

INTERNATIONAL COURT OF JUSTICE

**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 REPUBLIC OF SLOVENIA

5 July 2023

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WRITTEN OBSERVATIONS OF THE REPUBLIC OF SLOVENIA

Introduction

1. On 24 November 2022, the Republic of Slovenia availed itself of its right to intervene in the case concerning *Allegation of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* and submitted a Declaration of Intervention in accordance with Article 63 of the Statute of the Court and Article 82 of the Rules of Court.

2. By its Order of 5 June 2023, the Court rejected the objections raised by the Russian Federation in respect of declarations of intervention deposited by several States, including the Republic of Slovenia, and declared that the declarations of intervention made by several States, including the one submitted by the Republic of Slovenia, admissible at the preliminary objections stage of the proceedings¹. In the same Order, the Court fixed the time-limit for the filing of written observations referred to in Article 86, paragraph 1, of the Rules of Court².

3. The present Written Observations by the Republic of Slovenia are filed in accordance with the Court's Order. Pursuant to the Court's instructions, Slovenia's Written Observations are limited to "the construction of Article IX and other provisions of the Convention on the Prevention and Punishment of the Crime of Genocide that are relevant for the determination of the jurisdiction of the Court"³. They will not address other matters, such as the existence of a dispute between the Parties, the evidence (or the absence thereof), the facts or the application of the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the "Convention") in the present case.

4. In the interest of an efficient and good administration of justice and upon the Court's invitation to coordinate with other intervening States, the Written Observations of the Republic of Slovenia are largely coordinated on substance with those of other Member States of the European Union intervening in the proceedings.

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, paras. 99 and 102 (1).

² *Ibid.*, para. 102 (3).

³ *Ibid.*, para. 102 (1).

I. The principles relevant to the construction and interpretation of Article IX and other provisions of the Convention

5. The Republic of Slovenia reiterates⁴ that the construction and interpretation of Article IX and other relevant provisions of the Convention has to be established in accordance with the customary rules and principles of treaty interpretation, as codified and reflected in Articles 31 to 33 of the 1969 Vienna Convention on the Law of Treaties⁵.

II. The construction of Article IX of the Convention

6. Article IX of the Convention reads as follows:

“Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”

7. This compromissory clause is formulated broadly. The plain language of Article IX entrusts the Court with jurisdiction concerning any “dispute[] ... relating to the interpretation, application or fulfilment of the ... Convention” submitted by “any of the parties to the dispute”. It has been highlighted that this broad formulation of Article IX was aimed at giving

“a coverage as exhaustive as possible to the compromissory clause. The aim was thus to close down all possible loopholes weakening the jurisdictional reach of the Court. The purpose pursued in 1948 was to grant the Court a jurisdiction as wide as possible in the life of the Convention, forestalling all the potential subtle arguments denying jurisdiction on account of an insufficient link with that Convention.”⁶

⁴ Declaration of Intervention, para. 12.

⁵ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Preliminary Objection, Judgment of 6 April 2023, para. 87; *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. 87; *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 (II)*, p. 598, para. 106.

⁶ 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, 2009, p. 453.

Article IX entrusts the Court with a far-reaching and important role⁷ in the full and faithful implementation of the Convention through judicial process, in accordance with the general obligation of States to settle their disputes peacefully, reflected in Articles 2 (3) and 33 (1) of the United Nations Charter.

8. The Republic of Slovenia considers that the interpretation of the term “dispute” is well settled in the case law of the Court⁸, as most recently expressed in the Court’s judgment in the case concerning the *Application of the Convention on the prevention and punishment of the crime of Genocide (The Gambia v. Myanmar)*⁹. Therefore, the Republic of Slovenia does not consider necessary to comment further on the interpretation of this term in the present observations, or to discuss the question whether a dispute between Ukraine and the Russian Federation actually exists.

9. Article IX of the Convention further characterizes the disputes which the Contracting Parties agree to submit to the compulsory jurisdiction of the Court, i.e., any dispute “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”.

10. The construction of this part of Article IX of the Convention is particularly relevant for the determination of the jurisdiction of the Court in the present proceedings. In its preliminary objections, the Russian Federation alleges that the dispute submitted by Ukraine is not one “relating to the interpretation, application or fulfilment” of the Convention and that, therefore, the Court lacks *ratione materiae* jurisdiction¹⁰. In its Application, Ukraine contends that the dispute relates

⁷ *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of Congo v. Rwanda)*, *Jurisdiction and Admissibility*, Joint Separate Opinion of Judges Higgins, Kooijmans, Elaraby, Owada, and Simma, *I.C.J. Reports 2006*, p. 72, para. 28.

⁸ See Declaration of Intervention, 24 November 2022, para. 18. The Republic of Slovenia notes that Ukraine (Memorial, para. 151; Observations on Preliminary Objections, para. 31), as well as several intervening States (Declarations of Intervention of Germany, para. 29; of Sweden, para. 27; of France, para. 26; of Italy, para. 28; of Romania, para. 25; of Poland, para. 25; of Denmark, para. 19; of Ireland, para. 22; of Finland, para. 28; of Estonia, para. 26; of Spain, para. 18; of Portugal, para. 22; of Austria, paras. 30-31; of the Hellenic Republic, para. 27; of Luxembourg, para. 22; of Croatia, para. 18; of the Czech Republic, para. 25; of Bulgaria, para. 20; of Malta, para. 18; of Norway, para. 15; of the Slovak Republic, para. 32; of Belgium, paras. 30-31; of Canada and the Netherlands, para. 27; of Cyprus, para. 21; of the United Kingdom, para. 33; of Australia, para. 30; and of Liechtenstein, para. 17) have expressed similar views.

⁹ *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. 63-64.

¹⁰ Preliminary Objections of the Russian Federation, paras. 138-229.

to the Genocide Convention and concerns “the Russian Federation’s long-standing allegation that Ukraine is committing genocide in violation of the Genocide Convention, and Russia’s reliance on this false allegation to recognize the independence of the DPR and LPR and engage in its large-scale invasion of Ukraine”¹¹.

11. The Republic of Slovenia will address two aspects of the interpretation of the relevant part of Article IX, i.e., that the compromissory clause includes disputes concerning the compliance by a Contracting State with its obligations, and that it also covers disputes concerning the means and measures taken by a State on the basis of allegations of genocide, their lawfulness and their consequences. The Republic of Slovenia also wishes to clarify that disputes concerning the interpretation of any of the provisions of the Convention, including Article IX itself, fall within the scope of the compromissory clause.

A. ARTICLE IX INCLUDES DISPUTES CONCERNING THE COMPLIANCE BY A CONTRACTING STATE WITH ITS OBLIGATIONS UNDER THE CONVENTION

12. The Republic of Slovenia considers that under a proper construction of Article IX of the Convention, the Court has jurisdiction over disputes concerning the compliance and the respect by a Contracting State of its obligations under the Convention, including its obligation not to commit genocide encompassed in the Convention¹².

13. The terms of Article IX refer to any dispute “relating to the interpretation, application or fulfilment” of the Convention. According to the ordinary meaning of these terms, the provision thus covers all disputes that concern the meaning of the Convention and its provisions (“interpretation”)¹³, the question whether and how the provisions of the Convention are put into operation (“application”)¹⁴, or the question whether a Contracting Party performs its obligations and duties as required

¹¹ Ukraine’s Observations on Preliminary Objections, para. 81. See also Application, paras. 7-11.

¹² *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. 167.

¹³ See *Oxford English Dictionary*, 3rd edn., 2015, online (interpretation: “the action of explaining the meaning of something”). For the French term “*interprétation*”, see *Dictionnaire de l’Académie française*, 9th edn., online (“*Explication du sens qu’on peut donner à un texte*”).

¹⁴ See *Oxford English Dictionary*, 3rd edn., 2015, online (application: “the action of putting something into operation”). See also *Dictionnaire de l’Académie française*, 9th edn., online (“*Mise en œuvre, en pratique*”).

and expected (“fulfilment”)¹⁵. This includes disputes, like the one submitted by Ukraine to the Court, on the issue whether a Contracting State has fully respected and performed its obligations under the Convention, including the obligation not to commit genocide.

14. Nothing in the text of Article IX limits the scope or the nature of the disputes that the Contracting Parties agree to submit to the compulsory jurisdiction of the Court to those concerning the violation of the provisions of the Convention or those concerning claims that a Contracting Party has committed genocide, only. The text of Article IX makes clear that disputes relating to the interpretation, application or fulfilment of the Convention *include* those “relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III”. But it does not suggest that disputes concerning the responsibility of a Contracting State for acts of genocide are the only ones that can be submitted to the Court. Rather, the term “including” suggests that disputes “relating to the interpretation, application and fulfilment” of the Convention necessarily cover a broader spectrum of disputes¹⁶, including those where a Contracting Party claims that it has complied with its obligations and that it has therefore not engaged its responsibility for acts of genocide. All these disputes relate without doubt to the interpretation, application or fulfilment of the Convention¹⁷, independently of the different question which State submits the dispute to the Court and, related thereto, how the claims of the applicant State are formulated.

15. This is further confirmed by the text of Article IX which states that a dispute falling into the categories outlined, including those relating to the responsibility of a State for genocide, shall be submitted to the Court “at the request of any of the parties to the dispute”. This wording had been specifically (re)introduced during the drafting of the Convention on the basis of an amendment submitted by India¹⁸. Under the plain terms of Article IX, a dispute concerning the

¹⁵ See *Oxford English Dictionary*, 3rd edn., online, 2015 (fulfilment: “the meeting of a requirement, condition, or need”; “the performance of a duty or role as required, pledged, or expected”). For the meaning of the French term “*exécution*”, see *Dictionnaire de l’Académie française*, 9th edn., online (“*Action de faire passer des dispositions dans les faits*”).

¹⁶ *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. See also Written Observations of Ukraine on Preliminary Objections, para. 98.

¹⁷ See also *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase)*, Advisory Opinion, *I.C.J. Reports 1950*, p. 75.

¹⁸ United Nations, *Official Records of the General Assembly, Third Session, Part I, Sixth Committee, Summary Records of Meetings*, 104th meeting, 13 November 1948, UN doc.

Convention can be submitted by a Contracting Party that claims that another Contracting Party has not fulfilled its obligations, including the obligation not to commit genocide, or by a Contracting Party that is accused of having failed to fulfil these obligations. In other words, it does not matter which party to a dispute advances a claim of correct performance or of non-performance and which side opposes it¹⁹. If a Contracting State is permitted to submit a dispute claiming that another Contracting State has breached its obligations, it is also legitimate for this other State to seize the Court and to claim that it has complied with its obligations. Otherwise, a State accused of breaching the Convention would be deprived of any remedy under the Convention and would be submitted to the unilateral will of the State raising such accusation to submit the dispute to the Court.

16. Hence, the text of Article IX, taken as a whole, confirms that disputes concerning the compliance with the provisions and obligations of the Convention, including the obligation not to commit genocide – which are nothing else than the other side of the coin of a dispute where the applicant contends that these obligations were breached – fall within the scope of the compromissory clause. Nothing in the text of Article IX precludes the Court, being a court of law, to accept claims of violation as well as claims of compliance. As already pointed out²⁰, in the case concerning *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, the French Republic introduced proceedings and requested the Court to declare, *inter alia*, that “the decree of December 30th, 1948, concerning the regulation of imports not involving an allocation of currency, is in conformity with the economic system which is applicable to Morocco, according to the conventions which bind France and the United States”²¹, and to draw all consequences from this situation. This claim was opposed by the United States²². The Court had no difficulty to entertain, to address and to decide upon this claim²³ although it was a claim concerning the compliance with and not the violation of obligations under the applicable conventions. Similarly, in the case concerning *Questions of Interpretation and Application of the 1971 Montreal Convention*, the applicant claimed before the Court that it had complied with several obligations

A/C.6/SR.104, p. 447 (Sundaram). See also *ibid.*, 103rd meeting, 12 November 1948, UN doc. A/C.6/SR.103, p. 437.

¹⁹ See also *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 26, para. 50.

²⁰ Declaration of Intervention of Latvia, para. 43; Declaration of Intervention of Italy, para. 37.

²¹ *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, *Judgment, I.C.J. Reports 1952*, p. 180.

²² *Ibid.*

²³ *Ibid.*, pp. 181-186.

under the Montreal Convention²⁴. The Court rejected the preliminary objection of the United States of America according to which the provisions relied upon did not create any obligations on them and confirmed that the dispute submitted to it concerned the interpretation and application of the relevant provisions of the Montreal Convention²⁵.

17. This construction of Article IX further entails that, contrary to the allegations made by the Russian Federation²⁶, the jurisdiction of the Court is not dependent on the existence of acts of genocide or on the plausibility of acts of genocide having taken place or likely to be committed.

18. As explained above²⁷, the text of Article IX confirms that the jurisdiction of the Court is not limited to alleged violations of the Convention, or to claims that a Contracting Party is responsible for genocide. It concerns any dispute relating to the interpretation, application or fulfilment of the Convention. Such disputes may arise “without any infraction having been noted”²⁸, and also without any act of genocide actually having been committed.

19. This is obvious in respect of disputes concerning the interpretation of the Convention and its provisions. The Permanent Court confirmed in this regard that “[t]here seems to be no reason why States should not be able to ask the Court to give an abstract interpretation of a treaty; rather would it appear that this is one of the most important functions which it can fulfil”²⁹. In other words, a dispute related to the interpretation of the Convention can arise outside of a concrete case of application and, therefore, independently of the existence of acts of genocide.

20. The context of the Convention’s compromissory clause and, in particular, the obligations contained in the Convention further confirm that it is not limited to or conditioned upon the commission of acts of genocide. The obligation of not

²⁴ *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. 123-124, para. 25.

²⁵ *Ibid.*, p. 124, para. 26 and p. 127, para. 28.

²⁶ See, in particular, Preliminary Objections of the Russian Federation, paras. 139, 145-155.

²⁷ See paras. 14-15 above.

²⁸ *Interpretation of the Statute of the Memel Territory, Preliminary Objections, Judgment, 1932, P.C.I.J., Series A/B, No. 47*, p. 248; *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion, I.C.J. Reports 1988*, p. 30, paras. 42-43.

²⁹ *Certain German Interests in Polish Upper Silesia, Merits, Judgment, 1926, P.C.I.J., Series A, No. 7*, p. 18-19.

committing acts of genocide necessarily exists independently of genocide having taken place. Indeed, its aim is to ensure that no genocide takes place. Therefore, a dispute concerning the interpretation, application or fulfilment of this particular obligation cannot be limited to cases of genocide having been committed only.

21. This is also the case of other obligations contained in the Convention. For instance, under Article V, the Contracting Parties “undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III”. This obligation exists and operates independently of the commission and existence of acts of genocide. The Court had already the occasion to confirm this point in respect of similar provisions of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³⁰. In light of the aim of the obligation of Article V of the Convention and the scope of its application, it applies and must be implemented as soon as a State is bound by the Convention. Its application and fulfilment are not conditioned upon acts of genocide having been committed. Indeed, it would be too late to implement this obligation once genocide had taken place. For this reason alone, Article IX, which also encompassed disputes concerning the interpretation, application or fulfilment of Article V, cannot be submitted to the condition that genocide was committed.

22. The object and purpose of the Convention equally commands a broad interpretation of Article IX and precludes any prerequisite condition of genocide having taken place for its operation.

23. The principle aim of the Convention is to prevent genocide. In its resolution 96 (I), the General Assembly invited “the Member States to enact the necessary legislation for *the prevention* and punishment of [the crime of genocide]”³¹ and recommended “that international co-operation be organized between States with a view to facilitating *the speedy prevention* and punishment of the crime of genocide”³². The preamble of the Convention reiterates the aim “to liberate mankind from such an odious scourge”. In accordance with Article I, the

³⁰ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 451, para. 75.

³¹ United Nations, General Assembly, Resolution A/RES/96 (1), *The Crime of Genocide*, 11 December 1946 (emphasis added).

³² *Ibid.* (emphasis added).

Contracting Parties “undertake *to prevent* and to punish” genocide (emphasis added). The Court explained and repeated that:

“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.”³³

Thus, in the opinion of the Court,

“[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”³⁴.

24. The object and purpose of the Convention to prevent genocide would be defeated if, as the Russian Federation seems to suggest, the Convention and the mechanisms aimed at its effective interpretation, application and fulfilment only become operative when genocide was committed. For this reason alone, the jurisdiction of the Court is not conditioned upon a claim that genocide was committed or the demonstration of the likelihood of acts of genocide taking place. Indeed, as highlighted by the representative of Czechoslovakia during the drafting of the Convention and Article IX, the guarantees for the application of the convention need to “be appropriate to the object of the convention, which was to ensure the prevention and punishment of the crime of genocide”³⁵.

³³ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23; *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. 106.

³⁴ *Ibid.*, para. 107.

³⁵ United Nations, *Official Records of the General Assembly, Third Session, Part I, Sixth Committee, Summary Records of Meetings*, 103rd meeting, 12 November 1948, UN doc. A/C.6/SR.103, p. 439 (Zourek).

25. In this respect, the reliance by the Russian Federation of extracts from previous decisions of the Court in order to establish an additional condition for Article IX's operation, or the existence of other obligations under the Convention, is misplaced. It is true that in cases where an applicant State claims that the respondent State has breached obligations under a treaty, the Court has frequently ascertained whether the breaches alleged are capable of falling within the provisions of the treaty in question³⁶; it is also right that the Court has refused to exercise its power to indicate provisional measures where it was not convinced, *prima facie*, that the acts complained of could constitute acts of genocide as defined by the Convention³⁷. Nevertheless, the Court has already held that, in order to exercise its power to recommend provisional measures:

“the Court is not required to ascertain whether any violations of Myanmar's obligations under the Genocide Convention have occurred. Such a finding, which notably depends on the assessment of the existence of an intent to destroy, in whole or in part, the group of the Rohingya as such, could be made by the Court only at the stage of the examination of the merits of the present case.”³⁸

This holds equally true in respect of the establishment of the Court's jurisdiction. The existence of acts of genocide prohibited by the Convention is a question concerning the interpretation, application or fulfilment of the Convention that the Court can only ascertain definitely at the merits stage of the proceedings.

26. More generally, the question whether a violation of treaty has actually taken place or not is not an issue of jurisdiction. The Court has already established its jurisdiction in cases concerning the interpretation or application of a treaty while

³⁶ See, e.g., *Legality of Use of Force (Serbia and Montenegro v. Belgium)*, *Provisional Measures*, Order of 2 June 1999, *I.C.J. Reports 1999*, p. 138, para. 40.

³⁷ *Ibid.*, p. 138, para. 40. Contrary to the representation made by the Russian Federation in its Preliminary Objections (para. 207), the Court did not reject Yugoslavia's claims of genocide at the provisional measures stage. The Court only considered that it was “not in a position to find, at this stage of the proceedings, that the acts imputed by Yugoslavia to the Respondent are capable of coming within the provisions of the Genocide Convention” (*ibid.*, para. 41).

³⁸ *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. 14, para. 30. See also *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, *Provisional Measures*, Order of 16 March 2022, para. 43.

later concluding that no breach had occurred³⁹. This confirms that the existence of genocide cannot be a prerequisite for the Court's jurisdiction.

27. For all these reasons, Article IX includes disputes concerning the correct compliance by a Contracting State of its obligations under the Convention, including the obligation not to commit genocide, and the consequences this compliance creates vis-à-vis other State parties. The Republic of Slovenia contends that this construction of the compromissory clause, which stems from the ordinary meaning of the terms of the provision, in their context and taking into account the object and purpose of the provision and the Convention, ensures an effective remedy to Contracting States against abusive, unjustified claims of genocide. This is an essential element for safeguarding the authority of the Convention as a whole and the most elementary principles of morality contained therein.

B. ARTICLE IX INCLUDES DISPUTES CONCERNING THE MEANS AND MEASURES
TAKEN BY A STATE ON THE BASIS OF ALLEGATIONS OF GENOCIDE

28. The Republic of Slovenia considers that under a proper construction of Article IX of the Convention, the Court has jurisdiction over disputes concerning the question whether a Contracting Party is entitled to take certain measures against another Contracting State on the basis of unsubstantiated and false claims of genocide, and the consequences for the States concerned of such measures having been implemented.

29. Indeed, such disputes plainly fall under the terms of Article IX of the Convention. They relate to “the interpretation, application or fulfilment of the Convention”, and, in particular, of the obligation set out in Article I to prevent genocide.

30. Within the ordinary meaning of the terms of Article IX, the Court has jurisdiction to ascertain whether a Contracting Party could rely on this obligation to prevent genocide in order to take measures vis-à-vis another Contracting Party. This is a question concerning the interpretation of Article I, i.e., concerning the meaning of its terms, on the one hand, and its application, on the other hand. The Permanent Court had already noted that differences “as to the extent of the sphere

³⁹ See, e.g., *Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy)*, Judgment, I.C.J. Reports 1989, p. 15; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Merits, Judgment, I.C.J. Reports 2015, p. 3.

of application” of provisions of a treaty fall within the interpretation and application of the treaty⁴⁰. It pointed out that disputes relating to the application of a treaty:

“include not only those relating to the question 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”⁴¹.

31. This conclusion is reinforced by the well-established principle that treaties must be performed in good faith, codified in Article 26 of the 1969 Vienna Convention on the Law of Treaties⁴². In its commentaries to draft Article 23 (which became Article 26 of the Vienna Convention), the International Law Commission confirmed that the principle of good faith performance included the duty to “abstain from acts calculated to frustrate the object and purpose of the treaty”⁴³. In the case concerning the *Gabčíkovo-Nagymaros Project*, the Court confirmed that “[t]he principle of good faith obliges the Parties to apply [the treaty] in a reasonable way and in such a manner that its purpose can be realized”⁴⁴. Whether a treaty, or a specific provision of that treaty, has been applied or relied upon in a reasonable way is a question concerning the interpretation, application and fulfilment of the said treaty, i.e., a question whether a party performs its obligation as required and expected⁴⁵.

32. The dispute submitted to the Court in the present proceedings concerns such a question of applicability of the provisions of the Convention. Indeed, the question raised by Ukraine is whether the acts committed by the Russian Federation have created a situation – an *état de choses* – contrary to the provisions of the Convention, in particular its Articles I and IV, and whether the Russian Federation has applied the Convention in a reasonable manner, as required and expected, or not. Whether genocide has actually been committed is irrelevant in this respect; the

⁴⁰ *Certain German Interests in Polish Upper Silesia, Preliminary Objections, Judgment No. 6, 1925, P.C.I.J., Series A, No. 6*, p. 16.

⁴¹ *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 20-21.

⁴² *Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 296, para. 38.

⁴³ *Yearbook of the International Law Commission*, 1966, vol. II, p. 211. See also J. Salmon, “Article 26 Convention of 1969”, in O. Corten and P. Klein (eds.), *The Vienna Conventions on the Law of Treaties. A commentary*, Oxford University Press, 2011, p. 679-680.

⁴⁴ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 78-79, para. 142.

⁴⁵ See para. 13 above.

obligation to apply the provisions of a treaty in good faith and without abuse always exists.

33. For the same reasons, the jurisdiction of the Court under Article IX covers disputes concerning the means and measures taken by a Contracting Party when purportedly implementing its obligations under the Convention, including the consequences of an improper implementation or fulfilment of the Convention. These are plainly questions of interpretation, application and fulfilment of the Convention and of its provisions.

34. Although the text of Article I does not refer to or detail the specific means that a Contracting Party – or rather the Contracting Parties – can or must take in order to implement their undertaking to prevent or to punish genocide, the interpretation of this provision, taking into account its context and the object and purpose of the Convention, provides further guidance in respect of its implementation⁴⁶.

35. It is significant that Article I is formulated in the plural and refers to “[t]he Contracting Parties” and that “they undertake to prevent and to punish” genocide. This confirms that these obligations are assumed collectively in the pursuance of a common interest⁴⁷. The preamble stresses the Contracting Parties’ conviction that, “in order to liberate mankind from such an odious scourge, international co-operation is required”. Articles VIII and IX establish mechanisms ensuring the collective implementation of the Convention and its obligations. Whereas the former addresses “the prevention and suppression of genocide ‘at the political level rather than as a matter of legal responsibility’”⁴⁸ through collective determinations and actions by the competent organs of the United Nations, the latter empowers the Court to decide disputes “between the Contracting Parties” in accordance with international law. 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 International Court of Justice with a

⁴⁶ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures*, Order of 16 March 2022, para. 56.

⁴⁷ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*, I.C.J. Reports 1951, p. 23; *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. 106.

⁴⁸ *Ibid.*, para. 88; *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. 109, para. 159.

particularly important mission to enforce it in the interest of all States. The Republic of Slovenia is particularly sensitive to the necessary collective implementation of the Convention⁴⁹; only such collective implementation is capable of fulfilling the Convention's purpose and of preventing unreasonable and abusive accusation of genocide through unilateral action.

36. In addition, the Court has already determined some of the principles and rules that must guide Contracting States when implementing their obligations to prevent and to punish genocide. It found that:

“Various parameters operate *when assessing whether a State has duly discharged the obligation concerned*. The first, which varies greatly from one State to another, is clearly the capacity to influence effectively the action of persons likely to commit, or already committing, genocide. ... The State's capacity to influence must also be assessed by legal criteria, since *it is clear that every State may only act within the limits permitted by international law*; seen thus, a State's capacity to influence may vary depending on its particular legal position vis-à-vis the situations and persons facing the danger, or the reality, of genocide.”⁵⁰

37. Therefore, disputes concerning the application and the purported implementation of the obligation to prevent and punish genocide necessarily include any dispute concerning the means and actions taken by a Contracting State and their conformity with the requirements of the Convention, including the duty to act within the limits permitted by international law and the spirit and aims of the United Nations⁵¹, and the consequences of abusive reliance on the Convention. These are disputes falling under Article IX if construed properly⁵².

38. Indeed, as repeatedly recalled by the Court, it “must not exceed the jurisdiction conferred upon it by the Parties, but it must also exercise that

⁴⁹ See the address to the General Assembly by Mr. Janez Janša, Prime Minister of the Republic of Slovenia, United Nations, *Official Records of the General Assembly, Sixty-seventh session, Verbatim Records*, 12th plenary meeting, 27 September 2012, UN doc. A/67/PV.12, p. 35-37.

⁵⁰ *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 (emphasis added). See also *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Provisional Measures, Order of 16 March 2022, para. 57.

⁵¹ *Ibid.*, para. 58.

⁵² For a similar view, see *Enrica Lexie (Italy v. India)*, Award, 2 July 2020, paras. 809-811.

jurisdiction to its full extent”⁵³. The Permanent Court has also found that the jurisdiction conferred to the Court by virtue of a compromissory clause must necessarily entail the power of the Court to draw all the consequences of an improper application of the treaty in question:

“An interpretation which would confine the Court simply to recording that the Convention had been incorrectly applied or that it had not been applied, without being able to lay down the conditions for the re-establishment of the treaty rights affected, would be contrary to what would, *prima facie*, be the natural object of the clause; for a jurisdiction of this kind, instead of settling a dispute once and for all, would leave open the possibility of further disputes.”⁵⁴

39. Allegations that the measures in question are not controlled by rules and provisions of the Convention, but rather by other rules of international law cannot deprive the Court of its jurisdiction under Article IX. Indeed, as the Court has recognized, “[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”⁵⁵. Yet, as noted by the Permanent Court:

“It is clear that the Court’s jurisdiction cannot depend solely on the wording of the Application; on the other hand, it cannot be ousted merely because the respondent Party maintains that the rules of law applicable in the case are not amongst those in regard to which the Court’s jurisdiction is recognized.”⁵⁶

In the case concerning the *Appeal Relating to the Jurisdiction of the ICAO Council*, the Court considered, in the same vein:

“The question is whether the Council is competent to go into and give a final decision on the merits of the dispute in respect of which, at the instance of Pakistan, and subject to the present appeal, it has assumed jurisdiction. The answer to this question clearly depends on whether

⁵³ *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 23, para. 19. See also *Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, I.C.J. Reports 1986, p. 577, para. 45; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, p. 671, para. 136.

⁵⁴ *Factory at Chorzów, Jurisdiction*, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 25.

⁵⁵ *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.

⁵⁶ *Certain German Interests in Polish Upper Silesia, Preliminary Objections*, Judgment No. 6, 1925, P.C.I.J., Series A, No. 6, p. 16.

Pakistan's case, considered in the light of India's objections to it, discloses the existence of a dispute of such a character as to amount to a 'disagreement ... relating to the interpretation or application' of the Chicago Convention or of the related Transit Agreement If so, then *prima facie* the Council is competent. Nor could the Council be deprived of jurisdiction merely because considerations that are claimed to lie outside the Treaties may be involved if, irrespective of this, issues concerning the interpretation or application of these instruments are nevertheless in question. The fact that a defence on the merits is cast in a particular form, cannot affect the competence of the tribunal or other organ concerned, – otherwise parties would be in a position themselves to control that competence, which would be inadmissible. As has already been seen in the case of the competence of the Court, so with that of the Council, its competence must depend on the character of the dispute submitted to it and on the issues thus raised – not on those defences on the merits, or other considerations, which would become relevant only after the jurisdictional issues had been settled.”⁵⁷

40. Therefore, the question of the applicability of the obligations of the Convention, and in particular its Article I, and the related question of the conformity of the measures taken in purported reliance on the Convention are related to the interpretation, application or fulfilment of the Convention. They fall within Article IX. This remains true independently of the allegations made by the respondent State that acts and measures taken would fall under different rules and principles of international law or are justifiable *aliter et aliunde*; these are questions concerning the merits of the case and no conclusions can be drawn from them so as to exclude *ipso facto* the Court's jurisdiction under Article IX.

C. IN ANY EVENT, ARTICLE IX INCLUDES DISPUTES CONCERNING THE INTERPRETATION OF THE CONVENTION, INCLUDING ARTICLE IX

41. Finally, the Republic of Slovenia considers that according to the terms of Article IX, a dispute covered by the compromissory clause can relate just as well to a question of interpretation of the Convention as to a question of the application or fulfilment thereof. Consequently, a dispute relating to the interpretation, that is to the meaning and content, of any one of the articles of the Convention, including

⁵⁷ *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, Judgment, *I.C.J. Reports 1972*, p. 61, para. 27. See also *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Preliminary Objections, Judgment, *I.C.J. Reports 1998*, p. 18, paras. 24-25.

Article IX itself, falls within the scope of the provision. As set out above⁵⁸, nothing prevents the Court to exercise its jurisdiction related to the interpretation – even *in abstracto* – of the Convention or of several of its provisions. Indeed, in its Judgment on the preliminary objections in the case between Bosnia and Herzegovina and Yugoslavia, the Court found that the parties were “in disagreement with respect to the meaning and legal scope of several of [the] provisions [of the Convention], including Article IX” and considered that “there is accordingly no doubt that there exists a dispute between them relating to ‘the interpretation, application or fulfilment of the ... Convention, including ... the responsibility of a State for genocide ...’, according to the form of words employed by that latter provision”⁵⁹.

III. Conclusions

42. As set out in detail above, the Republic of Slovenia considers that Article IX is broadly formulated. It covers any dispute concerning the interpretation, application or fulfilment of the Convention and its provisions.

43. Interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of the object and purpose of the Convention, Article IX includes in particular any dispute concerning the compliance by a State with its obligations under the Convention, including the obligation not to commit genocide, and, as a result, any dispute regarding abusive allegations of genocide.

44. Under a proper interpretation, Article IX also applies to disputes in relation to the means and measures taken for the prevention and punishment of genocide under the Convention, their lawfulness and consequences.

45. In any event, disputes relating to the matters above raise questions of interpretation of the relevant provisions of the Convention, including its compromissory clause. They also fall within the scope of application of Article IX properly construed.

⁵⁸ See para. 19 above.

⁵⁹ *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. 616, para. 33.

The Hague, 5 July 2023

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name Marko Rakovec.

Dr. Marko Rakovec

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