ukraine, dated 1 July 2022.

⁹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Preliminary Objections submitted by the Russian Federation, dated 1 October 2022.

¹⁰ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Written Statement of Observations and Submissions on the Preliminary Objections of the Russian Federation submitted by Ukraine, dated 3 February 2023.

¹¹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Declaration of Intervention under Article 63 of the Hellenic Republic, dated 6 October 2022, para. 17.

grounds of inadmissibility or to defer consideration of admissibility of the Declarations until after the Court has made a decision on the Russian Federation's preliminary objections.¹²

11. On 31 January 2023, the Registrar of the Court informed the Hellenic Republic that: "In light of the fact that the Russian Federation has filed objections to the admissibility of your Government's declaration of intervention, the Court, pursuant to Article 84, paragraph 2, of its Rules, must hear the State seeking to intervene and the Parties before deciding on the question of admissibility. In this regard, the Court has decided to do so by means of a written procedure. To that end, it has fixed 13 February 2023 as the time-limit for your Government to submit observations in writing on the admissibility of its declaration, and 13 March 2023 as the time-limit for the Parties to submit observations in writing on the admissibility of that declaration".¹³

12. On 13 February 2023, the Hellenic Republic filed its written observations on the admissibility of its Declaration of Intervention pursuant to Article 84, paragraph 2, of the Rules of the Court, with which it addressed "the objections raised by the Russian Federation only to the extent that they were directly related to its own Declaration of Intervention".¹⁴

13. By an Order dated 5 June 2023, the Court decided that the Declarations of Intervention filed by thirty-two States, including that of the Hellenic Republic, "are admissible at the preliminary objections stage of the proceedings in so far as they concern the construction of Article IX ...".¹⁵

14. On 6 June 2023, the Registrar of the Court informed the Hellenic Republic that: "The Court has also fixed 5 July 2023 as the time-limit for the filing, by the States whose declarations of intervention have been deemed admissible at the preliminary objections stage of the proceedings, of the written observations referred to in Article 86, paragraph 1, of the

¹² *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, The Russian Federation's Written Observations on Admissibility of the Declarations of Intervention submitted by Australia, Austria, Denmark, Estonia, Finland, Greece, Ireland, Luxembourg, Portugal and Spain, dated 15 November 2022.

¹³ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Letter from the Registrar of the Court No 158457 to the Government of the Hellenic Republic, dated 31 January 2023.

¹⁴ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Written Observations of the Hellenic Republic on the Admissibility of its Declaration of Intervention filed under Article 63 of the Statute of the Court, dated 13 February 2023, para. 5.

¹⁵ *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.

Rules of Court”.¹⁶ Furthermore, he transmitted to the Hellenic Republic in accordance with the decision of the Court and Article 86, paragraph 1, of the Rules of the Court electronic copies of the Memorial of Ukraine, the Preliminary Objections of the Russian Federation and the Written Statement of Ukraine on those preliminary objections.

15. The Hellenic Republic’s Intervention under Article 63 of the Statute of the Court “involves the exercise of a right by a State party to a convention the construction of which is in question before the Court”.¹⁷ As stated in its Declaration of Intervention, the Hellenic Republic, in the present written observations, pursuant to Article 86, paragraph 1 of the Rules of the Court, will focus on the construction of Article IX of the Genocide Convention on the jurisdiction of the Court and will present its interpretation of Article IX of the Convention in line with the 1969 Vienna Convention on the Law of Treaties and customary rules of interpretation as reflected therein.¹⁸

16. Finally, upon the Court’s invitation to coordinate with other intervening States, and in consistency with its abovementioned Declaration of Intervention, the Hellenic Republic submits written observations which to a large extent substantially converge with the positions of other EU Member States intervening in the present case. However, in order to be able to meet the strict deadline set by the Court and for logistical reasons, the Hellenic Republic files its own written observations.

II. CONSTRUCTION OF ARTICLE IX OF THE GENOCIDE CONVENTION FOR WHICH THE HELLENIC REPUBLIC CONTENDS

17. In its Order indicating provisional measures in the case at hand, the Court affirmed its jurisdiction *prima facie* on the basis of Article IX of the Genocide Convention.¹⁹ As the Court has recalled in the same Order, the Parties to this case dispute whether the compromissory clause of Article IX of the Genocide Convention can be invoked in a case in which

¹⁶ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Letter from the Registrar of the Court No 159476 to the Government of the Hellenic Republic, dated 6 June 2023.

¹⁷ *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. 26 with further references.

¹⁸ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Judgment of 22 July 2022, p. 31, para. 87; see also *Application of the International Convention On the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections, Judgment, *I.C.J. Reports 2021*, p. 71, at p. 95, para. 75 with further references.

¹⁹ *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. 48.

allegations of genocide committed by one State lead to the use of military force by another State.²⁰ Furthermore, in its Order on Admissibility of the Declarations of Intervention, the Court determined that “the construction of Article IX and of other provisions of the Genocide Convention concerning the Court’s jurisdiction *ratione materiae* is in question at the present stage of the proceedings”.²¹

18. At the outset, the Hellenic Republic would like to stress that the Genocide Convention is of utmost importance to prevent and punish genocide. Any acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group constitute a crime under international law. The prohibition against genocide is “a peremptory norm in international law (*jus cogens*)”.²² Moreover, as the Court has affirmed, “[i]n view of their shared values, all the States parties to the Genocide Convention have a common interest to ensure that acts of genocide are prevented and that, if they occur, their authors do not enjoy impunity. That common interest implies that the obligations in question are owed by any State party to all the other States parties to the Convention” (obligations *erga omnes partes*).²³

19. Equally important is the system of monitoring compliance with the Convention and settling disputes arising thereunder. As it has been observed in legal doctrine, Article IX of the Convention is “a model of clarity and simplicity, opening the seizing of the Court as largely as possible”²⁴, thus allowing States parties to submit to an impartial, judicial forum major disputes arising out of the Convention (including those involving allegations of genocide). Seen from that perspective, Article IX promotes judicial settlement as a means of achieving peaceful resolution of international disputes falling within the ambit of the Convention.²⁵

20. Article IX reads as follows: “*Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating*

²⁰ *Ibid.*, paras. 28 *et seq.*

²¹ *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. 69.

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. 43, at p. 111, para. 161.

²³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p. 3, at p. 17, para. 41 with further references; see also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Judgment of 22 July 2022, p. 36, para. 107.

²⁴ R. Kolb, “The Compromissory Clause of the Convention”, in P. Gaeta (ed), *The UN Genocide Convention: A Commentary*, Oxford University Press, Oxford, 2009, p. 420.

²⁵ See C. Tams, “Article IX”, in C. Tams *et al.* (eds.), *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary*, Verlag C. H. Beck, München, 2015, p. 294. See also R. Kolb, *ibid.*, p. 413.

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.”

21. The Hellenic Republic’s interpretation of Article IX is based on Article 31 of the 1969 Vienna Convention on the Law of Treaties²⁶, reflecting customary international law, which reads as follows:

“1. 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.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.” [...]

22. As far as the meaning of the terms of Article IX is concerned, the Hellenic Republic contends that the notion of “dispute” is already well established in the case law of the Court and supports the interpretation given by the Court in its Order of 16 March 2022. The relevant parts of the aforementioned Court’s Order read as follows:

23. “Article IX of the Genocide Convention makes the Court’s jurisdiction conditional on the existence of a dispute relating to the interpretation, application or fulfilment of the Convention. According to the established case law of the Court, a dispute is “a

²⁶ Vienna Convention on the Law of Treaties, adopted 23 May 1969, entered into force 27 January 1980, *UNTS*, vol. 1155, p. 331.

disagreement on a point of law or fact, a conflict of legal views or of interests” between parties (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11*). In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other” (*South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962, p. 328*). The two sides must “hold clearly opposite views concerning the question of the performance or non-performance of certain’ international obligations” (*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, citing Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 74*). To determine whether a dispute exists in the present case, the Court cannot limit itself to noting that one of the Parties maintains that the Convention applies, while the other denies it (see *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 (II), p. 414, para. 18*).”²⁷

24. [...] “The Court recalls that, for the purposes of deciding whether there was a dispute between the Parties at the time of the filing of the Application, it takes into account in particular any statements or documents exchanged between the Parties, as well as any exchanges made in multilateral settings. In so doing, it pays special attention to the author of the statement or document, their intended or actual addressee, and their content. The existence of a dispute is a matter for objective determination by the Court; it is a matter of substance, and not a question of form or procedure (see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p. 12, para. 26*).”²⁸

25. [...] “The Court recalls that, while it is not necessary for a State to refer expressly to a specific treaty in its exchanges with the other State to enable it later to invoke the compromissory clause of that instrument to institute proceedings before the Court (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United*

²⁷ *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 28.

²⁸ *Ibid.*, para 35.

States of America), *Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, pp. 428-429, para. 83), 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 ascertain that there is, or may be, a dispute with regard to that subject-matter (*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) [...]”.²⁹

26. Turning to the interpretation of the other parts of Article IX, namely those indicating that the scope of such disputes must be “relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide” the Hellenic Republic contends that Article IX is a broad jurisdictional clause, allowing the Court to adjudicate upon disputes concerning the alleged fulfilment by a Contracting Party of its obligations under the Convention. The important role of the Court under the Genocide Convention on the basis of the latter’s compromissory clause contained in Article IX was highlighted in the joint separate opinion of five Members of the Court in *Democratic Republic of the Congo v. Rwanda*.³⁰ Such a pivotal role of the Court calls for a broad interpretation of Article IX of the Convention.

27. The phrase “relating to the interpretation, application or fulfilment of the Convention, including those relating to the responsibility of a State for genocide” may be divided in three parts: (a) “relating to”, (b) “interpretation, application or fulfilment of the Convention” and (c) “including those relating to the responsibility of a State for genocide”.

28. (a) As regards the first part, the phrase “relating to” establishes a link between the dispute and the Convention. Therefore, in order for the Court to exercise its jurisdiction under Article IX of the Convention, it is sufficient that the subject-matter of the dispute concerns the Convention itself. Or, to put it otherwise: it is allowed to use Article IX of the Convention to bring before the Court any dispute regarding alleged violations of the Genocide Convention.

29. Hence, where, like in the case at hand, the subject-matter of an application concerns the question whether certain acts, such as allegations of genocide and military operations

²⁹ *Ibid.*, para 44.

³⁰ Joint Separate Opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma, attached to *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*, p. 6, at p. 72, para. 28.

undertaken with the stated purpose of preventing and punishing genocide, are in conformity with the Genocide Convention, such dispute falls squarely within the scope of Article IX of the Convention. The Court can exercise its jurisdiction under Article IX of the Genocide Convention irrespective of the question whether or not the conduct in question simultaneously breaches other rules of international law extrinsic to the Genocide Convention and whether or not the Court has jurisdiction over those matters. As the Court observed in its Order of 16 March 2022 “certain acts or omissions may give rise to a dispute that falls within the ambit of more than one treaty”.³¹

30. (b) With regard to the second part, the phrase “interpretation, application or fulfilment of the Convention” is intentionally broad to encompass many different scenarios.

31. The reference to the Convention’s “interpretation” is self-explanatory as the latter “is typically understood as the process of ‘explaining the meaning’ of a legal norm”.³²

32. “Application” can be understood as “the ‘action of putting something into operation’ in a given case”.³³ As the Permanent Court of International Justice explained in *Factory at Chorzów*, a dispute “relating to the application” of provisions of a treaty “include[s] 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.”³⁴

33. The term “fulfilment” partially overlaps with that of “application” and it may be understood as “refer[ring] to an application that ‘meets the requirements’ of a norm”.³⁵ Moreover, the inclusion of the word “fulfilment” in Article IX in addition to the more common formulation of “interpretation and application” in compromissory clauses further supports the view that the Court has jurisdiction *ratione materiae* to declare the absence of genocide when genocide is being alleged to take place. As noted by a Member of the Court, the inclusion of the word “fulfilment” is “unique as compared with the compromissory clauses found in other multilateral treaties which provide for submission to the International

³¹ *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 46 with further references.

³² C. Tams, “Article IX”, *op. cit.*, p. 313.

³³ *Ibid.*

³⁴ *Case Concerning the Factory at Chorzów (Claim for Indemnity) (Jurisdiction)*, Judgment of 26 July 1927, Series A, No. 9, pp. 20-21.

³⁵ C. Tams, “Article IX”, *op. cit.*, p. 313.

Court of Justice of such disputes between Contracting Parties as related to the *interpretation or application* of the treaties in question” (emphasis in the original).³⁶

34. In the same vein, it has been pointed out that “[t]he *travaux préparatoires* [also] confirm the added breadth intended by the word ‘fulfilment’.”³⁷ The decision to add the word “fulfilment” shows that the intention was “to extend the Court’s jurisdiction to a broad range of possible disputes relating to the Convention, including the parties’ performance of their obligations under the Convention.”³⁸

35. In any case, “by inserting all three alternative terms” (“interpretation”, “application”, “fulfilment”), “[the] drafters [of the Convention] had sought to ‘give a coverage as exhaustive as possible to the compromissory clause’ and to ‘close down all possible loopholes’.”³⁹

36. As far as the last segment of the phrase “relating to the interpretation, application or fulfilment of the Convention” is concerned, the words “of the Convention” make clear that the compromissory clause refers back to all the provisions of the Convention. 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 same time, the *renvoi* relates to the entire life of the Convention, including breaches thereof.⁴⁰

37. 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 genocide. In that scenario, the Court verifies the factual basis for such allegation: if it is not satisfied that there were any acts of genocide actually being committed by the respondent State, it may decline its jurisdiction on that basis.⁴¹

³⁶ Declaration of Judge Oda, attached 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*, *I.C.J. Reports 1996*, p. 595, at p. 627, para. 5.

³⁷ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Written Statement of Observations and Submissions on the Preliminary Objections of the Russian Federation submitted by Ukraine, dated 3 February 2023, para. 95.

³⁸ *Ibid.*

³⁹ C. Tams, “Article IX”, *op. cit.*, p. 313; R. Kolb, “The scope *ratione materiae* of the compulsory jurisdiction of the ICJ”, in P. Gaeta (ed.), *The UN Genocide Convention: A Commentary*, Oxford University Press, Oxford, 2009, p. 453.

⁴⁰ See R. Kolb, *ibid.*, pp. 453-454.

⁴¹ *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

38. While this scenario of alleged responsibility for acts of genocide constitutes an important type of dispute about the “interpretation, application or fulfilment” of the Convention, it is not the only one. In *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 I⁴², and the Court affirmed its jurisdiction *ratione materiae*.⁴³ In *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 violating 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 V.⁴⁴ 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, there can also be disputes about “non-action” as a violation of the substantive obligations under Articles I, IV and V.

39. Therefore, the ordinary meaning of Article IX makes it clear that there is no need to establish genocidal acts as a basis to affirm the Court’s jurisdiction. Rather, the Court has jurisdiction over the question whether genocidal acts have been or are being committed or not. The French version of the text, which is equally authentic according to Article X of the Convention, corroborates this interpretation of Article IX, as the expression « *y compris ceux relatifs à la responsabilité d’un État en matière de génocide* » is broad enough to include not only the commission but also the non-commission of the crime of genocide.

40. (c) Turning to the third part, the phrase “including those relating to the responsibility of a State for genocide” further confirms “the comprehensive nature of Article IX”.⁴⁵ As stated by the Court, the word “including” is an “unusual feature”⁴⁶ indicating a broader scope of Article IX of the Convention when compared to a standard compromissory clause. The Court

of the Statute (see *Legality of Use of Force (Serbia and Montenegro v. France)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2004, p. 595).

⁴² *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, p. 595, at p. 603, para. 4 and p. 614, para. 28.

⁴³ *Ibid.*, at pp. 615-617, paras. 30-33.

⁴⁴ *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).

⁴⁵ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Written Statement of Observations and Submissions on the Preliminary Objections of the Russian Federation submitted by Ukraine, dated 3 February 2023, para. 98.

⁴⁶ *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.

explained that “[t]he 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”.⁴⁷

41. Furthermore, the context of the phrase “relating to” in Article IX confirms that the Court’s jurisdiction goes beyond disputes between States about the responsibility for alleged genocidal acts and also covers disputes between States about the absence of genocide and about the performance of treaty obligations by one or more States parties. In other words: “[w]ith a view to the question of positive fulfilment, the Court has jurisdiction over the question whether a Contracting Party (...) has not violated its obligation to prevent and punish genocide. In a negative way, the Court can also adjudicate whether a Contracting Party has failed to fulfil these obligations”.⁴⁸

42. Moreover, as noted above, the concepts of “dispute” and “fulfilment” in Article IX are sufficiently broad to allow the Court to issue a declaration that the applicant State bears no responsibility for a breach under the Convention, as alleged by another State. Article IX expressly provides for the jurisdiction of the International Court of Justice “at the request of *any of the parties* to the dispute” (emphasis added). The Court has stated that this phrase “clarifies that only a party to the dispute may bring it before the Court”.⁴⁹ The relevant limitation is that the State party to the Convention seizing the Court must be a party to the dispute, but there is no limitation as to which party to the dispute. It can be “any” party to the dispute. 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 with the effect that the Court will have jurisdiction over that dispute.⁵⁰ There is nothing that limits the Court’s jurisdiction to cases where it is the applicant State that accuses the respondent State of breaching its obligations under the Convention.

⁴⁷ *Ibid.*

⁴⁸ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Declaration of Intervention under Article 63 of the Principality of Liechtenstein, dated 15 December 2022, para. 20.

⁴⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Judgment of 22 July 2022, p. 37, para. 111.

⁵⁰ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Declaration of Intervention under article 63 of the United Kingdom, dated 1 August 2022, para. 34; Declaration of Intervention under article 63 of Australia, dated 30 September 2022, paras. 35-36; Declaration of Intervention under article 63 of Norway, dated 10 November 2022, para. 21.

Otherwise, a State party, acting contrary to the principle of good faith, could freely invent violations of the Genocide Convention, allegedly committed by another State party without the latter being able to have recourse to the Court, thus excluding from the Court's jurisdiction genocide-related disputes and leading potentially to serious misuses of the Genocide Convention. Hence, a State may seek a declaration from the Court that the allegations from another State that it was responsible for genocide are without legal and factual foundation.

43. More generally, nothing prevents a requesting State to invoke the compromissory clause of a given Convention to ask the Court for a negative declaration that it has not breached its international obligations under the convention in question. For example, in the Lockerbie case, Libya had requested several Court findings that it had complied with Articles 5, 6 and 7 of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation on the basis of its Article 14.⁵¹ The United States objected and argued that none of the provisions quoted by the applicant concerned obligations binding upon it as respondent.⁵² The Court rejected the preliminary objection. It held that there was a specific dispute before it on the interpretation and application of Article 7 - read in conjunction with Article 1, Article 5, Article 6, and Article 8 of the Montreal Convention -, which fell to be decided by the Court on the basis of Article 14.⁵³ It thus assumed jurisdiction over the applicant's request that it had not violated the Montreal Convention.

44. In addition, the already mentioned *erga omnes partes* character underpinning the Genocide Convention speaks against a narrowly construed opportunity to seeking judicial protection before the Court. On the contrary, such an interpretation would risk precluding a victim State from seeking relief from the Court in the face of abuses of the Convention. This would undermine the Convention's credibility and efficiency as a universal instrument for the prevention of genocide, as well as the role of the Court as a critical avenue for redress against abuses of the law.

45. The broad interpretation of the Convention's compromissory clause is furthermore confirmed by the fact that it does not require, unlike many other compromissory clauses, any

⁵¹ *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 115, at p. 123, para. 25.

⁵² *Ibid.*, at p. 124, para. 26.

⁵³ *Ibid.*, at p. 127, para. 28.

additional procedural steps such as prior negotiations or attempts to settle the dispute by way of arbitration.

46. Finally, the *object and purpose* of the Convention gives further support to the wide interpretation of Article IX. The Court has noted that “[a]ll the States parties to the Genocide Convention [...] have a common interest to ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention”.⁵⁴ The *erga omnes* nature of the obligations under the Convention also underpins the paramount significance of the text for the international community as a whole, entrusting the Court back in 1948 with a particularly important mission to enforce it in the interest of all States.

47. Famously, in its 1951 Advisory Opinion, the Court held:

“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.”⁵⁵

48. The Convention’s object to protect the most elementary principles of morality also requires from a State party not to abuse its provisions for other purposes. The purpose of the Convention also speaks loudly in favour of a reading of Article IX, according to which

⁵⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Judgment of 22 July 2022, p. 36, para. 107 with further references.

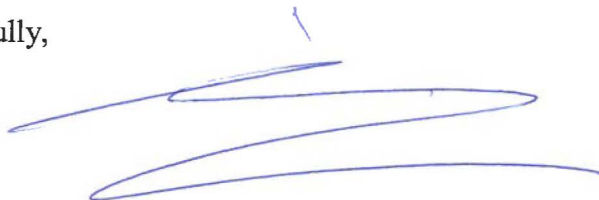
⁵⁵ *Reservations to the Genocide Convention, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951*, p. 15, at p. 23.

disputes relating to the interpretation, application and fulfilment include disputes about the abuse of the Convention's substantive provisions to justify a State party's action vis-à-vis another State party to the Convention. Indeed, it would undermine the Convention's credibility as a universal instrument to outlaw the most abhorrent crime of genocide if its authority could be abused by any State party without a possibility of the State party victim of such abuse to turn to the Court.

III. CONCLUSION

49. In conclusion, it follows from the ordinary meaning of Article IX of the Convention, its context and the object and purpose of the entire Convention that Article IX encompasses any dispute relating to the interpretation, application, or fulfilment of the Genocide Convention. Under the compromissory clause of Article IX, the Court has been granted "a jurisdiction as wide as possible in the life of the Convention"⁵⁶, which cannot be denied on account of an allegedly insufficient link with the Convention. Therefore, a dispute regarding acts carried out by one State party against another State party based on abusive claims of genocide falls under the notion of "dispute between Contracting Parties relating to the interpretation, application or fulfilment of the present Convention". Accordingly, the Court has jurisdiction to declare the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law.

Respectfully,



Zinovia Chaido Stavridi, Agent of the Hellenic Republic before the International Court of Justice

⁵⁶ R. Kolb, "The scope *ratione materiae* of the compulsory jurisdiction of the ICJ", *op. cit.*, p. 453.